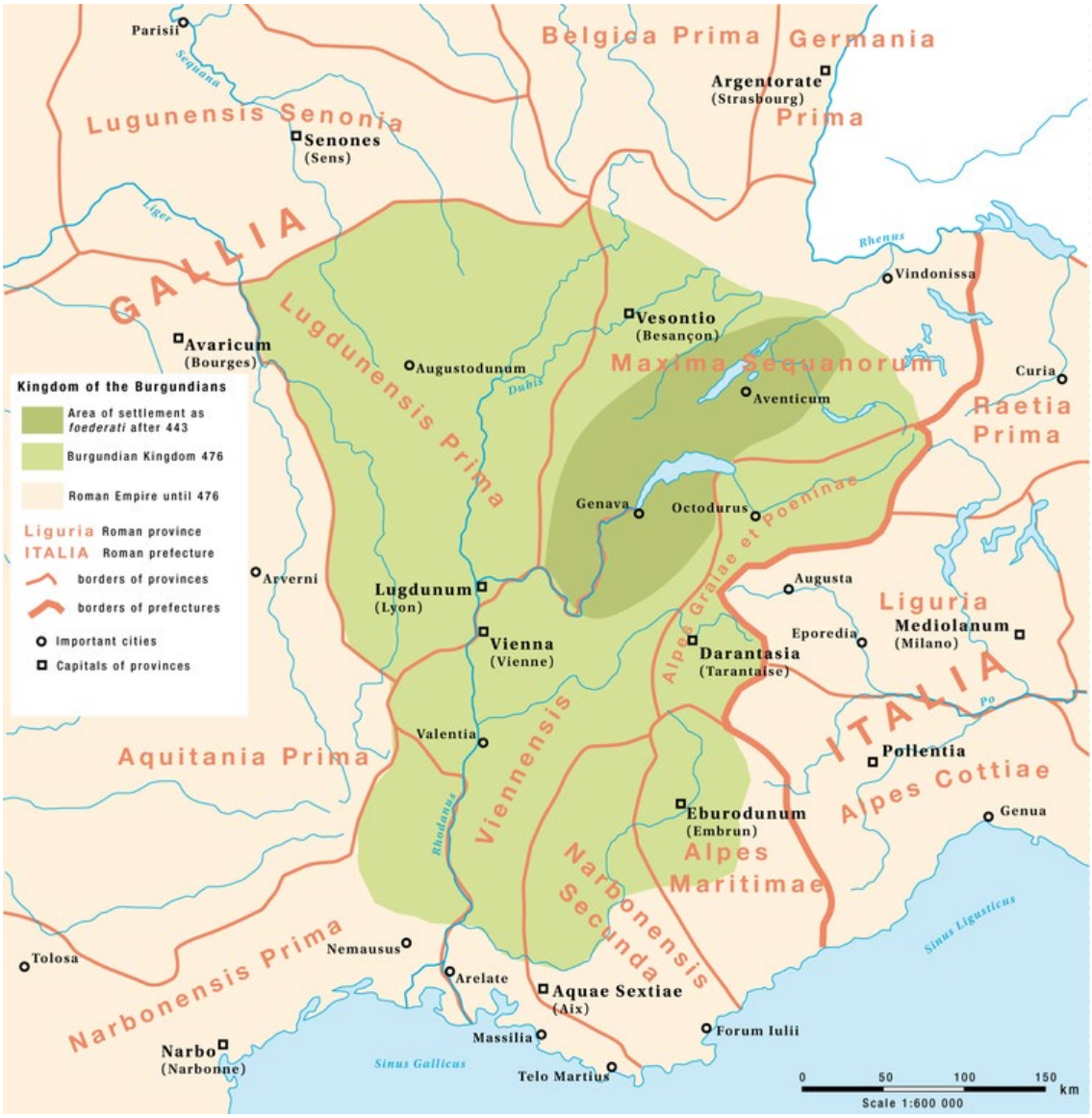
OUTLINE — LECTURE 4

The Burgundian Laws

Introduction.



1. The Burgundians crossed the Rhine sometime around 410 — kingdom centered in Worms, Speyer and Strasbourg (upper right-had corner and off the map), overthrown by the Huns (in Roman employ) c.436 — the remnants regathered as a federated people around Lake Geneva and under Gundobad (r. 474–516) established a kingdom up and down the Rhone. By 534 the kingdom was gone, divided among the Franks, but it retained in its northern part a territorial identity as Burgundy, throughout the Middle Ages and beyond.

2. *Territorial law and personal law*. The *Lex romana burgundionum* (LRB) for the Romans, the *Lex Burgundionum* (LB) for the Burgundians. Tit. 2–41 of the LB composed between 483, date of Euric's Visigothic laws, and 501 first dated constitution. The LB remained in force after the fall of the kingdom as the *loi Gombette*. The date of the LRB is uncertain but it was almost certainly composed before 506, the date of the massive compilation of Roman material that goes under the name of the Visigothic king Alaric II.

Titles in the LRB compared to the LB

(See the notes following the Burgundian Laws in *Materials*, § 3B.)

There is an intimate structural relationship between the LRB and the LB. The LRB contains 47 titles. Some of them make use of recognized categories of Roman law; some of them do not. There is no discernable order to the titles.

Most of the provisions of the LRB contain references to known sources of Roman law. The most commonly cited are the Theodosian Code, the *Sentences* of Paul, a post-classical work that contains summaries of what, at least in some cases, seems to be material written by the classical jurist Paul, and the *Institutes* of Gaius, probably known to the author through an epitome.

The core of the LB contains 42 titles (there are a number of later additions). There are no direct citations of Roman law, but the scheme of the titles clearly follows that of the LRB, though there are differences. The scheme of titles in the two codes is laid out on p. III–38 of the *Materials*. The correspondence begins at the beginning:

LRB 1. Concerning the gift of father or mother or the munificence of lords

LB 1. Of the privilege of bestowing gifts permitted to fathers, and concerning royal gifts and gratuities

LRB 2. Concerning homicides

LB 2. Of murders (translation difference, it's *De homicidiis* in the Latin of both)

LRB 3. Concerning grants of freedom (*libertatibus*) [to slaves]

LB 3. Of the emancipation (*De libertatibus*) (of our slaves) [the parenthetical is only in some manuscripts.]

There would definitely seem to be comparative work going on here. The Burgundians have a more elaborate law of delicts. The Romans a more elaborate law of property and procedure. At some point around LB 42 the systematic comparison stopped, but this did not prevent the author of the LB from devising titles that fitted the Roman titles later.

That comparative work was going on suggests that the LB is unlikely to have been the work of Burgundians. It seems far more likely to have been the work of Romans who knew something about Roman law and were in the employ of the Burgundians. Their command of Roman law was not super, but more or less what we would expect of provincial lawyers cut off from all but their very basic sources.

The comparative effort in which they engaged is quite remarkable. It has recently been suggested that it was done by a man named Syagrius, who is praised by a contemporary for his knowledge of Burgundian. I think it unlikely that it was Syagrius, but the fact that Syagrius is known to have mastered Burgundian shows what was possible.

Some specific comparisons of the two laws

(See the notes following the Burgundian Laws in *Materials*, § 3B.)

1. Homicide:

   a. LRB tit. 2.1: "A man who commits homicide, be he freeborn or slave, if they are [*sic*] found outside of a church, shall be condemned to death."

   b. LB tit. 2.1: "If anyone presumes with boldness or rashness bent on injury to kill a native freeman of our people of any nation or a servant of the king, in any case a man of a barbarian tribe, let him make restitution (*conponat*) for the committed crime not otherwise than by the shedding of his own blood."

      There are textual problems with both provisions. The LRB has a rather obvious mistake in the Latin, a plural verb in the subordinate clause where we expect a singular. In the case of the LB it's not entirely clear whether the qualifying phrase 'in any case a man of a barbarian tribe', modifies the most immediate referent, a servant or a slave of the king, or whether it is supposed to go back to the perpetrator of the offense. Probably it is the latter.

      The substantive difference between the two provisions is substantial. The most obvious one is that the provision in the LB seems to specify that the homicide has to be intentional "with boldness or rashness bent on injury" while that in the LRB does not. It is unlikely just any homicide would result in the death penalty for a Romance-speaker.

      But for the Burgundians this has to be said. Indeed, the notion of a death penalty for homicide may be new for the Burgundians, at least as something that is expressed in the law. Notice that the word used is 'make restitution'. We might suggest that the death penalty for intentional homicides is being incorporated in a legal system that thinks in terms of compensation not punishment.

      There is also a clear reference in the LRB to sanctuary in a church. This is a Christian idea, though it may have some roots in Roman law. It's not in the LB and may not apply to them. They were Arians not orthodox Christians at the time.

2. Proof:

   We will skip the materials on proof (see *Mats.*, III–41, III–43). It's fairly clear that the author of the LRB is still thinking in terms of the Roman law of proof, with witnesses and documents. The Burgundians seem to be thinking about decisory oaths and ordeals. This is a good group of texts on which to do a short paper.

3. *Furtum prohibitum*:

   a. LRB tit. 12.1: "If any freeman prohibits someone who is seeking his animals or his things from entering his house to investigate, let him be held for theft, so that the thing which is being sought be paid for four-fold, by the same reason that when he has suspicion of finding theft he enters with three free witnesses."

      "12.2. But if a *colonus* or a slave prohibits someone who is so inquiring, his presumption shall be vindicated by the judges by torture of blows and by these

[presumably the *coloni*] the things lost shall be paid for simply, after the fashion of Gaius who lays this down concerning prohibitions."

The reference is probably to G.I.3.186, 188, 192. The references to the classical law are not exact. *Furtum prohibitum* is a praetorian four-fold penalty for Gaius, so 12.1 is reasonably accurate, but Gaius says nothing about 3 witnesses. The author may have confused *furtum prohibitum* with *furtum conceptum*, where someone, with witnesses, finds stolen goods in another's house. This is a three-fold penalty. Gaius says nothing about *coloni* or slaves.

b. LB tit. 16.1: "If anyone has followed the tracks of an animal, and following those tracks comes to another's house, and if he to whose house he comes prohibits his entering the house to seek back his property, let him who drives him away from his house when he is making inquiry about that which he seeks back be held for punishment as a thief, with the further provision that it is not permitted a woman to deny questioning [i.e., to refuse to reply to an inquiry].

LB tit. 16.2. "But if perhaps a slave or a maidservant prohibits this when his or her master is absent, let him who prohibits it be held by law liable to punishment as a thief."

"3. If there is a way-pointer (tracker, *veius*)[1] present and he has received his payment (*vegiatura*) and he to whom he points the way is not able to find them (the animals), let the way-pointer (tracker, *veius*) pay for the theft in fee simple because he lies that he has pointed the way to them."

1. [KFD's note] Cf. DuCange, *op. cit.*, VI, 753–54. The word *vegius* seems to refer to some type of soothsayer, prophet, or diviner (*harioli*, *vates*, *divini*) whom the Saxons call *vigileri* and the Germans *viclers*, whence *viglias* means soothsayers, for these consult the auspices to determine whether slaves and animals have been taken away by theft so that they might point out where they are. The payment for providing this information is called *vegiaturum*. Others deduce a meaning from the Saxon word *veg* or *vaeg*, which means a road, thus they are road-pointers (*vegii*) who point out the tracks of animals. Cf. XCV.

In all probability the Burgundians did have customs that could be made to parallel those of the Romans with regard to searching for stolen goods. They do seem, however, to have used sooth-sayers for the purpose of finding stolen goods, as the Romans, at least in this period, did not, so the LB adds a provision about the liability of the soothsayer who doesn't say the sooth.

4. Damage by animals:

a. LRB tit. 13.1: "If anyone's animal does damage, the owner shall either pay the estimate of the damage or turn over the animal; this we also wish to be observed concerning a dog or a biped, according to the form of Paul's *Sentences* book one, under the title, "If a four-footed animal does *pauperies*"

This is not a quotation of Paul's *Sentences*, but it is close, except for the reference to the biped. The LRB continues with material that has no direct parallel in the LB that suggests, at least to me, that the author of the LRB was capable of thinking conceptually about fault in situations where there is damage to property. This is another passage that would make a good paper.

b. LB tit. 18.1: "If any animal by chance or if any dog by bite, cause death to a man, we order that among Burgundians the ancient rule of blame be removed

henceforth: because what happens by chance ought not to conduce to the loss or discomfiture of man. So that if among animals, a horse kills a horse unexpectedly, or an ox gores an ox, or a dog gnaws a dog, so that it is crippled, let the owner hand over the animal or dog through which the loss is seen to have been committed to him who suffers the loss."

What 'the ancient rule of blame' was is anyone's guess, but what follows suggests that under the ancient rule the liability may have been stricter: you pay for all the damage that your animals cause. The modification of the rule to make it correspond the Roman rule of liability called *pauperies* does not mention the option of the owner of the animal to pay for the damage rather than turning over the animal, but perhaps it is to be understood.

Then follows a remarkable passage about the lance, with echoes of the XII Tables, and no parallel in the LRB: "In truth, if a lance or any kind of weapon shall have been thrown upon the ground or set there without intent to do harm (*simpliciter*), and if by accident a man or animal impales himself thereupon, we order that he to whom the weapon belongs shall pay nothing unless by chance he held the weapon in his own hands in such a manner that it could cause harm to a man."

In many legal systems the first hint that we get in written law that liability for damage is not strict is in the case of weapons. It is possible that the provincial Roman lawyers who were helping Gundobad create his laws remembered the provision in the Roman XII Tables on the topic and suggested to Gundobad that that would be a good law. We should be careful, however, parallels like this can arise because people thinking about the problem come to the same solution without being influenced by others' who have arrived at the same solution.

5. Divorce:

   a. LRB tit. 21.1-3: "1. By the consent of the father of each repudiation can be given and marriage dissolved.

   [Cf. Nov. Th. 12.1; (repealed in 439); CJ.5.17.8pr, 9pr (none of these mentions parental consent).]

   "2. But if the man's part wishes to give repudiation, his wife contradicting, not otherwise shall it be allowed to him unless he convicts her of adultery, or poisoning, or bawdry; one of these crimes being proven, he shall be permitted to repudiate his wife and the marriage gift shall be recalled to his right.

   "3. But if the woman wants to repudiate the man, the husband unwilling, not otherwise shall it be allowed her, unless she prove the man a homicide or a violator of graves or a poisoner. And if she proves one of these crimes, she shall dismiss the man, and shall rightfully keep the gift granted for herself, and the shall vindicate the dowry that her husband made for her, according to the Theodosian law promulgated under the title, "Concerning repudiations." [C.Th.3.16.1 (which also mentions the possibility of relegation as punishment for the woman).]

b. LB tit. 34: "1. If any woman leaves (puts aside) her husband to whom she is legally married, let her be smothered in mire.

"2. If anyone wishes to put away his wife without cause, let him give her another payment such as he gave for her marriage price and let the amount of the fine be twelve *solidi*.

"3. If by chance a man wishes to put away his wife, and is able to prove one of these three crimes against her, that is, adultery, witchcraft, or violation of graves, let him have full right to put her away: and let the judge pronounce the sentence of the law against her, just as should be done against criminals.

"4. But if she admits none of these three crimes, let no man be permitted to put away his wife for any other crime. But if he chooses, he may go away from the home, leaving all household property behind, and his wife with their children may possess the property of her husband."

In classical Roman law, divorce was freely permitted to both the husband and the wife. The property consequences were complicated and may not be completely recoverable, because they were, at least to some extent, governed by the private agreement of the parties. It would seem that as a general matter, the wife got her dowry back upon divorce. There may have been an exception if the divorce was initiated by the husband because of the wife's adultery. The Christian emperors intervened and made divorce more difficult, but the rules on the books changed frequently. The LRB reflects, in a somewhat muddled way, some of these provisions.

The Burgundians seem dead set against divorce at the option of the wife. So far as divorce by the husband is concerned, the provisions may reflect the influence of Roman law. One thing seems reasonably clear. The Burgundians did not have a legally-recognized prestation by the wife or her family upon marriage, what we call, and the Romans called, dowry. They did have a legally-recognized payment by the husband to the bride or to the bride's family. This is referred to in the second clause as 'marriage-price', *pretium*, in the Latin. There are a number of other provisions about marital property in the LB. The topic makes a great paper, but it's a complicated one.

Æthelberht's and the Burgundian laws compared

6. The necessity of making comparisons. Why are these texts so hard?
   a. Writing does not come easy to these guys. In the case of both Æthelbert's laws and the Burgundian laws, we have reason to believe that neither of them was written by a native-speaker of the language. The Burgundian laws was not even written in Burgundian. They were written in Latin, though it's a pretty queer Latin.
   b. The problem of the self-understood in legal history. This is a perpetual problem, even with highly literate peoples. By and large people don't write down what everyone knows.
7. So the best way we have to try to begin to figure out what is going on is to range widely and make comparisons. This is both a fruitful method and dangerous.

8. The first kind of comparison is one that uses language, perhaps even comparative linguistics, and other uses of the same words in the same document. I'm something of a fan of this method, though some of the people who use it with this type of material probably go too far with the comparative linguistics. Let's take a look at one example and see how far we can get on a really difficult passage, perhaps the most difficult passage in Æthelberht (abbreviated 'Abt'), the clause that our edition numbers as Abt 72. It is the first in a rather extensive set of provisions about women in Abt 72–77.2. Everybody listening to this knows modern English. Most of you are native-speakers. Let's see how far we can get with it, if we take it slowly, using your knowledge of modern English, my not-very-good Old English, and two competent translations, one by Lisi Oliver in the *Materials* and an older one by Frederick Attenborough:

Abt 72. **G**if friwif locbore leswæs hwæt gedeþ, XXX [þritig] sci~~ll~~ gebete.

[Oliver] If a free woman in charge of the locks does anything seriously dishonest, let her pay 30 shillings.

[Attenborough] If a freeborn woman, with long hair, misconducts herself, she shall pay 30 shillings as compensation.

[Literally] If *friwif locbore* does some *leswæs*, let her pay in compensation with 30 shillings.

friwif is a compound of our words 'free' and 'wife' except that *wif* in Old English does not imply anything about the marital status, but means any mature woman.

locbore means 'lock-bearing'. In Old English as in Modern *loc* ('lock') can mean what you open with a key or what you have on your head unless you are bald.

leswæs is the only occurrence of this word in Old English with this spelling. The word does, however, occur with a different spelling in c. 9. Let's start with c. 8.

8. **G**if cyning his leode to him gehateþ 7 heom mon þær yfel gedo, II bóte, 7 cyninge L scillinga.

[Oliver] If the king summons his people to him and a person does any harm to them there, 2[-fold] restitution and 50 shillings to the king.

[Attenborough] If the king calls his lieges to him, and anyone molests them there, he shall pay double compensation, and 50 shillings to the king.

9. **G**if cyning æt mannes ham drincæþ 7 ðær man lyswæs hwæt gedo, twibote gebete.

[Oliver] If the king drinks at a person's home, and a person should do anything seriously dishonest there, let him pay two[-fold] restitution.

[Attenborough] If the king is feasting at anyone's house, and any sort of offence is committed there, twofold compensation shall be paid.

The Oliver translation of c. 8 is more literal. 'Lieges' in the Attenborough translation sounds too much like the later Middle Ages, and what the second part of the protasis says literally 'and a person does any harm (*yfel*, our word "evil") to them there'. C. 9 sets up a different situation. The king is drinking with his buddies in someone's

house, and what the offender does is not the generic *yfel*, but the apparently more specific *lyswæs*. If we have decided that the *friwif* in c. 72 is a woman in charge of the locks, then her offense is likely to be something dishonest. But, as we have seen, the *friwif* may not be in charge of the locks; she may have a characteristic that has something to do with her hair. 'Seriously dishonest' does not seem to be a way to describe something that might go wrong when the king is drinking with his buddies. It's more likely to be the kind of thing that happens when the college football team has been drinking.

9. Another kind of comparison, and a dangerous one, is one made forward or backward in time. One of the great concepts that we find in later English law is the concept of the king's peace. It is striking that this concept of peace occurs in our very first English law.

10. Another very simple, and also somewhat dangerous, way of making comparisons is to look at what contemporaries or near contemporaries did when they were writing in other languages. We spoke in the last lecture of Bede, who writes in the early 8th century and in Latin, calls Æthelbert's laws: *decreta iudicialia* = (in Spain) *forum iudicum* / *fuero juzgo*, = *domas*.

11. Another way of making comparisons is to look at similar laws and see if the similarities and the differences tell us anything. Most of what we have is in the form of compensation payments, and we are mightily ill-informed about how the system worked or didn't (although something must have happened in the *mæthl*), but we do have what they thought things were worth and we can compare different compensation payments to get some idea of value. We also can get something out of the way that they organized them. Æthelbert's Laws is quite well organized; the Burgundian Laws is not, but its organization is mirrored in the *Lex Romana Burgundionum*.

12. The broader we go the more dangerous the comparisons are, but with so little to go on we have to range widely. In comparing Æthelberht to the Burgundian laws we're stretching across a quite long space over some gap in time from an area in which Roman law influence is weak to one in which it is quite strong, from one in which the majority of the population is probably Germanic to one in which the Germanic people are a conquering minority, from one Germanic language family to a quite distant cousin. Much of what we see will be by way of contrast. Certainly the two laws have nothing in common with regard to their organization.

13. That said, let us try a specific comparison between the two laws in their laws about abduction. There are other provisions in each laws that could be brought to bear on this topic, and there are other possibilities for comparison suggested in the coursepack. In Æthelberht the following provision is the last of the rather extensive set of provisions on women, Abt 72–77.2.

Æthelberht

Abt 77. **G**if man mægþman nede genimeþ, ðam agende L scillinga, 7 eft æt þam agende sinne willan ætgebicge.

77.1. **G**if hio oþrum mæn in sceat bewyddod sy, XX scillinga gebete.

77.2. **G**if gængang geweorðeþ, XXXV scill, ⁊ cyninge XV scillingas.

[Oliver] 77. If a person takes a maiden by force: to the owner [of her protection] 50 shillings, and afterwards let him buy from the owner his consent [to marry her].

77.1. If she should be betrothed to another man by goods [i.e., the bride-price has been paid], let him pay 20 shillings [to that man as well].

77.2. If return [of the stolen maiden] occurs, 35 shillings and 15 shillings to the king.

[Attenborough] 82. If a man forcibly carries off a maiden, [he shall pay] 50 shillings to her owner, and afterwards buy from the owner his consent.

83. If she is betrothed, at a price, to another man, 20 shillings shall be paid as compensation.

84. If she is brought back, 35 shillings shall be paid, and 15 shillings to the king.

Mægþman, or the more common *mægþ*, is a young woman or a girl. The word does not have the emphasis on virginity that we tend to associate with the somewhat old-fashioned word ‘maiden’.

Nede is our word ‘need’, but in Old English it means ‘force’.

Agende is a property word. We can take it as meaning ‘owner’ so long as we remember that property concepts differ in different societies.

Sceat in 77.1 Oliver translates as ‘goods’ and Attenborough as ‘price’. In fact, it means both.

The word *bewyddod*, which both Oliver and Attenborough translate as ‘betrothed’ is derived from the Old English word, *wed*, which means ‘pledge’. It is found in our word ‘wedding’.

What *gængang* means is problematic, but both translators make the same guess, that it means ‘return’or ‘brought back’, and that is probably right.

Lex Burgundionum (i.e., Gundobad)

LB 12.1. If anyone shall steal (*rapuerit*) a girl (*puellam*), let him be compelled to pay the price (*pretium*) set for such a girl ninefold (*in novigildo*), and let him pay a fine to the amount of twelve solidi.

12.2. If a girl who has been seized returns uncorrupted to her parents (*parentes*), let the abductor compound six times the wergeld (*pretium*) of the girl; moreover, let the fine be set at twelve *solidi*.

12.3. But if the abductor does not have the means to make the above-mentioned payment, let him be given over to the parents of the girl that they may have the power of doing to him whatever they choose.

12.4. If, indeed, the girl seeks the man of her own will and comes to his house, and he has intercourse with her, let him pay her marriage price (*pretium nuptiale*) threefold; if moreover, she returns uncorrupted to her home, let her return with all blame removed from him (*remota omni calumnia*).

12.5. If indeed a Roman girl, without the consent or knowledge of her parents, unites in marriage with a Burgundian, let her know that she will have none of the property of her parents.

Rapere (of which *rapuerit* is a form) in classical Latin means to take, frequently to take by force. It does not mean 'rape' in the modern English sense. Hence, the use of *rapuerit* here probably corresponds to in the *nede genimeþ* Æthelberht laws, and has the same ambiguities.

Puella (*puellam* in the accusative) in Latin is a 'girl'. The implied age-range may not go quite so high as the Old English *mægþ*, but there is no common Latin word that quite corresponds to our 'young woman' or our gender-neutral 'teenager' (nor is there such a word in Old English).

Pretium in Latin means 'price'. The Latin in 12.2 uses the same word, *pretium*, as does 12.1. The text does not say *wergeld* as the translation does. Elsewhere the laws seems to give us wergelds for free people: 150 for the lowest class, 200 for the middle class, and 300 for the highest class. The *pretium* of 12.1 and 12.2 is almost certainly the same thing as the marriage price (*pretium nuptiale*) of 12.4. Whether the *pretium nuptiale* was equal to the woman's wergeld seems unlikely.

In novigildo is not Classical Latin, but it almost certainly means 'ninefold' as in the translation. 'Six times' and 'threefold' in the later provisions use Classical Latin expressions, though not the same ones.

Parentes in Latin is wider than our 'parents'. 'Close kin' probably translates it better.

Solidus (plural *solidi*) is the Latin word for shilling. That does not mean that the shilling was worth the same in Kent around the year 600 as it was in Burgundy in 500, but that the values were thought of in the same terms may be suggested by the fact that wergeld for the highest class people is the same in both laws, 300.

Remota omni calumnia revertatur in 12.4 might be better translated "let her return with no charges being brought." That is to say, the law does not deal with this situation.

With all due caution, what can we get out of the comparison of the two provisions? In abduction cases, the Burgundians have a clear distinction based on the will of the woman. Does Æthelberht have such a distinction? (What do you make of Æthelberht 77?) (There's more about abduction in the Burgundian laws in later provisions. It's a great paper topic.)

With all due caution, is there are anything in the comparison that might be used to begin to make generalizations about what is typically 'Germanic'?

Bride-price, money paid to the kin of the bride. The kin-group of the bride owns something that the prospective groom has to pay for. Oliver (c. 77) suggests that what is owned is the bride's *mund*, both the duty of protecting and the right to receive compensation if she is harmed. Bride-price (*pretium nuptiale*) also appears many times in the LB, including, as we have seen in tit. XII.

The compound word 'morning-gift' appears in both sets of laws (Abt 76.5 [*morgengyfe*], LB 42.2 [*morgengeba*, *morginegiva*]) and in the LB the Germanic word is used. It seems refer to a payment made not to the bride's kin but to the bride herself after the couple have had sexual intercourse for the first time.

One could do a similar comparison with the provisions about divorce in the two laws. The Burgundians are clearly much tougher on divorce by women than is Æthelberht. Indeed, it has been argued that there are no provisions on divorce by women in Æthelberht: the provisions in in Abt 76.3–76.5 that look as if they are about divorce are really about the situation where the husband has died. If that is right, what do we make of the fact that the Burgundian laws say a lot about divorce and Æthelberht nothing at all?

14. If we compare the two laws at the broadest level, we can make the following generalizations. The question is what do we do with them.

    a. The "if ... then" construction dominates in both laws but the LB is much more rhetorical.

    b. Despite what LB 2.1 says about execution, there are clear indications of a man-price (wergeld) in the Burgundian laws based on the status of the victim. Wergeld is a dominant idea in Abt.

    c. Æthelberht's law are laws about compensation. This characteristic is less obvious in LB, but see the wergeld payments in LB 2.2 and the detailing of injuries to the teeth in tit. 26.

    d. The LB has much more on succession, courts and procedure than does Æthelberht.

    e. There is much more evidence of problems with status in LB than there is in Æthelberht.

    f. The LB does not have the concept of *mund* nor of peace. The former is quite prominent in Abt.

    g. There is no evidence of influence of Roman law in Æthelberht. Direct influence of Roman law in the LB is hard to spot but it exists. That it is there is beyond doubt because the LRB has basically the same structure of titles, and it seems relatively clear that someone, at least at the start, was doing a comparative law number. There is no evidence of influence of Roman law in Æthelberht. The question is the influence of Roman ideas in LB is difficult to evaluate. How would you generalize about it?

    h. As we saw in the last lecture, there is some evidence of Celtic influence in Æthelberht's Laws; there is none in the Burgundian Laws.

15. Why were these laws written down? This is, in some sense, the bottom line of the whole exercise. Here are some suggestions that have been made in the context of Æthelberht's laws, with some attempt to apply them to the Burgundian.

    a. An expression of the *Volk*, the people? – the simplest counterargument to this is the virtually no one in Æthelbert's Kent could read, much less write. The same could probably be said of the Burgundians in Gundobad's Burgundy.

b. Mystification? This is what kings were supposed to do. This is a harder argument to counter in the case of Æthelberht's laws, but the archaisms in the language do suggest that at least for the bodily offenses there's an oral substratum. We can't see anything like that in the case of the Burgundian laws because it is not written in Burgundian, but there are some references to customs in it, such as that to the 'way-tracker' in XVI.3 that suggest that some elements in the laws are not totally made up. Some of what is not probably antedates the contact of the Germanic peoples with the Roman, the questions are both 'how much' and, even more, how much of it reflects actual practice.

c. Of the numerous suggestions that Brian Simpson makes about Abt, we already suggested in the last lecture reasons that some of them cannot hold up. One suggestion that he did make about possible Celtic influence gave us more pause. His reference was to the Irish penitentials, and there is no doubt that they specify offenses in great detail and lay out penances for commission of them. They do, however, more than that. In the last lecture I read you a couple of provisions from an Irish penitential of a couple of centuries after Æthelberht on the topic of homicide, and it certainly looks like a Germanic laws with penance substituted for compensation payments. I also read you the provision from the same laws on the topic of envy, which I suggested arose in a more specifically penitential context in which the focus was very much on the intent of the wrongdoer.

   There's nothing of this latter in Æthelberht's laws, but ideas about the primacy of intent in determining moral fault may have been working their way into the society and may have been reflected in the negotiations that are implied in a number of places in the laws.

   But the problem goes deeper than that. The minute that we realize that the LB, indeed, all Germanic laws, show the same feature of specifying offenses and outlining detailed penalties for them, we begin to realize that these features of Abt are not necessarily borrowed from the Celts. There were people of Celtic ancestry in Burgundy, but there is no evidence that the Gauls produced written native laws, and by the sixth century of our era probably no one in Burgundy spoke Gaulish. (Contrast Brittany, but Brittany is a long way from Burgundy.)

d. The late Patrick Wormald made an extensive study of the Anglo-Saxon laws. He collected some two hundred accounts of lawsuits from the Anglo-Saxon period. Not a single one cites any of the Anglo-Saxon laws, despite the fact that Anglo-Saxon kings continued to promulgate such laws into the 11th century. Not only were they promulgating them, but a number of manuscript copies survive, and a considerable amount of care is evident in their provisions. Wormald's view seems to have been that the Anglo-Saxon laws were an expression of value. This is how things ought to be. They may even have affected behavior, but they were not a solvent of controversies. It takes a while to wrap our minds around the notion that law is important but is not used to resolve disputes, but that seems to have been the situation in A-S England until quite late, and it may also have been the situation on the European continent for quite a long time.

e. My own view starts with Wormald and the almost total lack of evidence that these laws were ever enforced. We are looking here, I would suggest, at the beginnings of professionalization of the law. I have focused on speculations about how the laws were created. If I'm right, they do contain some genuine Germanic elements, but their real importance is that a rather small group of men have associated themselves with the king or others who are in power and have begun to think about and write down rules about how things ought to be.