# CODE AND CUSTOM: EVIDENCE OF WIDESPREAD TRADITION IN MEDIEVAL GERMANIC LAW

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# ABSTRACT

This thesis advances the study of Germanic cultural and legal discourse by drawing attention to the retention of customary law found within the constitutions promulgated by the peoples of Germanic ethnolinguistic origins during the Middle Ages. It argues that shared customs are apparent in the law codes issued by West and North Germanic kings on the Continent, in England, and in Scandinavia, and that those customs persisted for more than a millennium. The legal history of the *Leges Barbarorum*, the Anglo-Saxon dooms, and the Scandinavian laws is of profound historical importance, and the assorted law codes underscore an enduring Germanic culture spanning thousands of miles and more than ten centuries. By comparing institutional vocabulary and cultural standards among the many Germanic laws, an argument is made for a pan-Germanic consciousness rooted in shared ancient custom.

# ACKNOWLEDGEMENTS

I first discovered the similarities between the Anglo-Saxon and Frankish laws by pure accident over two years ago while researching a different topic. To be sure of my findings, I read every English translation of the Germanic law codes before bringing the discovery to the attention of my graduate adviser, Sally Vaughn. It is she who I would like to thank first for encouraging me to follow my instincts and explore this topic in greater depth, and for her continuous advice through discussions and email correspondence. Without the guidance of Kristina Neumann, I would have never considered the use of technology to aid in my research, and by doing so I have a greater understanding and appreciation of Digital Humanities and the possibilities the field offers. I am also indebted to Edie Furniss for recommending a linguistics approach, particularly keyword frequency, as a methodological option in my research. I would also like to thank John McNamara, my Old English professor, who through various discussions about Anglo-Saxon law and Germanic customs helped solidify my interest in this topic. Kairn Klieman stepped in at short notice as a member of the committee for this thesis upon the retirement of a previous member, for which I am eternally grateful; but even more so, I am deeply thankful for the opportunity to study under her, which led to a greater appreciation of oral tradition. Lastly, I would like to thank my friends from the History Department, particularly Taylor Mankin, Darah Vann, Steve Sherman, Paul Foley, and Thomas Barrows, for keeping me sane every Thursday night during graduate school and sharing ideas with me.

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Dedicated to my family,

who persistently encouraged me throughout my graduate studies, standing at my side through my achievements and my blunders, perpetually lending their support. Without them none of this could be so.


Map of the distribution of Germanic peoples between the fifth and thirteenth centuries mentioned throughout this thesis.

# INTRODUCTION

Sometime between 480 and 483, the Visigothic king Euric issued the first Germanic law code in written form from his kingdom in Iberia. In the century that followed, and by the beginning of the seventh century, the Burgundians, the Salic Franks, and the Anglo-Saxons in Kent had all published their own laws. For the Germanic-speaking peoples, the publication of their laws was the first time any of them had contributed their customs in written form beyond runic inscriptions; instead, their traditions were stored in folk-memory and recited orally at local assemblies by men whose role in society was to memorize and declaim the laws of the people. Enacting law in written form spread like wildfire among the Germanic *gentes*,[1] as each group followed suit either of their own accord or at the behest of some overlord. As the Germanic-speaking peoples migrated into the subarctic regions of Scandinavia, or crossed the Alps into northern Italy after leaving a homeland from beyond the Rhine River Valley, or sailed across the English Channel to settle in Britannia, they carried with them the customs of their previous homes, and those customs surfaced for the world to see once they committed them to writing. Notwithstanding settling in a wide assortment of locales and climates, the customs written down harbor an array of similarities.

Whether promulgated in Gaul at the opening of the sixth century or issued in Iceland within the first two decades of the twelfth, the similarities found in the Germanic

[1] From the Latin *gens*, pl. *gentes*, "a people." This term will be employed throughout this paper in place of the cruder "tribe."

codes solicit a series of questions: At what point do coincidences become overlaps, spawning from a shared custom? To what degree do the Germanic law codes of continental Europe coincide with the pre-Alfredian laws of the Anglo-Saxons in England? And how far geographically and how recent temporally does the presence of Germanic custom spread within medieval jurisprudence? Certainly, the laws deviate from one another to a marginal degree on the basis of temporal character, region, and social composition, yet the social architecture of North and West Germanic societies bears congruent foundations in spite of the differences of those societies. For even though they were segregated by geography and more than half a millennium of time, the Germanic laws exhibit more similarities to one another than they do to other European cultures.

## Historiography

Throughout Antiquity and the early Middle Ages, the Germanic peoples, their histories, and their customs have piqued the interests of the curious. Written observations about the Germanic peoples reach as far back as Julius Caesar's *Commentarii de Bello Gallico* (*Commentary on the Gallic Wars*), published between 58 and 49 BCE. Out of Antiquity it is perhaps Tacitus who provides the most coverage of Germanic custom in his *Germania* of the late first century.[2] His observations are not universally accepted and few if any were his own; it is much more likely that he received his information second-hand.[3] *Germania*, however, offers a tremendous amount of detail regarding Germanic

[2] Tacitus, "P. Corneli Taciti de Origine et Sitv Germanorvm," *The Latin Library*, accessed November 8, 2015, http://www.thelatinlibrary.com/tacitus/tac.ger.shtml; Tacitus, *Germania*, trans. J. B. Rives (New York; Oxford: Clarendon Press; Oxford University Press, 1999).

[3] See Tacitus, *Germania*, Introduction, 56–66.

custom that is indeed reliable, since most of the information pertaining to legal custom appears within the various Germanic law codes of the Middle Ages.

The next major works of Germanic history, published at the end of the sixth century, is the *Historia Francorum* by Bishop Gregory of Tours. Consisting of ten books, the *Historia* was a massive undertaking which recounted the history of the world from Creation up to the events of the year 591,[4] but its primary purpose was to provide a history of the Frankish kings and the ethnic lineage of the Frankish people. In order to offer some justification for Frankish hegemony over the Gallo-Romans of a failed empire, Gregory connected the Franks to the Trojans, something that the Icelanders also did more than half a millennium later. It is entries such as these that create problems for scholars when analyzing Gregory's *Historia*, for it undermines the veracity of the information found within the vast history. However, Gregory behaved like a true historian, relying on primary documents now lost to support much of what he wrote, and surely oral history played a role in his writing. Gregory's sources were limited and contradictory, much to the chagrin of the Bishop of Tours (see Chapter 3), but his final product still provides a wealth of information corroborated by archaeology and contemporary documentation.

Germanic vernacular writing in England did not appear beyond runic inscriptions until around the time of Gregory's death in 594 with the promulgation of King Æthelberht of Kent's laws *circa* 600. In the first half of the sixth century, British cleric

[4] An epilogue was released in 594, the same year of Gregory's death, but was likely written by another.

Gildas published in Latin his *De Excidio et Conquestu Britanniae* (*On the Ruin and Conquest of Britain*), which describes the invasion of the British Isles by the Anglo-Saxons.[5] The text is in part historical and part condemnation of British kings and their sinful behavior, to which the Germanic invasions are attributed. Although the work of Gildas is largely deemed unreliable at best, his influence remained secure in English writing up to the ninth century. Bede's *Historia ecclesiastica gentis Anglorum* (*The Ecclesiastical History of the English People*) relies heavily on Gildas, especially when describing the Anglo-Saxon invasions.[6] Writing in the late seventh and early eighth centuries, Bede is one of the most important English writers of the Middle Ages, completing his *Historia* in or just before 731. While not to the degree of Gregory of Tours, Bede also produced his works based on documentary evidence; in fact, his description of the conversion of Æthelberht and information about the Queen Bertha seem based on access to correspondence from Pope Gregory the Great (d. 604), who played a significant role in the conversion process (see next chapter).

The *Anglo-Saxon Chronicle*, however, produced over the course of several centuries beginning in the ninth, is perhaps the single most important production to come out of medieval England.[7] Written in Old English, it is the largest piece of literature scribed in a Germanic vernacular and spans the greatest amount of time, beginning in the first century and with its last entry dated 1154. Commissioned in the late ninth century,

[5] Gildas, *On the Ruin of Britain*, trans. J.A. Giles (Serenity Publishers, LLC, 2009).

[6] Bede, "Historiam Ecclesiasticum Gentis Anglorum," *The Latin Library*, accessed October 30, 2016, http://www.thelatinlibrary.com/bede.html; Bede, *The Ecclesiastic History of the English People*, ed. Judith McClure and Roger Collins (Oxford: Oxford University Press, 1994).

[7] E.E.C. Gomme, trans., *The Anglo-Saxon Chronicle* (London: George Bell and Sons, 1909).

either under the direction or simply during the reign of King Alfred the Great of Wessex, the *Chronicle* is a collection of annals chronicling the history of the Anglo-Saxons. Nine manuscripts, commissioned in different centuries in assorted conditions and lengths survive to today, where the information presented sometimes overlaps or provides details other versions are missing. Beyond the events described by the *Chronicle*, the collection's manuscripts hail from different regions, providing historical linguists with examples of different Old English dialects. The *Chronicle* offers very little legal information beyond dates in which certain laws were promulgated; however, an examination of detailed events presents aid in understanding social organizations and the duties of particular ranks of people (see Chapter 2).

The laws (*leges*) of the Germanic *gentes* have been studied in the modern era at length since the publication of the *Monumenta Germanicae Historica* (MGH) in the mid-nineteenth century, which includes transcriptions of manuscripts both fragmentary and extant of all the continental *leges* in folio, known as the *Leges Barbarorum*.[8] It was Samuel Parsons Scott in 1910 who first published an English translation of a Germanic code found in the MGH, which was the *Visigothic Code*,[9] the oldest Germanic code of law to survive in extant form. Not until 1949 was another English translation from the *Leges Barbarorum* published by Katherine Fischer Drew, the *Burgundian Code*,[10] who

[8] Laws of the Barbarians.

[9] S. P. Scott, trans., *The Visigothic Code (Forum Judicum)* (Boston: The Boston Book Company, 1910).

[10] Katherine Fischer Drew, trans., *The Burgundian Code: Book of Constitutions or Law of Gundobad* (Philadelphia: University of Pennsylvania Press, 1996).

followed with *The Lombard Laws* in 1973,[11] and *The Laws of the Salian Franks* in 1991.[12] Before Professor Drew published her translation of the Salic Frankish laws, however, Theodore John Rivers released in 1986 a translation of both the Salic and Ripuarian Frankish laws in a single book,[13] which followed his 1977 translations of the law codes promulgated by the Alemanni and Bavarians.[14]

As for the Anglo-Saxon laws, it was Benjamin Thorpe in 1840 who released the first facing translation,[15] with Old English on the left-facing page and Modern English on the right. Thorpe's translations cover every law issued between Æthelberht in the opening of the seventh century to Knut the Great in the early eleventh.[16] Nevertheless, there are two major problems with Thorpe's translations: (1) they are quite cumbersome, as it appears he attempted a literal translation of the laws; (2) he clearly struggled with a large number of Germanic terms, which go untranslated because he was unable to find appropriately modern parallels, adding to the clunky results. Fortunately, Frederick Attenborough perhaps discovered the same issues with Thorpe's facing translations, offering his own in 1922.[17] While Attenborough's work is not as massive as Thorpe's, his

[11] Katherine Fischer Drew, trans., *The Lombard Laws* (Philadelphia: University of Pennsylvania Press, 1973).

[12] Katherine Fischer Drew, trans., *The Laws of the Salian Franks* (Philadelphia: University of Pennsylvania Press, 1991).

[13] Theodore John Rivers, trans., *Laws of the Salian and Ripuarian Franks* (New York: AMS Press, 1986).

[14] Theodore John Rivers, trans., *Laws of the Alamans and Bavarians* (Philadelphia: University of Pennsylvania Press, 1977).

[15] Benjamin Thorpe, *Ancient Laws and Institutes of England Comprising Laws Enacted Under the Anglo-Saxon Kings from Æthelbirht to Cnut*, vol. 1 (Cambridge: Cambridge University Press, 2012).

[16] Thorpe transcribed the laws of Edward the Confessor, William the Conqueror, and Henry I from the Latin but did not translate them.

[17] F. L. Attenborough, *The Laws of the Earliest English Kings* (Cambridge: Cambridge University Press, 1922).

results are much clearer; Attenborough found modern terms for obscure Germanic institutions, and where he did not, he added notes to explain the terms in more detail. Finally, Dorothy Whitelock's contributions to legal discourse and translations cannot be overlooked. Although she never produced a single long translation of Anglo-Saxon law, her translations of legal tracts, wills, and charters all found in the formidable first volume of *English Historical Documents*, published in 1955,[18] remains a pillar of scholarship and a resource tapped by historians of English medieval history for nearly seventy years.

Translations into English of Scandinavian law codes are much rarer, the earliest of which come from Laurence M. Larson, who in 1935 published the Norwegian laws of the *Gulaþing* and *Frostaþing* into English.[19] The laws themselves date back to the tenth century but were probably not reduced to writing until the twelfth, which was performed in a North Germanic vernacular (Old Norwegian). It was not until 1980 that another group of North Germanic laws was translated to English: the Icelandic *Grágás*.[20] Like every other Scandinavian law code reduced to writing, the *Grágás* were written in a Nordic vernacular (Old Icelandic). Lastly, Christine Peel published the law of the Gotlanders in English in 2009, which was originally written in Gutnish sometime in the thirteenth century.[21]

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[18] Dorothy Whitelock, ed., *English Historical Documents*, vol. 1, c. 500–1042 (Oxford: Oxford University Press, 1955).

[19] Laurence M. Larson, trans., *The Earliest Norwegian Laws: Being the Gulathing Law and the Frostathing Law* (New York: Columbia University Press, 1935).

[20] Andrew Dennis, Peter Foote, and Richard Perkins, trans., *Laws of Early Iceland: Grágás, the Codex Regius of Grágás, with Material from Other Manuscripts*, 2 vols. (Winnipeg: University of Manitoba Press, 1980).

[21] Christine Peel, trans., *Guta Lag: The Law of the Gotlanders* (London: Viking Society for Northern Research, 2009).

Identifying similarities between the Germanic laws on the Continent and England is not a new concept; however, with the exception of Katherine Fischer Drew, few if any scholars have explored the similarities in any depth. Before publishing her translation of the Lombard laws, Professor Drew released a pamphlet consisting of the notes on her research while at the Rice Institute (now Rice University), and within those notes she drew comparisons between Anglo-Saxon and Lombard institutions.[22] The connections she made were based on legal context as well as linguistic evidence, though she mentioned that further research was necessary to draw any conclusions regarding other Germanic laws and their relationship with the Anglo-Saxon dooms.[23] No such research has been published in English. The closest argument found is in Stefan Jurasinski's response to Lisi Oliver's doctoral dissertation.[24] Simply put, Oliver's dissertation argues that Æthelberht's laws are based on custom and oral tradition, whereas Jurasinski argues that the Kentish laws are inexact copies of Frankish laws.

## Methodology

The subject of this thesis differs from similar works primarily in its geographic scope. From the research produced and disseminated by scholars over the past century and a half, it appears that most historians hone in on either the Continent, England, or Scandinavia with little attention given to the similarities between the law codes.

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[22] Katherine Fischer Drew, "Notes on Lombard Institutions/ Lombard Laws and Anglo-Saxon Dooms," *The Rice Institute Pamphlet* 43, no. 2 (1956).

[23] From the Old English *dóm* (pl. *dómas*), meaning "judgment" or "decree."

[24] Lisi Oliver, "The Language of the Early English Laws" (Unpublished doctoral dissertation, Harvard University, 1995); Stefan A. Jurasinski, "The Continental Origins of Æthelberht's Code," *Philological Quarterly* 80, no. 1 (2001): 1–15.

Connections are rarely outright ignored, though they are often left unexplored beyond a few paragraphs. Adopting a much wider approach, the research within this paper includes all three locations settled by Germanic-speaking peoples.

Beyond geography, flexibility was given to the temporal framework in which the Germanic law codes were issued. The earliest written laws enacted by a Germanic king date back to the end of the fifth century, whereas the most recent of the laws explored within this thesis were promulgated in the second half of the thirteenth century (see Table 1). The disparity of time creates its own set of challenges, not the least of which is that the more recent the code the more sophisticated it is, burying hints of custom within large bodies of text detailing judicial procedure. The earliest extant codes are much simpler in structure, therefore elements sought out are much easier to recognize. However, customary parallels can be identified with careful inspection.

Table1. Dates of the Germanic law codes[25]

| **Law Code** | **Date** | ***Gens*** |
|---|---|---|
| *Leges Burgundionum* | 483–501 & 501–17 & 524–32[26] | Burgundians |
| *Pactus legis Salicae* | 507–511 | Franks |
| Æthelberht | *c.*603 | Kentish |
| Ine | 688–694 | West Saxons |
| *Pactus legis Alamannorum* | *c.* 613 | Alemanni |
| *Edictum Rothari* | 643 | Lombards |
| *Lex Alamannorum* | *c.* 712 | Alemanni |
| *Lex Baiuwariorum* | 744–48 | Bavarians |
| *Gulaþing* | 11th Century | Norwegians |
| *Grágás* | 1117 | Icelanders |
| *Frostaþing* | 1260 | Norwegians |

[25] The Visigothic Code is omitted from this table because it is mostly a Roman code rather than a Germanic one. This will be explained in Chapter 1.

[26] The *Leges Burgundionum* began as early as 483 but was constantly updated over the course of fifty years, which explains the unorthodox dating in the table.

The method used in order to tease out shared custom among the various Germanic codes was to focus on specific legal terms and identify their pervasiveness. Figure 1 represents key legal concepts present in many of the Germanic constitutions, which provided a basis from which to investigate the correlations between codes of variable geography and time.

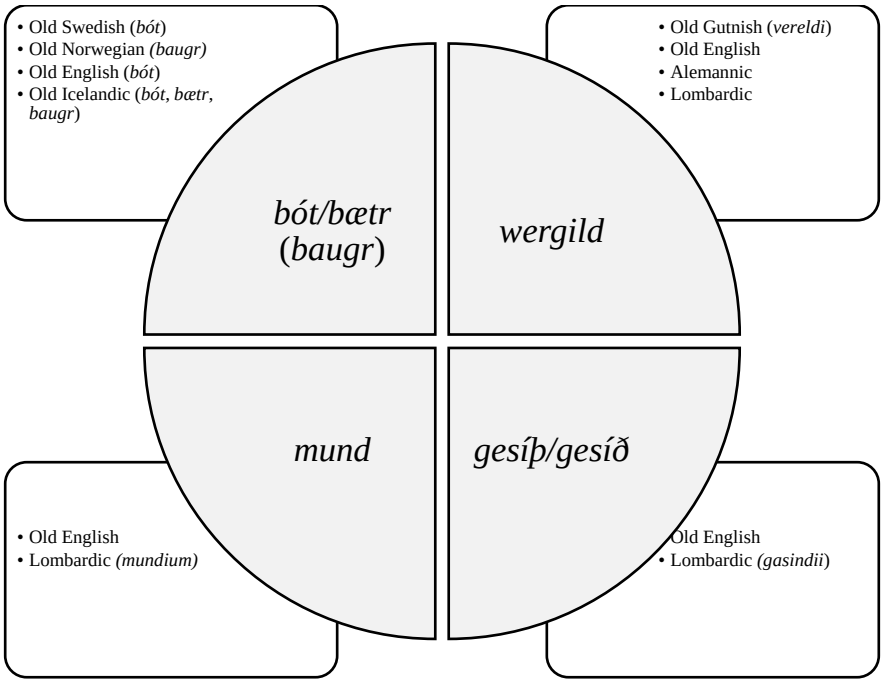


Figure 1: Key terms and the languages in which they appear[27]

[27] In most of the continental law codes *bót* and *wergild* are often represented by the Latin *pretium*. In Scandinavian vernaculars, the term *bót* is either part of a compound word or is rendered as the abstract *baugr* (ring). The definitions and importance of these terms within the context of the Germanic law codes is explored throughout this paper.

By searching for specific keywords in the original languages,[28] many elements found in the earliest of the continental codes appear again in the Anglo-Saxon laws and in Scandinavian jurisprudence. In order to determine the extent of the parallels between the Germanic laws on the Continent, in England, and eventually in Scandinavia, it was necessary to examine the *Leges Barbarorum* first, since they provide the earliest written record of Germanic custom with minimal Christian and Roman influence. Thus, the continental law codes examined within this thesis include the *Liber Constitutionum* of the Burgundians,[29] the *Pactus Legis Salicae* of the Salic Franks,[30] the *Leges Langobardorum* of the Lombards (primarily the *Edictum Rothari*), as well as the *Pactus Legis Alamannorum* and *Leges Alamannorum* of the Alemanni, and the *Lex Baiuariorum* of the Bavarians.

For the Anglo-Saxons, all laws up to and including those promulgated by Alfred the Great were referenced, including the laws of Æthelberht, Hlothhere and Eadric, and Wihtred of Kent; along with Ine and Alfred of Wessex.[31] Alfred's laws are much more comprehensive than those promulgated by preceding kings, issued in the second half of the ninth century. By the time Alfred promulgated his laws, English jurisprudence began to take on a life of its own, yet still bound by Germanic custom. The laws of Alfred are referenced in this thesis to address how Anglo-Saxon legal thinking changed over the

[28] Keyword searches were performed using GREP software, which provided a shortcut for determining correlations. The roots of keywords were searched using regular expressions (regex) and the results scrutinized to ensure proper legal context.

[29] Later referred to as the *Lex Gundobada* "Law of Gundobad."

[30] The capitularies issued by the successors of Clovis were also explored, though they acted more as updates to the *Pactus* rather than separate codes of law. Thus, the *Pactus Legis Salicae* was my primary focus.

[31] Laws of later kings, such as Æthelred II and Knut the Great, are sometimes referenced because their codes provided details missing from the laws of their predecessors.

centuries, leading to jurisprudence far larger in scope than the system of tariffs found in the earliest Germanic codes.

With the aid of keywords, specific legal institutions and cultural patterns were analyzed to determine the extent of which Germanic custom saturated written law. The primary challenge in this approach stems from the copious amount of languages the Germanic peoples employed when writing down their laws. The continental laws were published in a vernacular Latin, while the insular and Scandinavian laws were recorded in Germanic vernaculars. Because the laws were recorded in a variety of different tongues, and due to the nature of Germanic custom, some legal terms were replaced by equivalent ones in the parent language to varying degrees of success. In Latin texts where Roman language was ill-equipped to convey Germanic tradition, morphologically Latinized Germanic terms often stood in place of pure Latin ones. Even though the Germanic vocabulary appearing in the Latin texts of the *Leges Barbarorum* is mostly unique to a specific text, with few if any keyword overlaps, the Germanic languages and their relationship with one another is of paramount importance. Figure 2 on the following page offers the linguistic arrangement of the Germanic languages.

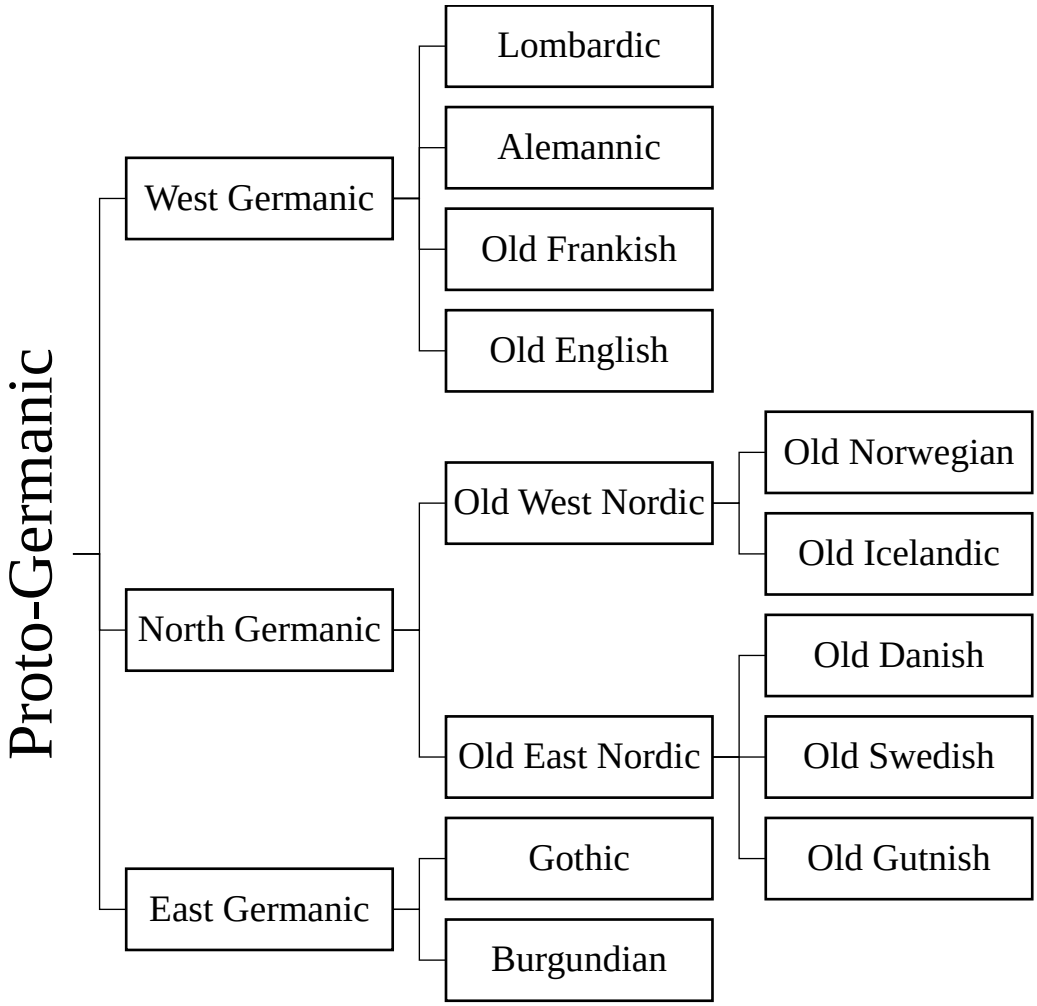


Figure 2: Germanic languages and relationships[32]

[32] Burgundian, Gothic, and Lombardic are extinct languages with no modern equivalents. The only remnants of Lombardic survive as terms in medieval legal documents and today in the modern Italian lexicon (e.g., *barba* "beard," *maniscalco* "blacksmith," *borgo* "village," *staffa* "stirrup," *stalla* "stable," *faida* "feud"); however, Lombardic and Saxon appear to be similar, therefore Old English may provide surviving kinship. Alemannic (Suebi) developed into High German, and the oldest coherent form of the language dates back to eighth-century texts preserved at the Abbey of St. Gall. Frankish evolved into the Low Franconian dialects spoken today in the Netherlands and parts of Belgium.

## Structure

The body of this thesis is organized into three chapters, each exploring different facets of the cultural parallels found in the assorted *corpora* of the Germanic legal codes. The sheer number of corresponding institutions and cultural adherences could fill the pages of a dissertation but here we will focus on a select but crucial few. Chapter 1 establishes the historical and linguistic framework in which the Western Germanic constitutions were written down. It provides approximate dates of issuance but also examines why the continental codes were recorded in Latin and the insular ones in a Germanic vernacular. Moreover, it looks more closely at the linguistic forces that shaped the development of Old English.

Chapter 2 explores the indirect influence Roman jurisprudence had on the content of the Germanic law codes and delves into the similarities between the continental Germanic laws of the *Leges Barbarorum* and those promulgated by the earliest Anglo-Saxon kings. It emphasizes the parallels found in fiscal units and the judicial officials assigned to them, exploring sub-topics such as the shaky understanding of early Germanic kingship and the Anglo-Saxon counterparts to continental offices. With comparisons made to early observations by Tacitus, the chapter's goal is to show that the legal foundations for the Germanic codes is rooted in a shared ancient custom.

The final chapter, Chapter 3, attempts to bridge the gap several centuries wide by drawing connections between the West Germanic laws of the fifth through eighth centuries and the Scandinavian codes promulgated beginning in the eleventh century. It acknowledges the structural differences between the Scandinavian and Western European

law codes but teases out shared institutions and cultural standards. The chapter's primary focus revolves around shared legal terminology and attitudes toward women.

By targeting and probing distinctive themes, such as the treatment of women within the wergild system and the implicit characteristics of inheritance, a clearer representation of Germanic custom appears. When exploring the laws issued by Germanic kings in both Europe and in England over the course of the first three centuries of the Medieval Period, one finds an astounding number of parallels in their legal institutions and social attitudes, parallels that even appear in the Scandinavian laws committed to writing much later, in the eleventh through fourteenth centuries. Also, by examining specific statutes in the North and insular Germanic legal texts and comparing how they are similar to one another yet atypical in respects to other European legal tracts of the period, one can begin to see Germanic custom surface. A combination of shared legal terms, institutions, and cultural principles supports the theory that the Germanic peoples from southwestern Gaul to Scandinavia practiced the retention of common ancient customs, lodged firmly within cultural memory. These customs, first surveyed by Tacitus in the first century, emerged in written form over the course of half a millennium as Germanic kings promulgated the customary laws of their people.

# CHAPTER 1: FOUNDATIONS AND TONGUES OF THE GERMANIC CODES

> *Qui inter cetera bona, quae genti suae consulendo conferebat, etiam decreta illi iudiciorum, iuxta exempla Romanorum, cum consilio sapientium constituit; quae conscripta Anglorum sermone hactenus habentur, et obseruantur ab ea.*[33]
>
> Among other benefits which [Æthelberht] conferred upon the people under his care, he also established, with the advice of his counselors, a code of laws according to the examples of the Romans; which are written in the language of the English people and are still kept and observed by them.
>
> - *The Venerable Bede*

Many of the conditions in which the various West Germanic peoples first promulgated their laws were similar: (1) they filled a power vacuum left by the Roman Empire beginning in the fifth century; (2) they codified their customary laws with the help of Roman administrators and the Church of Late Antiquity; (3) their laws were written in a language that they felt most appropriate considering their geography. While similar, the conditions were not identical, leading to different degrees of Roman influence in the codification of the Germanic laws, whether linguistic or juridical. The circumstances under which the numerous Germanic customary laws were committed to written form and the linguistic influences that acted upon them is addressed in this chapter.

[33] Bede, *Historiam Ecclesiasticum Gentis Anglorum*, ii.5.

## The Germanic peoples and the Late Roman Empire

When Rome's military and administrative power trickled away in Western Europe, the Germanic barbarians,[34] living both within the provincial boundaries of the Western Roman Empire and east of the Rhine, became the new custodians of a continent whose infrastructure and institutions had become derelict, some establishing power in locations already settled and others sweeping westward to secure footholds far beyond their original homelands. These new custodians adhered to a different moral compass than the Romans of Late Antiquity, with distinct laws of their own. On the Continent they received the Christian faith (although at first only superficially) and adopted the written language of their Roman predecessors, and in the process, the Germanic peoples quickly promulgated their ancient customary laws. The Germanic migrants in southeastern Britain—namely in Kent—followed a similar pattern to their continental cousins but deviated just in the slightest by instead developing a written vernacular by which their laws were issued. With the mighty legions that once stifled their hunger for expansion now all but gone, these newly invigorated wardens filled the power vacuum left by the Romans and, with the help of the recently conquered, they established the early institutions of what would become medieval Europe. This was not achieved by adopting Roman institutions—Rome had failed in the West—nor by forcing Germanic custom upon the Romans. However, before we can draw comparisons between the customary laws of the continental Germans and the English, which will be performed in the

[34] The term "barbarian" used throughout this chapter does not include the modern distortion of the definition, which can sometimes incorporate the meaning of "uncivilized" or "savage." In the original Greek (βάρβαρος), *bárbaros* simply means "foreign" or "non-Greek." While the barbarians were not strictly Germanic, in the context of this thesis the term will be restricted to the various continental Germanic confederations to which this study is devoted.

following chapter, we must first explore the foundations upon which these two legal cultures arose.

Bede's pithy description of the Kentish laws, particularly the phrase "*iuxta exempla Romanorum*," can also be applied to the continental laws of the Germanic peoples. Declaring that the Anglo-Saxon laws were modeled after the examples of the Romans is somewhat misleading, and therefore needs a clarification that also applies to the continental Germans.[35] Both the Anglo-Saxon dooms and the legal corpus of the continental barbarians encompass Germanic customary law and display very few connections to Roman jurisprudence, with the exception of the Visigothic Code (discussed below). In fact, the earliest laws issued by the Germanic successors of the western provinces only applied to Germans, whereas Roman legislation continued to protect those classified as *Roman*.

To call these people "Germans," however, is a bit of a misnomer because it presupposes that there was a singular, self-imposed ethnic and/or cultural identity among them, which is a troublesome concept for this period. "Germanic" may be better suited as a linguistic qualification than an ethnic one, but the idea of linguistic unity is also anachronistic, for people often chose advantage over language solidarity—for example, Slavs might abandon their own people to join Germanic warbands due to the latter's military superiority at a given time.[36] Moreover, many of the Germanic *gentes* discussed throughout this thesis were confederations rather than discreet tribal units. The very fact

[35] See Chapter 2 for specific Roman influences acted upon the Germanic laws.

[36] Walter Goffart, *Barbarian Tides: The Migration Age and the Later Roman Empire* (Philadelphia: University of Pennsylvania Press, 2009), 221–222.

that Germanic customary law was written in a non-Germanic vernacular (with the exception of the Anglo-Saxons and then the Scandinavians half a millennium later) attests to the difficulties of pinpointing ethnic identity. The Visigoths, Burgundians, and Salic Franks, nevertheless, attempted a feat of ethnic engineering when codifying their laws by distinguishing themselves from the Romans.[37] Furthermore, the legal lexicon was inundated with Germanic terms with which there were no Latin parallels linguistically or culturally. This was an important stage in the development of medieval Europe, and it is easier to refer to these people as "Germans," for indeed they shared among themselves ancient customs and language. These barbarians churned the abandoned topsoil of the Roman West in order to sow their own seeds of cultural and ethnic identity.

Rome's expansion reached its zenith in the early second century, during the *imperium* of Trajan, but as early as the Late Republic the notion of being *Roman* no longer meant hailing from Italy; instead, it was a coveted legal status that suffused all the lands under Rome's influence. In 212, however, that legal status had lost its meaning, as Emperor Caracalla extended Roman citizenship to all free men and women within the Empire.[38] To complicate things further, the Germanic confederations that swarmed Western Europe in the wake of Rome's decay were not strictly made up of ethnic Germans. Just as Germans conquered and displaced by the Huns at times joined their conquerors, so too did Celts and Slavs join German confederations. Although these

[37] See Patrick Wormald, "The *Leges Barbarorum*: Law in the Post-Roman West," in *Regna and Gentes: The Relationship between Late Antiquity and Early Medieval Peoples and Kingdoms in the Transformation of the Roman World* (Leiden; Boston: Brill, 2003), 31–33.

[38] Patrick J. Geary, *The Myth of Nations: The Medieval Origins of Europe* (Princeton: Princeton University Press, 2002), 63–64.

confederations sometimes absorbed Slavs and Celts, they did not contain a truly heterogeneous assortment of peoples with a widespread array of ethnic and linguistic backgrounds; instead, they mostly constituted Germanic-speaking peoples.[39] During this period, we see the self-identification of the Germanic peoples as they distinguished themselves through the transmission of their customary laws, forging cultural identities that were at first distinct from the Romans of late Antiquity but then eventually included them.

We must not look at the fifth century when Rome's power in the West had ultimately disintegrated as if the gates were finally opened and the Germans of the Rhine River Valley spilled over into a vulnerable Europe. On the contrary, a number of Germanic confederations had already settled west of the Rhine with the permission of the Roman Empire. The Visigoths, Ostrogoths, and the Franks, for example, had functioned as Roman auxiliaries and a great many Germans even rose in the ranks of the Roman legions. The earliest barbarians settled within the provinces were known as *laeti*,[40] and they settled in depopulated Gaul, serving as laborers, and acting as a pool from which military units could be drawn. Under the system of *hospitalitas*, barbarians were billeted on civilian land and given one-third of the Roman estates on which they settled, although it was more common, especially in the twilight years of the Western Empire, for them to actually receive shares of the income taxes from those lands.[41] During the Third Century

[39] As this pertains to the Anglo-Saxons, see Ibid., 115.

[40] Under the Roman Empire a *laetus* was a foreign bondsman who was assigned to farmland for cultivation and who received a percentage of the income. In Old English, a *læt* was a social rank above that of a slave but below *ċeorl* (free man).

[41] Patrick J. Geary, *Before France and Germany: The Creation and Transformation of the Merovingian World* (New York; Oxford: Oxford University Press, 1988), 25.

Crisis, and certainly, by the end of the fourth century, the barbarian *laeti* rose from being simple laborers and auxiliaries to *foederati*, wherein they answered to their own chieftains as opposed to being commanded by Roman prefects. Patrick Geary describes the primary differences between *laeti* and *foederati* in a succinct sentence stating that:

> [W]hile *laeti* settlements were intentionally isolated from indigenous Roman population areas and still more from Free Germans, *foederati* in the Empire not only found themselves in intimate contact with the local population, whom they tended to dominate through their military roles, but also remained in close and constant contact with the tribes across the Rhine and Danube.[42]

Western Europe was vulnerable by the beginning of the sixth century, and the barbarians exploited that vulnerability by assuming roles of power.

As aforementioned, many of these Germanic populations were not, in fact, solitary tribes, but rather they were amalgamations of smaller populations who, for the most part, held common language and custom, and in some cases membership to these unions was voluntary and others compulsory.[43] The most famous of these is the Franks, who first appeared as a confederation in 256/7, and by 382 they were serving under internal leadership.[44] This conglomerate—their name meaning "free ones" or "free people"—consisted of lesser groups such as the Batavi, Bructeri, Chamavi, Chattuari, Sugambri, and Salii, among others.[45] The Alemanni, too, were a confederation, their collective name meaning "all the people," although they were conquered and absorbed by

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[42] Ibid., 22.

[43] The Germanic coalition that stopped the Huns was a confederation of Goths, Franks, and Alemanni, among others, who fought together temporarily to stop a common enemy. The Franks were a federation, for the Salic Franks conquered and absorbed the likes of the Alemanni and Ripuarians.

[44] Herbert Schutz, *The Germanic Realms in Pre-Carolingian Central Europe, 400–750* (New York: Peter Lang Publishing, 2000), 138–39.

[45] Ibid., 138; Geary, *Before France and Germany*, 78.

the Franks under Chlodovech (Clovis I) at the close of the fifth century. Under the barbarian *foederati*, the Germanic-speaking peoples codified their first laws, the entire corpus of which is known as the *Leges Barbarorum*.

## The earliest Germanic laws

The first Germanic laws committed to writing were those of the Visigoths, compiled and issued by Euric *circa* 481. The *Codex Euricianus*, the first edition of the *Leges Visigothorum*, has unfortunately been lost, yet a number of its provisions appear in the Visigothic Code (*Forum Iudicum*) of the seventh century, even if heavily modified.[46] Following Euric's code is the *Breviarium Alaricianum*,[47] more commonly called the *Lex Romana Visigothorum*, decreed by Alaric II in 506. The *Lex Romana Visigothorum* was a code of laws providing legal protection for the Hispano-Romans and Gallo-Romans living under Visigothic rule. This instance of a division of law whereby Germans and Romans were each protected under distinct laws is a form of retention of custom and assertion of ethnic identity—the Visigoths purposely discerned themselves from the Romans in their edicts. In the middle of the seventh century, however, Recceswinth, the Visigothic King of Hispania, promulgated the *Forum Iudicum*, which updated the *Breviary of Alaric* by merging it with the *Code of Euric* and thus creating a single codex of laws protecting all the people within the Visigothic Kingdom. At this point, the laws of the Visigoths had transitioned into statutory law with only minor influences from

[46] Scott, *Forum Judicum*, xxiii–xxiv.

[47] The *Breviary of Alaric* was a modified and abbreviated version of the *Theodosian Code* (*Codex Theodosianus*). One of the updates included prohibiting the marriage between Goths and Romans. See Geary, *Myth of Nations*, 128–130.

Germanic customary law; as a result, the *Forum Iudicum* is not considered part of the *Leges Barbarorum*—for all intents and purposes, it functioned as Roman law.

The difference between customary (*mos*) and statutory (*lex*) law is fairly uncomplicated, where customary law is associated with laws that apply to people and statutory to the laws that are confined to place.[48] Thus, under customary law geography is irrelevant, for a person is protected and judged by the laws of his people's customs no matter the location. For instance, if an Aleman traveled to a territory held by the Bavarians and committed a crime, he would be judged in accordance with the laws of *his* people rather than those of the Bavarians. This was especially true during the period of *foederati* whereby Germans living in Roman provinces observed their own laws in lieu of provincial law. Once the Germanic peoples took control of the provinces of the Western Empire, the difference in laws became troublesome, leading to the Germanic rulers establishing the *leges Romanae* and differentiating those laws from the *Leges Barbarorum*.

Following the early Visigothic example, the Burgundians and the Salic Franks both developed and compiled written forms of their customary laws.[49] Whereas the laws of the Salic Franks are often regarded as the earlier of the two codes, the Burgundians very likely began recording theirs before the Franks. The two codes are significantly different from one another in organization and content and the Burgundian code shows

[48] The personality of law and territoriality of law, respectively. See Katherine Fischer Drew, trans., *The Burgundian Code: Book of Constitutions or Law of Gundobad* (Philadelphia: University of Pennsylvania Press, 1972), Introduction, 3.

[49] The Salic Franks (*Salii*) became the overlords of the Frankish federation, their name meaning "salty ones," indicating they originated from a coastal region, like north of the Rhine delta beyond the Roman provincial borders.

no signs of Frankish influence, unlike the later codes promulgated by the Alemanni and Bavarians. The difficulty in dating any of the legal compilations of the *Leges Barbarorum* with any precision is the simple fact that the preambles, prologues, and epilogues contain no dates. Fortunately, the kings under which the law codes were issued are typically mentioned in the manuscripts. The *Leges Burgundionum*—more aptly, the *Lex Gundobada*—was compiled under Gundobad (r. 474–516), King of the Burgundians, although likely not before the *Lex Visigothorum* of 481.[50] Because Gundobad died in 516, all titles between that year and 523 were compiled by his son Sigismund (r. 516–523). The compiling and promulgation of the *Lex Gundobada*—which may have been referred to as the *Lex Burgundionum* under or after Sigismund—was a process that occurred over the course of no less than twenty years, and so its final version postdates the most primitive redaction of the Salic laws, the *Pactus legis Salicae* (*ca*. 507x511). The earliest laws of the Salic Franks are traditionally attributed to Clovis I, who reigned between 507 and 511, and the entire corpus of Salic law survives in over eighty manuscripts, none of which are contemporary to their issue.[51] Over the course of the sixth, seventh and eighth centuries, the Salic Franks—specifically the Merovingian dynasty—increased their power and absorbed many of those Germanic *gentes* that had settled west of the Rhine, such as the Alemanni, Bavarians, Burgundians, and the Ripuarian Franks, and, with the

[50] Drew, *The Burgundian Code*, Introduction, 6.

[51] Katherine Fischer Drew, trans., *The Laws of the Salian Franks* (Philadelphia: University of Pennsylvania Press, 1991), Introduction, 52.

exception of the Burgundians, the Merovingians in all likelihood oversaw the promulgation of each of these group's law codes.[52]

## Vernacular Latin and the continental laws

The customary laws of the Germanic peoples in their entirety owe their inception to oral tradition, and the written forms of the *Leges Barbarorum* as well as the Anglo-Saxon dooms convey this, particularly those of the early redactions. Their titles and schedules were plainly written, signifying their practical use and especially their connection to continued oral practice. "Orality," as Rosamond McKitterick puts it, "with literacy, retained its centrality in early mediaeval [*sic*] societies."[53] The motives behind first writing down their laws must have been so that Germanic kings could validate themselves, creating for themselves a respectability, among their newly acquired Roman subjects, for their German subjects were accustomed to orally-transmitted law. In point of fact, only a portion of Germanic customary law is *lex scripta* (written law).[54]

What *lex scripta* comes down to us within the corpus of the *Leges Barbarorum* is composed in Vulgar Latin (*sermo vulgaris*), a form of Latin associated with common speech as opposed to the refined classical Latin found in literature. For much of the twentieth century, discussions of Vulgar Latin have led to some contention in regard to

[52] The *Pactus Legis Alamannorum* (613x629), *Lex Baiuariorum* (744x748), and the *Lex Ribuaria* (629x634) respectively. If Merovingian scribes did not produce these law codes, then the respective laws were at least influenced by the *Pactus Legis Salicae*.

[53] Rosamond McKitterick, ed., *The Uses of Literacy in Early Mediaeval Europe* (Cambridge: Cambridge University Press, 1990), 320.

[54] Rosamond McKitterick, *The Carolingians and the Written Word* (Cambridge: Cambridge University Press, 1989), 37.

its actual function in early medieval society. Was it representative of a change in the spoken vernacular, wherein the written form had a pragmatic use and was disseminated to a much wider audience than the social elite? Or was the employment of *Latinum vulgare* indicative of a declining educated elite who were struggling to reconcile colloquial Latin with the classicality of Ciceronian Latin?

In the 1920s, Henri Muller and his students supported a thesis asserting that between the late sixth and early eighth centuries the breaking down of the passive voice was the primary basis for the death of Latin and the evolution of the Romance languages. According to Muller, the "reform of Charlemagne which severed the common people's speech from its natural support, the written language, accelerated the linguistic changes to such an extent that less than thirty years later it was officially recognized and its use recommended under certain circumstances."[55] What Muller suggests is that prior to Charlemagne's educational reforms, written Latin between the sixth and eighth centuries more closely represented speech—it was a practical form as opposed to the stylized variety favored during the classical period of the late Roman Republic and early Empire. In the 1950s, however, a new school contradictory to Muller's arose that supported the idea that Latin remained pure, just that those who attempted to use it often failed at grasping the complexity of the classical rules. The influential linguist Dag Norberg, for example, was a leader in this school, writing a number of treatises on the subject. He argued that by late Merovingian period (700–751) Latin had become an incoherent

[55] Henri Francois Muller, "When Did Latin Cease to Be a Spoken Language in France," *Romanic Review* 12 (1921): 334.

system and inadequate for communicating.[56] This led to the notion that Latin produced in writing during the early Middle Ages was "bad Latin." It was not until the 1980s that philologists began to pay closer attention to the changes in the structure of written Latin during the early medieval period without concerning themselves with the subjective perceptions of "good" and "bad" language.[57] Unfortunately, linguists and historians did not universally accept the shift. In 2005, Jacques Fontaine, a French medievalist, described the Latin used in Merovingian documents as corrupted and bastardized by the receding gulf between spoken language and traditional Ciceronian norms, insisting that the Frankish scribes who compiled the likes of the *Formulary* of Marculf and the *Chronicle* of Fredegar were "hardly literate."[58] As recent as 2010, the linguists Ti Alkire and Carol Rosen of Cornell University wrote that texts of the eighth century "present countless examples of bad Latin, which does, especially in Italy, look much like the vernacular, but only because of incompetence, not because of intent."[59]

Vulgar Latin, in a wider sense of the term, predates the Middle Ages, and it best describes how speakers of Latin during the Roman period communicated verbally as opposed to the way Latin was written. In essence, *Latinum vulgare* is associated with vernacular Latin. For our purposes, however, we narrow the definition and focus on the

[56] Dag Ludvig Norberg, *Manuel pratique de latin médiéval* (Paris: A. & J. Picard, 1968), 31; for a summary of how philologists evolved their thinking over the 20th century, see Alice Rio, trans., *The Formularies of Angers and Marculf: Two Merovingian Legal Handbooks* (Liverpool: Liverpool University Press, 2009), Introduction, 18–20.

[57] Here we see a rise in Descriptive Linguistics, which describes how language was actually used, rather than Prescriptive Linguistics, a practice hinged on the idea that language is static with absolute rules.

[58] Jacques Fontaine, "Education and Learning," in *The New Cambridge Medieval History*, vol. 1 (Cambridge: Cambridge University Press, 2005), 756.

[59] Ti Alkire and Carol Rosen, *Romance Languages: A Historical Introduction* (Cambridge: Cambridge University Press, 2010), 322.

written form during the early medieval period. A comprehensive analysis of Vulgar Latin is beyond the scope of this chapter, yet a few choice illuminations are warranted.

There are a number of chief aspects of how Latin written during the Merovingian and early Carolingian periods changed from the classical norms, although only a few will be mentioned here.[60] The most obvious difference we see between the Latin of Cicero and that of the Merovingians is reduction, such as the loss of both the genitive and dative cases—their relationships instead conveyed by means of prepositions rather than inflections—and the absorption of the grammatical neuter gender by the masculine. Whereas in Classical Latin prepositions were used economically, specifically because case endings provided the necessary information required (to/from whom, by whom, ownership, etc.), Vulgar Latin of the early Middle Ages reduced the case endings while prepositions filled in the missing information that those endings once offered. Writings in Vulgar Latin, therefore, are often more verbose than Classical Latin. Consider the following example of a phrase taken from the Oaths of Strasbourg (842):

Table 2. Classical and Vulgar Latin of the Strasbourg Oaths

| **Classical Latin** | **Vulgar Latin** | **English** |
|---|---|---|
| Per Dei amorem et per christiani populi et nostram communem salutem . . . | Por Deo amore et por chrestyano pob(o)lo et nostro comune salvamento . . . | For the love of God and the Christian people and our common salvation . . . |

*Source*: Phrase snippets provided by http://bbouillon.free.fr/univ/hl/Fichiers/strasb.htm.

[60] For a thorough analysis of the changes that occurred in early Medieval Latin, refer to Paul Fouracre and Richard Gerberding, *Late Merovingian France: History and Hagiography 640–720*, Manchester Medieval Sources Series (Manchester University Press, 1996), 58–78.

Were Fontaine, Alkire, and Rosen correct in their analyses of Merovingian Latin? Is the Latin we find in the *leges*, the *formulae*, and in the early charters a corruption resulting from incompetence and a lack of education? Both Rosemond McKitterick and Alice Rio disagree with this notion by emphasizing the traits of legal documents attested under the Merovingians and Carolingians, the former analyzing charters from the monastery of St. Gall and the latter the formularies of Angers and Marculf.[61] A *formula* (pl. *formulae*) is a model legal document, much akin to a template, which was used to guide scribes when they produced specific types of documents, such as charters, contracts, manumissions, and point of sales. Although some judgments for legal disputes are found in the formularies, they were often handed down orally due to their temporary nature.[62] Due to their nature, Rio argues that the formularies (collections of *formulae*) were specifically designed for transmission among a lay audience. She thus concludes that the language used in *formulae* is indicative of a conscious shift to model the written word after the spoken. "Formulae," Rio implores, "thus ought not to be construed as evidence for declining literacy or for a lessened relevance of the written word, but in fact indicate the very reverse: a widespread use of literate forms in early medieval Francia."[63]

What we see in the *Leges Barbarorum* is a vernacular form of Latin, a form that appears not only in Gregory of Tours' *Historia Francorum* or the barbarian laws but is

[61] See Rosamond McKitterick, "A Literate Community: The Evidence of the Charters," in *The Carolingians and the Written Word* (Cambridge: Cambridge University Press, 1989), 77–134; as well as the Introduction of Rio, *Formularies*, specifically 18–24.

[62] Once a judgment was handed down the dispute at hand was considered resolved, and therefore it did not require the permanence akin to transactions dealing with land or freedom. See Alice Rio, *Legal Practice and the Written Word in the Early Middle Ages: Frankish Formulae, c.500–1000* (Cambridge: Cambridge University Press, 2009), 19.

[63] Rio, *Formularies*, Introduction, 24.

found in an array of texts, both legal and literary. The Latin found in Merovingian texts is not "bad" Latin, it is better described as functional Latin which was a closer representation of the vernacular.[64] The above brief analysis of Vulgar Latin within the sphere of the *Leges Barbarorum* was necessary because it leads us to the Germanic group not officially connected to the *Leges*, but whose legal development runs almost contemporaneously with the earliest issues of Germanic law on the Continent: the insular Anglo-Saxons.

## Germanic settlement of England

Germanic settlement of the British Isles and contact with other continental barbarians can be traced back to the Roman occupation, as attested by ceramic evidence dating to the third century and by the fifth-century *Notitia Dignitatum*.[65] It has long been known that the Germanic settlers in Kent originally hailed from the Jutland peninsula, for Jutish clothing and jewelry found at burial sites in southeast England is abundant for this period. The archaeological record also confirms a long tradition of contact between Kent and Francia. Graves at Finglesham and Lyminge dating *circa* 500 contain belt fittings in the characteristic Frankish style; in wealthy women's graves in cemeteries at Bifrons are found imported glass and bronze bowls, Frankish brooches of multiple styles (garnet-set, rosette, radiate), and gold-brocaded *vitta* (headband) of the fashionably Frankish design; and in the case of brooches, it is not uncommon to find Frankish objects alongside Jutish

[64] Fouracre and Gerberding, *Late Merovingian France*, 63.

[65] The *Notitia Dignitatum* is a Roman document that details the organization of provincial administration throughout the Empire. See Malcolm Todd, *The Northern Barbarians: 100 BC–AD 300* (London: Hutchinson & Co, 1975), 212.

and Scandinavian ones.[66] These older Jutish and Scandinavian fashions gave way to the more stylish Frankish designs, indicating that there was not, in fact, a mass immigration of Franks, but instead the Kentish were frequently trading with their wealthier and more voguish neighbors to the south.

Further, some historians have argued that Kent was a subject of Francia and relied heavily on the whims of its kings.[67] Higham tells us that Æthelberht's motives behind conversion and committing his laws to written form were influenced by a desire to connect to the Frankish court under Childebert II, and that "Æthelberht's interest in producing his own law-code may well have been stimulated by Childebert II's publication at Cologne in March 596 of a systematic text of the *Lex Salica*."[68]

## The conversion of Kent and the introduction of written law

The introduction of written law to England by King Æthelberht is often attributed to Saint Augustine, who, in 595, was dispatched to Kent by Pope Gregory I in order to bring the pagan Kentings into the Christian fold.[69] Instead of traveling by sea, Augustine left Rome with a small entourage and journeyed overland through Francia. The reason for traveling by land rather than by sea, and especially by way of Francia, seems to have

[66] Sonia Chadwick Hawkes, "Anglo-Saxon Kent c 425–725," in *Archaeology in Kent to AD 1500*, CBA Research Report 48 (The Council for British Archaeology, 1982), 72.

[67] J.M. Wallace-Hadrill, *Early Germanic Kingship in England and on the Continent* (Oxford: Clarendon Press, 1971), 27–31; also see N. J. Higham, *The Convert Kings: Power and Religious Affiliation in Early Anglo-Saxon England* (Manchester; New York: Manchester University Press; St. Martin's Press, 1997), 113–119.

[68] Higham, *The Convert Kings*, 117. The *Lex Salica* is a later (eighth century) redaction of the Salic laws, including the *Pactus legis Salicae* and amendments by Pepin III.

[69] F.M. Stenton, *Anglo-Saxon England*, 2nd ed. (London: Oxford University Press, 1947), 104–105.

involved Pope Gregory's interest in curbing the Franks, for reports of simony and corruption within the church abounded.[70] Kent's proximity to the Frankish kingdoms provided the ideal staging ground for Gregory's reformation of the church in Gaul, and although in the fall of 597 Gregory had written to Queen Brunhilde of Austrasia in a fruitless effort to "secure the queen's support in his campaign against simony," he was shrewd enough to consider the potential of Kent in his political maneuvers.[71] Gregory employed that cunning when writing to the Frankish kings Theoderic and Theodebert a year earlier by stating that the English had requested a mission for their conversion and that Frankish clerics would be needed. As Pope Gregory wrote:

> [I]t has come to our attention that the people of England earnestly desire to be converted to the Christian faith, with God's compassion, but that the priests from nearby neglect them, and cease to inflame their demand with their encouragement. And so, we have decided for this reason that Augustine . . . should be sent there with other monks. We have also ordered that they should take some priests with them from nearby, through whom they might understand their thoughts, and whose advice might help them to get what they want, whatever God should give them.[72]

It is likely that the English did not request conversion, but rather that the above missive was part of Gregory's rhetoric to convince the Franks to cooperate with missionaries to England.[73] Having Frankish clerics in the mission would have certainly helped the

[70] John R.C. Martyn, trans., *The Letters of Gregory the Great* (Toronto: Pontifical Institute of Mediaeval Studies, 2004), 8.4. References to Gregory's letters henceforth *Epistles*.

[71] Ibid., 503, n40. Brunhilde was the grandmother of Kings Theoderic and Theodebert and acted as their regent during their youth.

[72] *Epistles*, 6.51.

[73] Higham, *The Convert Kings*, 81.

process along, for the Frankish tongue at that time was very close to that of the language spoken in Kent.[74]

In 597, Augustine arrived in England and awaited a meeting with King Æthelberht on the Isle of Thanet. According to Bede, Æthelberht "took precaution that they should not enter any building, for he held the long-standing superstition that, if they practiced any magic arts, they might deceive him and get the better of him."[75] Bede's comments here are purely anecdotal, because while it was true that Germanic pagans worshiped outdoors at open shrines, Æthelberht was no stranger to Christianity, and therefore he would not have behaved with such naïveté. In point of fact, by the time of Augustine's arrival at Thanet, Æthelberht had been married to a Frankish Christian, Bertha, for nearly two decades.

## Queen Bertha and Bishop Liudhard as contributors

Very little documentary history exists on Bertha and so Anglo-Saxon scholars are forced to extrapolate, primarily basing information on periphery sources. The great-granddaughter of Clovis I—the Frankish king who promulgated the first Salic laws—Bertha was the progeny of King Charibert II and Ingoberg. The earliest reference to her is

[74] North and West Germanic dialects were mutually understandable until, perhaps, the High Middle Ages, when English became increasingly influenced by Latin and French while Old Icelandic remained isolated. Graeme Davis argues that it is "appropriate to think of a single Old Germanic language with dialects of Old English, Old Icelandic, Old High German, and others. These dialects have substantial differences one from the other, but notwithstanding they are still dialects not separate languages." Graeme Davis, *Comparative Syntax of Old English and Old Icelandic: Linguistic, Literary and Historical Implications* (Bern: Peter Lang AG, Internationaler Verlag der Wissenschaften, 2005), 15.

[75] "*Cauerat enim, ne in aliquam domum ad se introirent, uetere usus augurio, ne superuentu suo, siquid malificae artis habuissent, eum superando deciperent*." Bede, "Historiam Ecclesiasticum Gentis Anglorum," i.25.

made by Gregory of Tours in his *Historia Francorum*, although Bertha is not mentioned by name: "Further, King Charibert accepted as a wife Ingoberg, by whom he had a daughter who thereafter married a man from Kent and was taken there."[76] She is also referenced in *Historia Francorum* ix.26 in a similar fashion: ". . . she [Ingoberg] left a daughter, who married a certain son of a king in Kent."[77] Bede, writing more than a century after the events of the conversion, too, only mentions Bertha twice: the first time is when describing Æthelberht's rendezvous with Augustine on Thanet, and the second is when writing the king's obituary, stating that he was laid to rest next to his wife, who had died before him.[78] Because so little is written about Queen Bertha, and about Æthelberht himself, it is difficult for historians to pin down the date of their marriage.

Bede informs us that Bertha joined Æthelberht in Kent (*circa* 580) along with her personal chaplain, the bishop Liudhard.[79] Writing contemporaneously to the actual events, Gregory of Tours obviously felt that what was occurring in Kent was inconsequential, hence mentioning neither the names of Æthelberht, nor Bertha, nor even Liudhard in his *Historia*; and, because of that, the Liudhard medalet has been the chief corroborating evidence used by historians for the existence of Bertha's chaplain, regardless of the fact that very little scholarship has been performed on the object.[80]

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[76] "*Porro Chariberthus rex Ingobergam accepit uxorem, de qua filiam habuit, quae postea in Ganthia* [*sic*] *virum accipiens est deducta*." Gregory of Tours, "Historia Francorum," *The Latin Library*, iv.26, accessed October 30, 2016, http://www.thelatinlibrary.com/gregorytours.html.

[77] ". . . *relinquens filiam unicam, quam in Canthia regis cuiusdam filius matrimonio copulavit.*"

[78] Bede, "Historiam Ecclesiasticum Gentis Anglorum," i.25; vii.5.

[79] Bede does not provide any dates. For theoretical dating of events surrounding Æthelberht and his marriage to Bertha, see Lisi Oliver, *The Beginnings of English Law* (Toronto: University of Toronto Press, 2002), 10.

[80] For a detailed analysis, see Martin Werner, "The Liudhard Medalet," in *Anglo-Saxon England*, vol. 20 (Cambridge: Cambridge University Press, 1992), 27–42.

Bearing the inscription "LEVARDUS EPS" (*Leudardus Episcopus*) on its obverse, the medalet is a sixth-century Anglo-Saxon gold coin, discovered in a small hoard in the churchyard of St. Martin's, Canterbury just before 1844.[81] The medalet has inexplicably been the sole piece of evidence substantiating Liudhard's existence beyond a mere literary invention by Bede.[82] However, Bertha's chaplain was regarded locally as a saint well into the twelfth century, as attested by William of Malmesbury and Goscelin, so it is perplexing why there was ever any doubt to his actuality.[83]

Liudhard's presence in Kent raises some tricky questions about the conversion and the introduction of written language, to the latter of which the Roman missionaries are often also accredited. Was Æthelberht actually baptized by Liudhard before Augustine's arrival in 597? It is certainly within the realm of possibility, and pagan Germans rarely took conversion to Christianity as seriously as later Christians would describe. Although early Germans were superstitious, they were also quite pragmatic, and so converting to Christianity was not seen as abandoning their deities, instead adding a new one to their already diverse pantheon. Æthelberht was apparently unthreatened by

[81] John Yonge Akerman, *The Numismatic Chronicle and Journal of the Royal Numismatic Society*, vol. 7 (London: The Royal Numismatic Society, 1845), 186–191.

[82] Roy Flechner, "Pope Gregory and the British: mission as a canonical problem," in *Histoires des Bretagnes*, ed. H. Bouget and Magali Coumert, vol. 5 (Brest: Université de Bretagne occidentale, 2015), 49.

[83] William of Malmesbury, *Gesta Pontificum Anglorum*, trans. M. Winterbottom (Oxford: Clarendon Press; Oxford University Press, 2007), ii. Goscelin's *Vita et miraculi S. Letardi* is found in Cotton MS Vespasianus B.XX.

Christianity, for he allowed his wife to continue practicing her faith in Kent.[84] To appreciate the fragility of conversion, however, one only has to look to Bede:

> But after the death of Æthelberht, when his son Eadbald had taken over the helm of state, there followed a severe setback to the tender growth of the Church. Not only had he refused to receive the faith of Christ but he was polluted with such fornication as the apostle declares to have been not so much as named among the Gentiles, in that he took his father's [second] wife.[85]

In all likelihood, however, Æthelberht's conversion followed the Gregorian mission. Bertha may not have been a Frankish princess of much standing upon her marriage to Æthelberht, but she was a princess of Francia nonetheless, and Æthelberht's marriage contract may have included a stipulation that included him receiving the faith at the Frankish court or by a Frankish bishop (Liudhard).[86] On the one hand, if Æthelberht had agreed to such stipulation, Kent surely would have admitted to political subordination to the Franks. By accepting Christianity from Rome, on the other hand, "Æthelberht effectively asserted his independence from Frankish control."[87]

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[84] Bertha restored an old Roman church in Canterbury and dedicated it to St. Martin of Tours, which became St. Martin's Church. It is the oldest church in England, and as such was inscribed as a UNESCO World Heritage Site in 1988, along with the ruins of St. Augustine's Abbey, and Canterbury Cathedral.

[85] Bede, *The Ecclesiastic History of the English People*, ii.5. Bertha had been dead for a number of years by this point, so Eadbald took his father's second wife. Æthelburh, Eadbald's sister, took after her mother and received the faith, spreading it to Northumbria through her marriage to Edwin of Northumbria.

[86] There is no evidence for an actual marriage contract, although such contracts were common. The arrangement was likely handled orally, for Æthelberht at the time was pagan and illiterate. For the political ramifications of the marriage, see Higham, *The Convert Kings*, 70–71; for the supposition of a marriage contract, see Barbara Yorke, *Kings and Kingdoms of Early Anglo-Saxon England* (London: B.A. Seaby Ltd, 1990), 28–29.

[87] Yorke, *Kings and Kingdoms of Early Anglo-Saxon England*, 29.

## Germanic vernacular vs. Latin

Conversion is only important to this examination if Augustine and his entourage of clergy indeed introduced the written word to Kent, of which there is overwhelming evidence to the contrary.[88] The death of Augustine, according to Bede, occurred on 26 May 604, which would place him in Kent for only seven years. Richardson and Sayles once claimed that Augustine's date of death is truly unknown and that he could have died as late as 609;[89] but there is no reason to distrust Bede in this instance, for he had access to the papal archives via the priest Nothhelm, and surely Rome would have had the date of Augustine's death correct.[90]

Nevertheless, Augustine's time in Kent is exceptionally short for developing a written vernacular—especially one with which he was entirely unfamiliar. Moreover, it would be fallacious to state that the pagan Germans were completely illiterate on both the Continent and the British Isles before exposure to Latin; as a matter of fact, Old English was being written in Kent in the form of the runic *futhorc* before Æthelberht.[91] While we cannot know the extent to which the people comprehended *futhorc*, it undoubtedly played an important role in developing the Anglo-Saxon vernacular that first appeared in Æthelberht's laws. The North and West Germanic tongues (West in the case of England) comprised of sounds that could not be reproduced in Latin, therefore the Roman alphabet

[88] For a compelling, although narrow, discussion of the conversion of Kent, see H. G. Richardson and G. O. Sayles, *Law and Legislation from Æthelberht to Magna Carta* (Edinburgh: University Press, 1966), Appendix I, 157–169.

[89] Ibid., 9.

[90] Yorke, *Kings and Kingdoms of Early Anglo-Saxon England*, 25.

[91] Nicholas Brooks, "The Laws of King Æthelberht of Kent: Preservation, Content, and Composition," in *Textus Roffensis: Law, Language, and Libraries in Early Medieval England* (Turnhout, Belgium: Brepols, 2015), 111–112.

was not suitable for manufacturing a Germanic vernacular in written form. Indeed, King Chilperic I (r. 561–584) of Neustria attempted to augment the Roman alphabet by adding four new characters: *w, ae, the, wi*, but his reform was soon abandoned.[92] In Kent these characters were pulled directly from the *futhorc* (see Table 2), providing us with the classic Germanic characters in an expanded Latin script, which would also later be found in the Old Norse vernacular half a millennium later.

It seems reasonable to believe that the Old English vernacular began its development much earlier than the Gregorian mission led by Augustine. It was once thought that runic was only used for inscribing short messages in wood and stone, such as spells, property markers, or even simple graffiti (consider the early medieval equivalence of "[Name] was here"); however, the Ruthwell Cross contains an inscription of the Old English poem *Dream of the Rood*, consisting of one hundred and ten words fully inscribed using the *futhorc*. Granted the poem post-dates Anglo-Saxon conversion (eighth century), but the fact that so many words were inscribed using runic should not be overlooked. When it comes to developing a language in a Germanic vernacular, Bishop Liudhard is a much more believable candidate over Augustine; even Bertha would have been better equipped, for she was learned in letters and spoke a similar language.[93]

[92] Gregory of Tours, "Historia Francorum," v.44. "*Addit autem et litteras litteris nostris, id est w, sicut Graeci habent, ae, the, uui, quarum caracteres hi sunt*." Gregory was incorrect to assume that Chilperic was introducing Greek letters. Early manuscripts of the HF indicate that runic was indeed used to produce these symbols. Brooks, "Laws of King Æthelberht of Kent," 126.

[93] *Epistles*, 11.35. "For once your Glory . . . was fortified by the true faith and trained in Holy Writ . . ."

Table 3. Runic Influence on Old English[94]

| Rune | Old English | Transliteration |
|---|---|---|
| ᚦ | *þorn* (thorn) | þ, ð, th |
| ᚹ | *wynn* (joy) | p, w |
| ᛄ | *ġér* (year) | J |
| ᚫ | *æsc* (ash) | Æ |
| ᚣ | *úr* (ox, auroch) | Y |

If Old English was indeed developed before Augustine's arrival, why is it that none of it survives? One theory, as presented by Richardson and Sayles, is that anything recorded was done so on papyrus, which does not preserve well.[95] "Papyrus," they tell us, "would also be used by the Roman mission as it was by the Roman curia, and the papal letters to Æthelberht and Bertha were doubtless on papyrus;" the Kentish laws, however, would have been written on parchment, "since they were intended for permanent reference."[96] Nicholas Brooks offers an expanded approach to this reasoning by using Scandinavia as an example, by stating that pre-Christian laws (or any other writing, particularly pagan in content) written in runes—and consequently early Old English—would not be preserved in Christian monasteries.[97] But as it pertains to Æthelberht's laws, why record them in a Germanic vernacular instead of Latin?

[94] IPA pronunciation from top to bottom: /ø/, /w/, /j/, /æ/, /u/. The *ġ* in Old English is pronounced with /j/ like in the Modern English "year;" the *y* is a front, closed, rounded vowel that appears in Modern English in words like "through" and "you," and it is also retained in umlauted vowels in other Modern Germanic languages, such as High German, Dutch, and the Scandinavian dialects.

[95] Richardson and Sayles, *Law and Legislation from Æthelberht to Magna Carta*, 160.

[96] Ibid., 160, n1.

[97] Brooks, "Laws of King Æthelberht of Kent," 128–129.

There are a number of possible answers to this question, and, to some degree, they could all, individually or in tandem, have influenced the decision to choose their own language over the customary Latin. If the *Cantware* (people of Kent) truly did develop a written vernacular prior to 597, then a simple response would be that they were already familiar with their own writing, and Latin, which would have been learned as a second language, was, therefore, unnecessary early on. If a pre-Christian vernacular is neglected, then the response easily shifts to oral tradition and Latin's inaccessibility in the region.[98] In contrast, the Merovingian court was stuffed with a Latin-speaking clergy and laity, and converting a Germanic oral legal tradition to Latin text was much less demanding.[99] Kent, unlike Francia, was populated by Britons rather than provincial Gallo-Romans; in the two centuries since the Romans exfiltrated the British Isles, Latin was abandoned and local language restored.[100] Southern Britain was under the control of Germanic-speaking peoples by the end of the fifth century, and Kent in particular did not have a significant Latin-speaking population, meaning the alternative to German speech was that spoken by the native *Wealas*.[101] Furthermore, as previously stated, not all of the Anglo-Saxon laws were *lex scripta*—legal practices in Kent and later throughout England retained elements of orality. As Anglo-Saxon legal culture became more sophisticated, certain social

[98] See Lisi Oliver, "The Language of the Early English Laws" for a linguistic argument in favor of Æthelberht's laws being influenced by oral tradition; for an opposing argument, one for Merovingian influence, see Stefan A. Jurasinski, "The Continental Origins of Æthelberht's Code," *Philological Quarterly* 80, no. 1 (2001): 1–15.

[99] In spite of the fact that Germanic terms appear throughout the *Leges* in Latinized form, the Merovingians ruled over speakers of *sermo vulgaris*, whereas in Britain the majority population spoke a variety of Brittonic and Goidelic languages.

[100] Latin was probably never spoken in rural areas where the Germans settled, only in administrative centers.

[101] Patrick Wormald, *The Making of English Law: King Alfred to the Twelfth Century* (Oxford: Blackwell Publishers, 1999), 101.

classes became responsible for enforcing the law and presiding over lawsuits or acting as witnesses to legal transactions. Laws transmitted in the spoken tongue are clearly easier to abide.

## Conclusion

While each law code mentioned above was issued at different points in history, they all served a similar purpose: to introduce Germanic customary law to a foreign population. In some instances, kings issued separate codes, one for ethnic Germans and one for the Roman population, yet other kings, such as those of the Franks or Kentish people, felt it unnecessary to preserve Roman jurisprudence. Geography and population played a large part in their decisions. For the Franks in northern Gaul, Roman administration was weak, so there was likely little pressure from the population to perpetuate the institutions of a dead empire. Although the Frankish laws may be the most Germanic when compared to other codes issued during the fifth and sixth centuries, there are a number of indirect Roman influences, the nature of which is discussed in the next chapter.

For the English, matters were much simpler: no significant Roman population endured in the British Isles once the legions were recalled in 410, especially in the rural areas in which the Germans settled. The Germans arrived in England at the invitation of the Romano-British when appeals to the Roman Empire to redeploy legions to the island fell on deaf ears. By the time Æthelberht of Kent issued the first written English law code *circa* 600, the Romano-British had been under the control of Germanic warlords for more than 150 years. Britannia was a frontier in the eyes of the Romans, a distant backwood to

which only a few legions were deployed, mainly to protect economic interests as raw materials moved from the island to the Empire. Roman law held very little credence in the British Isles, which explains why none of it survived the Germanic settlements of the fifth century.[102]

We saw in this chapter the circumstances in which the various Germanic *gentes* promulgated their customary laws and the different paths they took in committing those laws to writing. On the Continent, the law codes were all recorded in a vernacular Latin whereas in England a Germanic vernacular was favored. In both instances, the choice of language appears determined in large part by the surrounding population and the strength of lingering Roman administration. The next chapter examines the legal cultures of the West Germanic peoples and delves into the correlations between some of the institutions and political units found in the codes both on the Continent and England.

[102] Antti Arjava, "The Survival of Roman Family Law after the Barbarian Settlements," in *Law, Society, and Authority in Late Antiquity* (Oxford: Oxford University Press, 2001).

# CHAPTER 2: WEST GERMANIC LEGAL CULTURE BOTH INSULAR AND CONTINENTAL

> A kingdom was never thought of merely as the territory which happened to be ruled by a king. It comprised and corresponded to a 'people' (*gens*, *natio*, *populus*) which was assumed to be a natural inherited community of tradition, custom, law, and descent.[103]
>
> - *Susan Reynolds*

Customary law provides the standards to which a community adheres and is most often attributed to long-accepted values observed over time in an assumed location. As the Germanic *gentes* mobilized throughout Western Europe in Late Antiquity and the Early Middle Ages, they carried with them the values and legal institutions of a long-forgotten homeland; their customs were no longer anchored to a geographic region but followed them to their new homes. When the various Germanic *gentes* promulgated their laws, their customs were finally written down despite the locations in which their constitutions were issued, and by examining the different Germanic law codes, one can identify a shared pattern of tradition. What follows is a comparative analysis of just some of the institutions present in all the West Germanic laws with an emphasis on a shared Germanic legal ideology, whether realized or unknown by the peoples themselves.

By and large Latin played a vital role in the issue of the continental Germanic *leges*, as the vast majority of codes and compilations issued under Germanic kings was

[103] Susan Reynolds, *Kingdoms and Communities in Western Europe, 900–1300* (Oxford: Clarendon Press, 1986), 250.

recorded in Latin, although Germanic legal terms (typically morphologically Latinized) appear throughout legal texts in places where the *lingua franca* of the Romans was unsuitable for expressing unique juridical philosophies. One could argue that, with the exception of the Visigoths, Burgundians, and Lombards, the Salic Franks prompted the other continental Germanic *gentes* to commit their customs to writing, for each of the peoples whose laws were written following the promulgation of the *Pactus Legis Salicae* had recently been conquered and absorbed by the Franks.[104] Some Germanic legislation could have been inspired by the Franks whereas others were insisted upon by Frankish kings. Either way, this does not necessarily mean that the Germanic laws *post Pactus Legis Salicae vel Lex Salica* were simply amended copies of Frankish jurisprudence. Indeed, the differences between each of the Germanic law codes are significant enough to harbor originality.

What was the organizational pattern of administering justice in medieval Germanic society? Throughout Antiquity and the early Middle Ages, the Germans practiced retaliation for acts of violence by means of the blood-feud,[105] whereby the wronged exacted vengeance upon wrongdoers and their kin. It was the collective responsible for seeking justice rather than the individual, which could lead to perpetual hostility between kin groups spanning generations, a process outlandish to both the Greeks and Romans.[106] Tacitus mentions both feuding and recompense as options to the

[104] The prologue to the Bavarian legislation states that their laws and those of the Alemanni were issued under the instruction of the Frankish king Theoderich. Also see Lisi Oliver, *The Body Legal in Barbarian Law* (Toronto: University of Toronto Press, 2011), 17.

[105] Mentioned in the Lombard laws in Germanic vernacular as *faida*.

[106] Tacitus, *Germania*, 209–210, n21.1.

Germanic peoples of his day, the latter of which, he observes, a means of mutual settlement of a feud, which typically occurred during a feast held by a big man (*princeps*).[107] Moreover, assemblies were a gathering where people levied accusations and brought capital charges for prosecution, and it was there that kings interfaced with the people and collected fines not in currency but in kind (livestock).[108] Once the Germanic *gentes* emigrated to Roman lands in the fifth and sixth centuries, led by kings such as Alaric the Visigoth and Gundobad the Lombard,[109] the customary assemblies merged with the Roman courts. Feuding remained an aspect of Germanic society following the promulgation of Germanic laws in written form; however, the institution of composition included tariffs as wergild payments and fines to the fisc so high that wronged families preferred payment instead of feud, as financial recompense held a greater reward than vengeance. Furthermore, similar to the observations of Tacitus, the Lombards included a provision in their laws declaring a feud resolved once composition was paid.[110]

## Roman influence and disparity

The previous chapter reveals that Roman influence was minimal in the development of written Germanic legislation beyond the fact that the laws were written down in Latin (with the exception of the Anglo-Saxons and, later, the Scandinavian

[107] Tacitus, *Germania*, 22.

[108] Tacitus, *Germania*, 12.

[109] Katherine Fischer Drew, "The Barbarian Kings as Lawgivers and Judges," in *Life and Thought in the Early Middle Ages*, ed. R.S. Hoyt (Minneapolis: Minnesota Press, 1967), 8.

[110] *Edictum Rothari*, 45: "*De feritas et conpositionis plagarum, quae inter hominis liberus eveniunt, per hoc tinorem, sicut subter adnexum est conponatur, cessante faida hoc est inimicitia*."

laws). Besides the *Forum Iudicum* of the Visigoths, the contents of the codes undeniably stem from Germanic custom; however, Roman inspiration appears in more indirect ways, especially regarding what content actually appears in the codes.

Roman jurisprudence had a preoccupation with private law and judicial procedure, the latter of which became increasingly more complex in the eras of the Principate and Dominate,[111] especially as Byzantium rose in dominance, and because Germanic tradition does not fixate so much on these aspects, their appearance in the earliest Germanic *leges* suggests some Roman influence. To be sure, the statutes occupied with marriage, inheritance, and contracts (sales) in Germanic legislation are indeed Germanic in custom, but their very inclusion suggests Roman influence, which explains why such statutes emerge in the codes issued in regions where Roman administration was still strong (Iberia, southern Gaul, and northern Italy) and not in regions where Roman administration was weak or absent (northern Gaul and England). The *Pactus Legis Salicae* of the Franks is the most Germanic of the *leges* on the Continent, to which its structure, organization, and contents testify, and while the code covers marriage and inheritance, it does so to a much lesser degree than the Visigothic, Burgundian, and Lombard codes. With exception to references to the Church, the laws promulgated by the Anglo-Saxon kings are the most Germanic of all the *leges*, and they never mention inheritance or contracts and only briefly discuss marriage.[112]

[111] For a thorough overview of Roman law from the Republic to the Dominate, see Herbert Felix Jolowicz, *Historical Introduction to the Study of Roman Law*, 2nd ed. (London; New York: Cambridge University Press, 1954).

[112] Ine, 31; Alfred, 18.

Contrary to Roman concern with private law, Germanic law fixated on monetary or other penalties for damaging acts committed against person or property, yet some of the Germanic codes also describe legal procedure, specifically proof through compurgation or through ordeal. Compurgation, or oath, was the most common method of providing proof in a dispute in Germanic custom, whereby the plaintiff would swear an oath that he was wronged and the defendant would swear that he did no wrong or that he would pay the fine according to the judgment handed down.[113] Either side would then be supported by oathtakers or oath-helpers, those who would reinforce the oath of the accuser or accused, the number of which was contingent upon the severity of the infraction. The value of an oath directly correlated to social rank and tied to a person's wergild value, therefore a freeman's oath was worth more than a freedman's.[114] Trial by ordeal typically reared its head in the most severe of infractions, when simply paying a fine was not deemed sufficient by society. This occurred more often in situations of theft or adultery, as homicide—particularly manslaughter—was regarded as a personal dispute between kin groups.[115] Trial by ordeal was considered *judicium dei*, an ancient method of proof whereby innocence or guilt was a divine determination, usually practiced by subjecting the person to a painful, elemental experience (commonly trial by fire or

[113] Masculine pronouns are used in this instance because in early Germanic society women were considered incompetent and therefore not allowed to bring suits or defend themselves in court. Legal actions were brought by men (husbands or closest male relatives) on behalf of women. This does not appear to be the case in Anglo-Saxon England, where records of lawsuits nor the laws themselves indicate that women required male representation.

[114] Slaves did not enjoy this essence of the law. In fact, slaves existed outside the law and consequently were not protected by it. Upon the violation of the peace, a slave was tried by lot (unless the master paid outright). If found guilty the master would pay the fine or the slave received corporal punishment, which included beating, mutilation, or most commonly death.

[115] Feuding was common practice among the early Germans, although by the issuance of their laws in written form the feud was considered too chaotic and detrimental to the stability of society, hence its reduction in favor of a pronounced wergild system. See below.

water), such as walking barefoot atop smoldering iron or coals or by dipping a hand in boiling water. Guilt or innocence was determined days later by inspecting the wounds received during the ordeal: if the wound was healing well the person was deemed innocent due to divine favor; if not, or the wound became infected, the accused was determined to be guilty.[116]

Germanic law retained essences of both public and private law, and it did not distinguish the difference between civil and criminal law. Problems in describing Germanic jurisprudence lie in the erroneous effort to mold it so that it fits within a Roman legal matrix. This is problematic because the gulf between the two legal cultures is expansive. The private aspect of Germanic law was that most often legal disputes were resolved between two parties—the "state" did not bring forth a grievance nor did it prosecute a person for breaking the law, instead an individual brought forth a complaint against another individual and a settlement was agreed upon in accordance to the law (fixed fines or composition or both). The public aspect appeared in situations where fines ran concurrently with settlements when specific infractions demanded a levy paid to the fisc as well as composition to the injured party.[117] Moreover, suits were announced in public in front of witnesses both locally and at the local assembly, and legal disputes involved more than a pair of individuals but also entire kin groups.

[116] The ordeal predates western civilization by millennia and is included in the oldest surviving law code of Ur-Nammu in Sumer. See S. N. Kramer, "Ur-Nammu Law Code," *Orientalia* 23, no. 1 (1954): 40–51; S. N. Kramer, "The Oldest Laws," *Scientific American* 188, no. 1 (1953): 26–29.

[117] Fines were added in situations of theft or adultery, but especially in instances wherein the peace was broken in the presence of a high-ranking social figure, such as a duke or king. This also applied to vicinities in which these social figures resided at the time of the infraction, though not directly present. For instance, if an assault took place in a village where the duke or king was currently passing through and resided, even if the official was not present during the infraction, a fine for breaching the peace was added.

While the earliest Germanic laws may harbor some Roman influence (mainly in what types of statutes appear), and the differences between the laws of one German *gens* and another's are many, those differences are mere nuances, nuances primarily determined by the geography during the time at which specific law codes were promulgated. For instance, statutes in the *leges* regarding the ownership and protection of beehives are plentiful but not universal, appearing in the *Pactus Legis Salicae*,[118] the *Lex Langobardorum*,[119] and the *Lex Baiuariorum*,[120] though not in the *Lex Burgundionum* nor the *Pactus Legis Alamannorum* or *Leges Alamannorum*. While the absence of legislation protecting bee cultivation in some Germanic polities may not strictly correlate to geography (bees require tropical to temperate climates and maintain hives at 90–95 degrees Fahrenheit),[121] the absence may also suggest a lack of economic interest in honey production.

## Agreements: marriage, contracts, and procedure

With nuanced differences, the Germanic laws share a vast array of parallels beyond the traditional pattern of tariffs levied for disrupting the communal peace, providing a glimpse at the range of specific social *mores* adhered to by the Germanic peoples. A preponderance of statutes in each of the codes is dedicated to tariffs, but many of the codes also share elements of proper procedures under certain circumstances, such as calling forth oath-helpers or witnesses and the values of those oaths according to social

[118] *Pactus Legis Salicae*, 8.
[119] *Edictum Rothari*, 318.
[120] *Lex Baiuariorum*, 8, 9.
[121] "Habitat of a Honey Bee: Beehives, Climates & Locations of Honeybees," *Orkin.com*, accessed October 25, 2017, https://www.orkin.com/stinging-pests/bees/habitat-of-a-honey-bee/.

rank, or the circumstances in which a sale of goods or property is invalidated, as well as the process for manumitting slaves. Looking beyond assault and homicide, the *leges* bestow agreeing aspects of proper social behavior under the law. The depth and origins of these aspects can prove difficult, if not impossible to conclude; however, some can be found in tradition spanning centuries. Adultery and sexual assault, for example, are two trespasses met with heavy punishments in Germanic societies, and the former was not simply a result of Christianization. At the end of the first century, in his *Germania*, Tacitus observes that:

> . . . the marriage tie with them is strict: you will find nothing to their character to praise more highly. They are almost the only barbarians who are content with a wife apiece: the very few exceptions have nothing to do with passion, but consist of those with whom polygamous marriage is eagerly sought for the sake of their high birth.[122]

Marriage may not have been sacred to the pre-Christian Germanic peoples but, as indicated by their laws, the union was a legal contract which bound two families. The union reconfigured the kin group, contributing to who received wergild payments and determining the order of inheritance. The *Germania* also tells us that, during the second century, it was the groom and his family who provided the dowry, not the bride.[123] This process had been updated by the time when the Germanic laws were reduced to written form, for each party in a marriage arrangement brought a financial stake to the table: the bride the dowry (*donatio nuptialis*) and the husband the bride price (*wittimon*) and

[122] William Peterson, trans., *Tacitus: Dialogus, Agricola, Germania* (London; New York: The MacMillan Co.; William Heinemann, 1914), 289. Hereafter *Germania* and section.

[123] Tacitus, *Germania*, 18.

morning gift (*morgengaba*).[124] If the union ended, the financial gifts were repaid to both families less the *morgengaba* (unless for some reason the marriage was never consummated). While the financial values of the marriage gifts may differ slightly among the Germanic laws, the procedures are parallel.

The descriptions of contracts in the *leges* are diverse, with some laws offering paltry formulae and others rife with details. Marriage between two individuals was a pact agreed upon between two families, and because the union was considered a contract, specific rules under the law were in place. The same applied to the sale of goods and property under the Germanic laws. What is striking about statutes detailing the rules of sales is that some include the stipulation that there is some form of written document binding the agreement, a receipt. This does not imply that those statutes have no basis in custom; any mention of a written receipt in the codes clearly meant to update customary law to conform to a literate population, which is evidenced by the inclusion of witnesses to sales agreements. In Title 99 of the *Liber Constitutionum* (or *Lex Gundobada*, as it became known) and the 227th statute of the *Edictum Rothari*, the Burgundians and Lombards combine the use of witnesses with written receipts. Consider the following examples from each:

[124] Cf. *Lex Gundobada* 12.4, 24, 42.2, 52, 61, 69, 86.2, and 101; *Pactus Legis Salicae* 44, Cap 1:67; *Edictum Rothari*, 182, 199, 200, 216.

LEX GUNDOBADA (Burgundians):

> If anyone has bought a bondservant, or field, or vineyard, or landsite and house built in any place, we order that if it has not been confirmed in writing or witnessed, he shall lose his payment; that is, provided that the writing has not been subscribed and sealed by seven of five witnesses dwelling in that place.[125]

EDICTUM ROTHARI (Lombards):

> [If] the seller or his heirs contest the sale and claim that they had only temporarily conveyed the property but had not sold it, then they [the seller or his heirs] must offer written documents wherein the first man requested merely to lease [the land]. If they do not have such documents, the purchaser shall do nothing, but he should offer an oath, the strength of which is determined by the value of the money with which he bought the property.[126]

While both statutes lean heavily on the existence of a written receipt, they both easily provide proof by means of oath. That the laws governing the rules of sales stem from custom is corroborated in the Frankish and Bavarian codes, for both rely on witnesses and their oaths to validate sales without mention of a written component.[127] Of the four Germanic *gentes* mentioned, it is the Franks and Bavarians who provide the most detail regarding local economics. Although the Bavarians promulgated their laws after being absorbed by the Salic Franks and under the instruction of a Frankish king, the content of the information relayed in the *Lex Baiuariorum* differs significantly from that of the *Pactus Legis Salicae*. The former offers a number of circumstances in which sales were legal or invalid, such as the requirement that witnesses to a purchase be heard

[125] Drew, *The Burgundian Code*, 85.
[126] Drew, *The Lombard Laws*, 97.
[127] Cf. *Pactus Legis Salicae*, 50 and *Lex Baiuariorum* 16. The latter at times, though rarely, mentions charters (*carta*/*pactus*) when selling land (*Lex Baiuariorum*, 16.2, 16.16).

orally,[128] or that purchasing goods from a slave could be invalidated if that slave's master later did not agree to the sale,[129] and even return policies on defective goods.[130]

The Frankish laws, however, provide a detailed glimpse at the procedures involved in the event that one party in a sale failed to fulfill their end of the bargain (*fides factus*).[131] After the agreed upon time of delivery had come and gone, the wronged individual would call a hearing, gather any witnesses to the purchase, and with them appear before the home of the wrongdoer. At that point, the promiser had the option to fulfill their end of the bargain, but it would include a fine of fifteen *solidi* above what was already owed.[132] If the promiser refused to pay what was owed at that point, then the promisee would summon the former to the local court (*thigius*) and file an official suit, which would be heard by a judge (*thungine*).[133] Regardless of the judgment passed down by the local justice, the promiser could still refuse to pay the aggrieved, at which point the suit was brought before the count (*grafio*).[134] Among instances of assault or homicide, the Frankish methods of handling failed economic exchanges showcase the community's involvement in meting out justice. Bringing a complaint to the local assembly was an

[128] *Lex Baiuariorum*, 16.2.
[129] *Lex Baiuariorum*, 16.3.
[130] *Lex Baiuariorum*, 16.9.
[131] *Pactus Legis Salicae*, 50: *De fides factas* [*sic*].
[132] *Pactus Legis Salicae*, 50.1. The promisee would receive what was owed but the fine was paid to local officials, which was adopted from the Romans. Revenues from fines enabled local officials to perform their duties and raise and maintain militias.
[133] *Pactus Legis Salicae*, 50.2. It should be noted that *thigius* is a cognate of the North Germanic *þing* found in later Scandinavian jurisprudence and sagas, and evidence of local assemblies is abundant in all Germanic law codes. Moreover, the Franks and Alemanni often refer to hundred courts (*centenae*) and the hundredman (*centenarius*, *thunginus*), both of which correspond to the English judicial unit and its non-royal officials. This will be discussed in more detail below.
[134] *Pactus Legis Salicae*, 50.3. At this point the situation was deemed critical. The count had to produce himself or a justice in his stead lest forfeit his life or pay his own wergild (50.4). Who received the payment from the count is unstated, but it is most likely that it went to the coffers of the royal fisc.

option when individual negotiations failed, and at the assembly hands were forced. It is unknown the extent to which *things* (local assemblies) remained part of Germanic society, but their essence is found in Frankish and English legal culture, where there was a privation of Roman administrative influence.

## The conundrum of kings and dukes

Germanic culture evolved from the kindred doling out justice to ranking officials either appointed or elected whose responsibilities centered around arbitrating disputes in public assemblies. It is clear from the *Pactus Legis Salicae* that the assembly could be bypassed in the event of a dispute if both parties agreed to a resolution, which often meant a wergild payment. If the accused refused to pay composition, the case was presented before *iudices*, who were presided over by a *comes* (count, in the case of continental Germanic *gentes*), or in certain circumstances a *dux*.

This brings into question the judicial ranks of the Germanic *gentes*, something that frustrated Gregory of Tours when writing his histories of the Franks, particularly the relationships and responsibilities of Germanic *reges* and *duces*. What confounded Gregory was in part the fault of the Roman writers and observers upon which he relied (many now lost), who had a dubious understanding of Germanic leadership. According to Gregory, one of those sources, Sulpicius Alexander, inconsistently referred to Frankish leadership as *duces*, *reges*, and *regales* when describing their early leadership.[135] It is perplexing that Gregory did not seem to lean on the *Lex Salica* for information regarding

[135] Gregory of Tours, *The History of the Franks*, trans. Lewis Thorpe (Harmondsworth; New York: Penguin, 1974), II.9.

Frankish leadership.[136] While the Salic law code does not outright describe the duties of the upper-ranking hierarchy, there is a plethora of information available within to devise an outline of the organizational features of Frankish society. Moreover, prior to the capitularies, there is no mention of the rank of *dux* in the *Pactus*; the *comes* typically handled disputes beyond the kindred, and only when land was in dispute—especially church lands—did the king become involved, unless, of course, there was a violation of the *mundeburdium*.[137]

Even if the descriptions of the early Germans provided by Tacitus are flawed, they are still valuable, and the *Germania* would have been indispensable to Gregory when composing his *Historia Francorum*, which indicates that Gregory had never read Tacitus. The distinction between *rex* and *dux* is made clear by Tacitus, and that distinction applies to the Germanic *gentes* of Gregory's time: "They choose kings for their birth, generals for their courage."[138] In a time of crisis, a military leader (*dux*) came forth to lead the people to victory, likely elected by other big men (*principes*) within the *gens*. How long the individual held onto power after the crisis was abated is unclear, but the notion of "warlord" within Germanic society is inherent to their warrior culture.

According to Tacitus, a king was born as such—there was a royal bloodline; however, as Edward James puts it, "[T]o confuse matters, it seems likely that a successful

[136] The *Lex Salica* refers to the *Pactus Legis Salicae* and its capitularies issued by the successors of Clovis, predating the Carolingian recension of *Lex Salica Karolina* by Charlemagne.

[137] Royal protection or the king's peace. See Alan Harding, *Medieval Law and the Foundations of the State* (Oxford: Oxford University Press, 2002), 16–22.

[138] "*Reges ex nobilitate, duces ex virtute sumunt*." Tacitus, Germania, VII.

*dux* could found a royal line or even become king himself."[139] This corresponds to early Anglo-Saxon England, when petty kings (*subregulus*) were for a time subject to over-kings (*rex magnus*, but mostly just *rex*), and how petty kings could rise in power and influence enough to become *rex*. A look at some of the earliest English charters demonstrates both the relationship between *rex* and *subregulus* as well as the inadequacy of Latin descriptions given to Germanic institutions. With the permission of King Offa of Mercia, Uhtred, *regales* of the Hwicce, granted land to a number of priories between the years 764 and 770.[140] One charter, dated 764x774, gives Uhtred the title of *subregulus* instead of *regales*, further confusing matters, and drawing attention to a series of questions. Were the titles of *regales* and *subregulus* interchangeable, or was one deemed more prestigious? And if the latter is true, which one held a higher prestige? If *regales* held a higher prestige than *subregulus*, then the date of S61 must be 764 rather than 774. If the converse is true, then S61 should hold a date of 774. This logic conforms, of course, to the idea that demotions were irregular if not rare, especially considering that moving against the king led to a death sentence. Treason was not only punishable by death, some laws went further by declaring that all lands owned by the traitor be confiscated and absorbed into the fisc, which also punished the kindred by eliminating any potential inheritance. One may find a conspicuous similarity between the two laws that mention the forfeiture of land for treason:

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[139] Edward James, "The Origins of Barbarian Kingdoms: The Continental Evidence," in *The Origins of Anglo-Saxon Kingdoms* (London; New York: Leicester University Press, 1989), 42.

[140] P.H. Sawyer, ed., *Anglo-Saxon Charters: An Annotated List and Bibliography* (London: Royal Historical Society, 1968), S58–61, http://www.esawyer.org.uk/about/index.html. Any charter references from Sawyer will be given as "S000," where S represents *Sawyer* and the numbers represent a specific charter within Sawyer's catalogue.

EDICTUM ROTHARI (Lombards)

> If any man plots or gives counsel against the soul of the king, let him incur ruin and his property shall be tarnished.[141]

ALFRED (West Saxons)

> If anyone plots against the life of the king, either on his own account, or by harbouring outlaws, or men belonging to [the king] himself, he shall forfeit his life and all he possesses.[142]

## The fiscal and political unit

As feuding became more minimized in favor of compensation and fines as a response to offenses among the Germans, the assembly, its officials, and its procedures grew in importance, and there are remarkable analogs between Germanic Europe and England. Before discussing administrative officials and their judicial duties, territorial divisions must be addressed, a topic which entertains some controversy among historians regarding the similarities between England and the Continent. On the eve of the Norman invasion in the middle of the eleventh century, the hundred was an administrative unit in England by which public burdens were assessed; and although the hundred is often quantified as consisting of one-hundred hides,[143] its spatial qualifications were actually irregular.[144] As an administrative unit, the hundred provided local officials with revenues

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[141] *Edictum Rothari*, 1: "*Si quis hominum contra animam regis cogitaverit aut consiliaverit, animae suae incurrat periculum et res eius infiscentur* [*sic*]."

[142] Attenborough, *The Laws of the Earliest English Kings*, 65. (Alfred, 4.)

[143] A land-unit traditionally representative of a single household and its farmland capacity, notionally equaled to 120 acres. Surviving evidence, especially from the *Domesday Book* commissioned by William of Normandy in 1086, shows that hidage was not restricted to 120 acres.

[144] Stenton, *Anglo-Saxon England*, 296–297. "[I]n southern England this correspondence is exceptional, and within a single county the assessments of different hundreds may range from less than 20 to more than 150 hides."

and the king with soldiers,[145] as well as partitioning the countryside under the king's *regnum* into manageable units of infrastructure.[146] It was within the hundred that people sought justice for offenses, where litigation occurred, presided over and judged by men of considerable social rank. Yet this organization and its institutions are not unique to England.

A judicial unit referred to as a hundred (*centenus*), presided over by hundredmen (*centenarii*), can be found in the Frankish and Alemannic codes. What's more is that the hundredman in the *Pactus Legis Salicae* is also referred to in the morphologically Latinized Germanic word *thunginus* (thingman) in nearly every instance where the Latin version appears (*thunginus aut centenarius*), and the Germanic term always appears first when they are paired.[147] Unfortunately, aside from mentions in the law codes, the hundred as a unit or court is elusive in continental records. Frankish historians have been quick to dismiss the connection to Anglo-Saxon England's fiscal unit as coincidental, providing instead interpretations based on a paucity of local evidence. J.M. Wallace-Hadrill acknowledged the fact that there is no primary evidence to support any wisdom of how widespread the hundred was within Merovingian lands, and so he concluded that it functioned as an amalgamation of colonial and military settlement within Roman provinces during the Migration Period.[148] He supported his argument by saying that the

[145] Each of these fiscal units were required to provide soldiers to the *fyrd*, that is, the militia that made up the king's army. The Anglo-Saxons had no professional military, instead men pledged loyalty to local nobility, who pledged loyalty and troops to the king.

[146] Roads, bridges, and churches were maintained by occupants of the hundred.

[147] See, for example, *Pactus Legis Salicae*, 44, 46, 46.4.

[148] J. M. Wallace-Hadrill, *The Long-Haired Kings* (Toronto: University of Toronto Press, 1982), 193.

unit was nothing new at the time of the *pactus* between the kings Childebert I and Chlotar I,[149] both successors of Clovis, the Germanic *rex* responsible for reducing Frankish customary law to writing but who was not the first Merovingian king. The fact that the district as an administrative measurement existed prior to those kings, and even possibly Clovis himself, does not preclude a customary parallel to the fiscal district instituted in England under various Germanic *gentes* (Angles, Saxons, Jutes).

Is it truly a coincidence that the Franks and the Anglo-Saxons both shared a fiscal division of the same name? The language among the Franks, Alemanni, and Anglo-Saxons alone in regard to hundred courts speaks volumes.[150] In both locales, the purpose of the hundred courts was the same: to adjudicate griefs and pass judgment on a localized level, as well as take up fiscal burdens. Problems of chronology do arise between the Anglo-Saxons and the Franks, as the hundred as an administrative unit does not appear in any document in England before the tenth century and may very well be a consequence of Alfred's unification following his victories against Scandinavian invaders.[151] The problem is circular because even if Alfred borrowed the idea of the hundred from the Franks, it suggests a Germanic origin, for it did not exist under the Romans. When Alfred promulgated his law code in the latter half of the ninth century, it was the fullest, most comprehensive code of law in English history, combining the laws of kings dating back

[149] Ibid.

[150] One could argue that Alemanni references to hundred courts merely mirror the Frankish writing, since the promulgation of Alemannic law occurred after the Franks conquered them. Bavarian law resembles Frankish more so than the Alemannic, and the Bavarians never once mention a hundred court, but once refer to hundredmen (*centurio*): *Lex Baiuariorum*, 2.5.

[151] Harding, *Medieval Law and the Foundations of the State*, 23. The Scandinavian unit equivalent to the hundred was the *vápnatak*, from *vápn* "weapon" and *taka* "to take." The term may correspond to voting by raising weapons, as indirectly referred to by Tacitus in *Germania*, 11.

to Æthelberht. Alfred's laws are much more detailed than any before him, meaning he made changes, corrections, additions, and completions before promulgation. It stands to reason that he would include what was practiced but not previously written, including the division of territory into discrete units based on custom.

The hundred as a political division is unique among the Germanic peoples and even referenced (incorrectly) by Tacitus in *Germania*.[152] As a unit, the hundred is an allusion to the quantity of something within a geographic space, although what the something was is not always clear. In Anglo-Saxon England, the hundred was a collection of hides. References to hundreds are persistent in Old Swedish local names, such as *Fjaðrundaland*, *Áttundaland*, and *Tíundaland*, i.e. lands of four, eight, and ten hundreds. The minutiae separating continental hundreds from English ones are superficial, especially when considering that the English hundred as a unit has always been a fluid concept.[153]

## Judicial officials and upper-classmen

The officials who presided over or served a function at the assemblies were numerous and diverse among the Germanic *gentes* on the Continent and in England,

[152] Tacitus, *Germania*, 12.

[153] One potential reason for the mutability of the Anglo-Saxon hundred described by Stenton is that pre-Christian Germans, especially Scandinavians, used a duo-decimal system (= 12 x 10 or 120), whereby 100 was expressed by 10 x 10 (*tíu-tíu* "ten-ten" in Old West Nordic vernacular). Thus, in theory, an Anglo-Saxon *hundred* would be an expression of 120 hides. Another possibility for variation is that land could have been added or subtracted after the institution of a hundred while it (the hundred) persisted as an institution for administrative efficiency. In the early Anglo-Saxon period, granting land was the primary means by which kings rewarded faithful servants, although later alienating land and donating it to the Church was how big mean ensured eternal salvation (by shedding mortal possessions, granting them to the immortal Church).

including kings (*reges*), dukes (*duces*), counts (*comites*), hundredmen (*centenarii*/*hundred-menn*), lawspeakers (*rachimburgi* in the Frankish codes), ealdormen (*eorles*/*ealdormenn*), and thegns (*þeġnas*). Directly beneath or sometimes comparable to the king was the duke, whose responsibilities most often related to military affairs. During crises or military campaigns, big men—men who were respected among the *gens* and formidable in combat—took on the role of *dux* in the classical Latin sense of a military leader, forming a warband (*comitatus*) made up of loyal warriors. Just as Julius Caesar commanded the loyalty of his legions, so too did the Germanic *dux* receive the fidelity of his warriors; in return for service, the *dux* rewarded his men with plunder and land. It is by means of this system of loyalty and its rewards that Germanic *duces* could garner enough military strength and influence to establish their own royal dynasty.

Within the context of the continental Germanic laws, the *dux* was exclusively associated with all matters military.[154] It was he who was responsible for administering justice on behalf of soldiers, and if he failed to do so, then he paid composition to both the king and the one he failed.[155] In the case of the Lombards, the *duces* called upon freemen to fill the ranks of the army when the king commanded in the event of a threat against the *gens* as a whole (national threat); however, a *dux* could deploy his portion of the army in response to a local threat. The freemen who made up the army of a Germanic *gens* were akin to militiamen or active reservists in the modern sense—they were ready to

[154] Cf. *Edictum Rothari*, 20–25 and *Leges Alamannorum*, 23–35.
[155] *Edictum Rothari*, 25.

go to battle as soon as they received the cry of war, which, under the Lombards and Alemanni, was delivered by the *dux*.[156]

The titles of *eorl* and *ealdorman* in the Anglo-Saxon kingdoms correspond to the continental *dux*.[157] The office evolved substantially in the three and a half centuries between the reigns of King Æthelbehrt of Kent and King Alfred of Wessex, and even more so under Knut the Great (r.1016–1035). During Æthelbehrt's reign, the office of *eorl*—typically translated as "nobleman"—was associated with birthright, as attested by instances of *eorlcund* appearing in his laws and those of succeeding Kentish kings.[158] It is under the West Saxon king Ine that the term *ealdorman* first appears in Anglo-Saxon law codes,[159] issued *circa* 694,[160] which slowly came to replace *eorl*. Unfortunately, the laws promulgated by the Anglo-Saxon kings provide no details concerning official responsibilities assigned to either *eorles* or *ealdormenn*, although there is some legal evidence offering insight into the dignitary's sphere of influence, which can then be extrapolated.

The word *ealdorman* appears to be an innovation of the West Saxons and its usage continues in all following West Saxon laws up until Knut the Great's conquest of

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[156] Drew, *The Lombard Laws*, Introduction, 24.

[157] It should be noted that the title of *dux* appears nowhere in either the Burgundian or Frankish codes. The *Edictum Rothari* predates Lombard incorporation into the Frankish *gens*, therefore statutes centered on the royal dignitary cannot be a consequence of the latter's influence. Alemannic references to the office parallel the Lombard laws, and within they reference "ancient custom" (*consuetudinem antiquam*) regarding the assembly (*centenus*) and a *dux* refusing to attend: *Leges Alamannorum*, 36 and 36.3.

[158] The Old English suffix *-cund* refers to "origin" or "of birth." Æthelbehrt, 75; Hlothhere and Eadric, 1. The term was replaced in West Saxon laws by *gesiðcund*: Ine, 45, 50, 51, 54, 63, 68.

[159] Ine, Prologue, 6.2, 36.1, 45, 50.

[160] Stenton, *Anglo-Saxon England*, 71.

England in 1016, at which point the title reverted back to *eorl*.[161] As a rank of nobility, the early Anglo-Saxon *eorl* was an inherited title that passed from father to son, whereas the title of *ealdorman* could be inherited, appointed by the king, or the position could be elected by members of the shire.[162] An ealdorman's purview centered on the shire, as attested in Ine 36.1, wherein it states that if he lets a thief escape he forfeits his shire unless pardoned by the king.[163] Following Knut's conquest of England, the upper echelon of the Anglo-Saxon aristocratic institutions was overhauled, with Knut passively replacing ealdormen with earls.[164] Shrewdly, as ealdormen died, Knut chose not to replace them or have them replaced, but instead he appointed trusted men (mostly other Scandinavians) as earls to watch over multiple shires, increasing the administrative bounds of the office.[165] Despite this significant change, Knut's laws were deemed English and not Scandinavian.[166] In the years between the promulgation of Ine's laws of the late seventh century and Knut's institutional reforms of the early eleventh, the ealdorman appears to have held responsibilities at the very least compatible with that of the *dux* in the Germanic *gentes* on the Continent. Entries in the Anglo-Saxon Chronicle attest to the

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[161] Attenborough, *The Laws of the Earliest English Kings*, 183, n2.

[162] G.O. Sayles, *The Medieval Foundations of England* (Philadelphia: University of Pennsylvania Press, 1950), 124; It has been argued that the position dates back to the Continent from before the Germanic conquest of Britain. The Old English *eorl* is a cognate of Old Saxon *erl*; see H. Munro Chadwick, *Studies on Anglo-Saxon Institutions* (New York: Russell & Russell, 1963), 383–392.

[163] "*Gif he ealdormon sie, Solie his scire, buton him keening arian wille.*"

[164] Although still appearing as *eorl* in Knut's laws, the office effectively became the Scandinavian *jarl*. The terms are cognates but functioned differently, the latter wielding more power over a larger region than the former. In essence, Knut's *jarl* was an under-king with a jurisdiction of several shires rather than a single one.

[165] Katharin Mack, "Changing Thegns: Cnut's Conquest and the English Aristocracy," *Albion: A Quarterly Journal Concerned with British Studies* 16, no. 4 (1984): 378; Simon Keynes, "Cnut's Earls," in *The Reign of Cnut*, ed. Alexander R. Rumble (London: Leicester University Press, 1994); Timothy Bolton, *The Empire of Cnut the Great Conquest and the Consolidation of Power in Northern Europe in the Early Eleventh Century* (Leiden: Brill, 2009), 13–42.

[166] Bolton, *Empire of Cnut*, 82–83.

ealdorman's martial obligations, as most of the time when the noble class is mentioned it is within the context of him supporting his lord king on the battlefield.[167] Within the Anglo-Saxon Chronicle, however, are entries in which ealdormen behave more akin to the continental *duces* in that they behave more like *reges* than military leaders alone, seeking the well-being of their people. According to the *Winchester* Chronicle, the people of Middlesex converted to Christianity in 653 under the direction of the ealdorman Peada.[168] Lastly, where an ealdorman appears as a witness to a royal charter, his title is displayed in Latin as *dux*.[169]

Lacking any single matching figure in Anglo-Saxon England is what the continental law codes refer to as *comites* (counts). As a royal official, the principal function of the *comes* was to head the assembly and act as the chief justice wherein he arbitrated cases brought before the *thing*. According to the formularies of Angers and Marculf, the types of cases brought before a *comes* were dedicated to local matters involving civilians both Roman and German, including but not limited to sales, loans, manumissions, divorces, charters, and the replacement of lost documents pertaining to these subjects.[170] Unlike the *iudices* of the late Roman period, the *comites* under the various Germanic *gentes* were not responsible for creating or interpreting the law,[171] instead at the assemblies they behaved more like royal mediators and notaries. A sale of

[167] The Anglo-Saxon Chronicle shifts between *eorl* and *ealdormann* depending on the entry and the scribe. Consider the *Winchester* (Parker) Chronicle's entry for 871, which describes *eorles* leading armies to battle at Reading. For a translation, see Gomme, *ASC*, 871 [A].

[168] *Anglo-Saxon Chronicle*, 653 [A]: "*Her Middelseaxe onfengon under Peadan aldormen ryhtne geleafan.*"

[169] See any example from F.E. Harmer, *Select English Historical Documents of the Ninth and Tenth Centuries* (Cambridge: Cambridge University Press, 2011).

[170] Rio, *Formularies*, 106.

[171] Drew, *The Laws of the Salian Franks*, Introduction, 33.

land was void if not performed in the presence of a *comes*, or a manumission was deemed unlawful if not witnessed by a *comes*. Indeed, they also functioned as royal advisors, and their seal of approval marked the legitimacy of promulgated law, as seen in the Burgundian Code:

> [I]t is pleasing that our constitutions be confirmed with the signatures of the counts added blow, so that this statement of the law which has been written as the result of our effort and with the common consent of all may, observed throughout posterity, maintain the validity of a lasting agreement.[172]

In regard to judicial responsibilities, the continental hundredman (*centenarius*) was also a royal official who shared duties with the count: presiding over disputes, witnessing contracts, and collecting fines for transgressions. Because there is no evidence detailing the constitution of the continental (particularly Frankish) hundred as a political unit, and no wergild is given in the laws for the office by which to measure status, it is unknown whether the hundredman ranked higher or lower than the count on the social ladder. One problem lies in jurisdiction, and only the prologue of the *Lex Gundobada* offers any inkling of a count's purview by referring to "*civitatum aut pagorum comites*."[173] Context, regrettably, offers no absolution in this circumstance. The entry essentially states that no one, especially the nobility, is above the law and that bribery will not be tolerated.[174] Whether "counts of the cities or villages" implies a count has

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[172] Drew, *The Burgundian Code*, 21; "*Constitutiones vero nostras placuit, etiam adiecta comitum subscriptione firmari, ut definitio, quae ex tractatu nostro et communi omnium voluntate conscripta est, etiam per posteros custodita perpetuae pactionis teneat firmitatem*," from *Lex Gundobada*, Prologue, 14.

[173] *Lex Gundobada*, Prologue, 5. No references to hundredmen are made in the Burgundian *lex*.

[174] "*Sciant itaque obtimates, consiliarii, domestici et maiores domus nostrae, cancellarii etiam, Burgundiones quoque et Romani civitatum aut pagorum comites is vel iudices deputati, omnes etiam et militantes: nihil se de causis his, quae actae aut iudicatae fuerint, accepturos aut a litigantibus promissionis vel praemii nomine quaesituros; nec partes ad compositiones, ut aliquid vel sic accipiant, a iudice conpellantur*."

jurisdiction over a single city or village, or that a count has jurisdiction over multiple communities will, unfortunately, be left in the embrace of ambiguity. Nonetheless, it is much more likely that the *comes* outranked the *centenarius* based on how the pair are addressed in the laws. A hundredman could replace a count at an assembly or, if a hundredman was not available, an appointee of the count would preside. Never is it said that an appointee of a hundredman may preside.[175]

The closest relevant class to the continental *centenarius* found in pre-Norman England is the *þegn* (thegn),[176] an official who altogether encompasses aspects of the *comes* and *centenarius*. What truly differentiates the thegn from the count or hundredman is that the early English sources account for various grades of dignity, such as *disc-þegn*, *hors-þegn*, *byrþor-þinen*, and *cyninges þegn*. None of these grades appear to have changed the social status of the individual beyond the base, for wergilds remained the same,[177] therefore the types are descriptors associated with function rather than a legal status. The Old English verb *þegnian*, from which the class derives, simply means "to serve," whereas the noun-form corresponds to *comes*, as in "companion, attendant." Much like the early *comites* were to the continental Germanic kings, thegns were trusted members of an Anglo-Saxon king's retinue (*comitatus*), yet over time the role and its obligations divorced from the monarchy insomuch that the thegn eventually became a

[175] The *Leges Alamannorum* (36.3) offers a shining example with, "*Si quis autem liber ad ipsum placitum neglexerit venire vel semetipsum non praesentaverit aut comite aut centenario aut ad missum comiti in placito, solidos sit culpabilis*" (underline mine for emphasis).

[176] In North Germanic dialects *þegn* refers to a freeman, not a noble rank.

[177] There is no differentiation in the laws between *disc-* and *hors-þegn*. Differences are in function and responsibilities, not in social hierarchy.

royal official performing duties outside the direct influence of the king. Moreover, the term *þegn* was a later replacement of the earlier vernacular *gesíþ*.

As a member of the king's retinue, the social rank and its term, *gesíþ*, predates *þegn*, the former corresponding to *gasindius* found in the Lombard laws. In Anglo-Saxon England, the term for the social rank shifted from *gesíþ* to *þegn* for reasons that historians are unclear of, but after the change the obligations also expanded. Old English *þegn* hails from Proto-Germanic **þegnaz*, carrying the same meaning ("man, servant, warrior"), yet *gesíþ* does not resemble any reconstructed Proto-Germanic word. The answer may lie in a regional dialect shared by the Lombards and Jutes.[178]

It is uncertain in which century *þegn* replaced *gesíþ* as a class rank, although the process must have been completed by the end of the tenth century.[179] More telling is the fact that the social status lost its *-cund* suffix, meaning that a freeman could elevate himself by meeting specific criteria rather than the station being restricted to birthright.[180] Although the term for the class shifted from *gesíþ* to *þegn*, the martial foundations persisted up to the Norman invasion, as thegns maintained their standing as leaders among warriors. By the reign of Knut, the rank of *þegn* had fully matured into a complex social distinction with obligations far exceeding those of its ancestral *gesíþ*, whereby military responsibilities endured, as the grades mentioned above were each obliged to

[178] The term *gesiþ* first appears in Kentish law under Wihtred (statute 5), although it also emerges under Wihtred's West Saxon contemporary, Ine (statute 45). Cædwalla, Ine's predecessor, had conquered southern England during his reign (685–688), including Kent, which may explain why the term appears in laws of both Saxon and Jutish dialects.

[179] H.R. Loyn, "Gesiths and Thegns in Anglo-Saxon England from the Seventh to the Tenth Century," *The English Historical Review* 70, no. 277 (1955): 530.

[180] Thorpe, *Ancient Laws*, 1:191, no. 2.

outfit themselves and others with gear, the specifications dependent upon the thegn's grade.[181]

There are references to hundredmen in Old English literature, just no references in the laws. One function of the law the Anglo-Saxons neglected to record, from Æthelbehrt to Alfred, is judicial procedure. Fortunately for historians, Anglo-Saxon kings, their appointees, and church officials did not take literacy for granted: they liberally recorded transactions, charters, and lawsuits—what survives (abundant but a small collection considering writing behavior) is not a lack of effort, yet a consequence of lands tormented by warfare.[182] While what is known of the thegn's judicial obligations comes from later centuries (ninth and on), and not from laws but legal documents, the consistency and echoes of the written record project a sharp yet blemished image.

Thegns held a great deal of responsibility within the hundred and within the shire beyond martial concerns. They acted as the *comites* and the hundredmen by presiding over hundred- and shire-courts and hearing legal disputes,[183] as well as fetching those accused of wrongdoing.[184] As the centuries wore on, the Anglo-Saxon law became increasingly sophisticated and less nebulous, especially regarding judicial procedure. A lawsuit in Herefordshire during the reign of Knut provides one of the most vivid

[181] Knut the Great's laws of the early eleventh century offer the most details regarding a thegn's military obligations, particularly as they pertain to outfitting themselves and others. For an explanation, see William Stubbs, *The Constitutional History of England: In Its Origin and Development*, 6th ed., vol. 1 (Oxford: Clarendon Press, 1903), 174.

[182] Roman departure in the early fifth century was swift and absolute, hence the arrival of the Germanic peoples. Saxon pirates constantly menaced the eastern coasts even during Roman supremacy, but the region became a magnet for invasion beginning in the eighth century—Viking raids were all but unending in the ninth through eleventh centuries.

[183] Harding, *Medieval Law and the Foundations of the State*, 23.

[184] Æthelred 3.3 in Thorpe, *Ancient Laws*, 1:295.

instances of thegns performing their duties.[185] A suit brought by Edwin, son of Enniaun,[186] against his mother over a piece of land at a shire-meeting demonstrates how three thegns from the meeting were selected to mediate. Edwin's mother, who is not named, was not present at the shire-meeting in Hereford; hence, the thegns rode out to where she was in Fawley and inquired as to what claim she had to the land in question. The mother said that she had no land belonging to her son; she then summoned her kinswoman, Leofflæd, wife to Thurkil the White (who was present at the shire-meeting), and proceeded to orally declare her will in the presence of the thegns. She announced that Leofflæd would receive all of her land and wealth following her death and not her son. After her declaration, she said to the thegns, "Act rightly and like thegns; announce my message to the meeting before all the worthy men, and tell them to whom I have granted my land and all my property, and not a thing to my own son, and ask them all to be witness of this."[187] Even if the thegns had not announced the claim at the shire-meeting, the mother's declaration in their presence would have been legally binding. The attestation written in the gospels at Hereford was merely a precaution, perhaps for posterity.

One final official position of the assembly appears in the laws of the Salic Franks, made up of men from local communities whose purpose was to memorize and recite the law: the *rachimburgi* or lawspeakers. *Rachimburgi* were not royal officials and

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[185] A.J. Robertson, trans., *Anglo-Saxon Charters* (Holmes Beach: W.W. Gaunt, 1986), 153.

[186] Robertson merely duplicates the genitive Enneawnes (nom. Enneawn) from the original Anglo-Saxon into the translation. Dorothy Whitelock explains that whomever originally recorded this into the gospel at Hereford corrupted a Welsh name, of which the proper form is shown in the text above. See the introduction to this lawsuit in *EHD*, 1:556.

[187] Robertson, *Anglo-Saxon Charters*, 153.

how they were selected is enigmatic, although usually there were seven to a court.[188] Borne of custom, the official of lawspeaker appears regularly in other Germanic legal systems, primarily among the Scandinavians, whose laws were committed to writing more than half a millennium after the earliest continental Germanic codes. In Sweden, Norway, and Iceland the institution of lawspeaker provided an official whose responsibility was to recite the law from memory.[189] There is no evidence that such an institution existed in England, although the Old English poem *The Gifts of Men* found in the Exeter book twice alludes to men versed in the law.[190] Considering the diversity of roles filled by Anglo-Saxon thegns, it is perhaps they who were responsible for reciting the law at assemblies. A mountain of extant legal records from the Anglo-Saxon period indicates that the early English were nothing if not efficient, so it is reasonable to hypothesize that the lawspeaker's obligations were folded into those of the thegn.

Arrayed on the adjacent page is a simplified rendition of the political and fiscal hierarchy employed by the Germanic peoples both on the Continent and in England. Where there was a king, he rested firmly at the head of society and had jurisdiction over all. Fiscal units were established for the efficient administering of justice but they also provided revenues and warriors. Big men, who were directly liable to the king, supervised these fiscal units, appointing judicial officials to administer the assemblies.

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[188] Drew, *The Laws of the Salian Franks*, Introduction, 33.

[189] *Lǫgǫgumðr* in Iceland and Norway, *laghsaga* in northern Sweden.

[190] Lines 41–42 and 70b–71 of The Gifts of Men. See Oliver, *The Beginnings of English Law*, 35, for a brief discussion on Lawspeakers; neither the Gutnish nor Danish laws indicate the existence of a Lawspeaker per Peel, *Gutalagen*, xxv. References to Peel's translation will appear as *Gutalagen* and statute number when identifying specific laws.

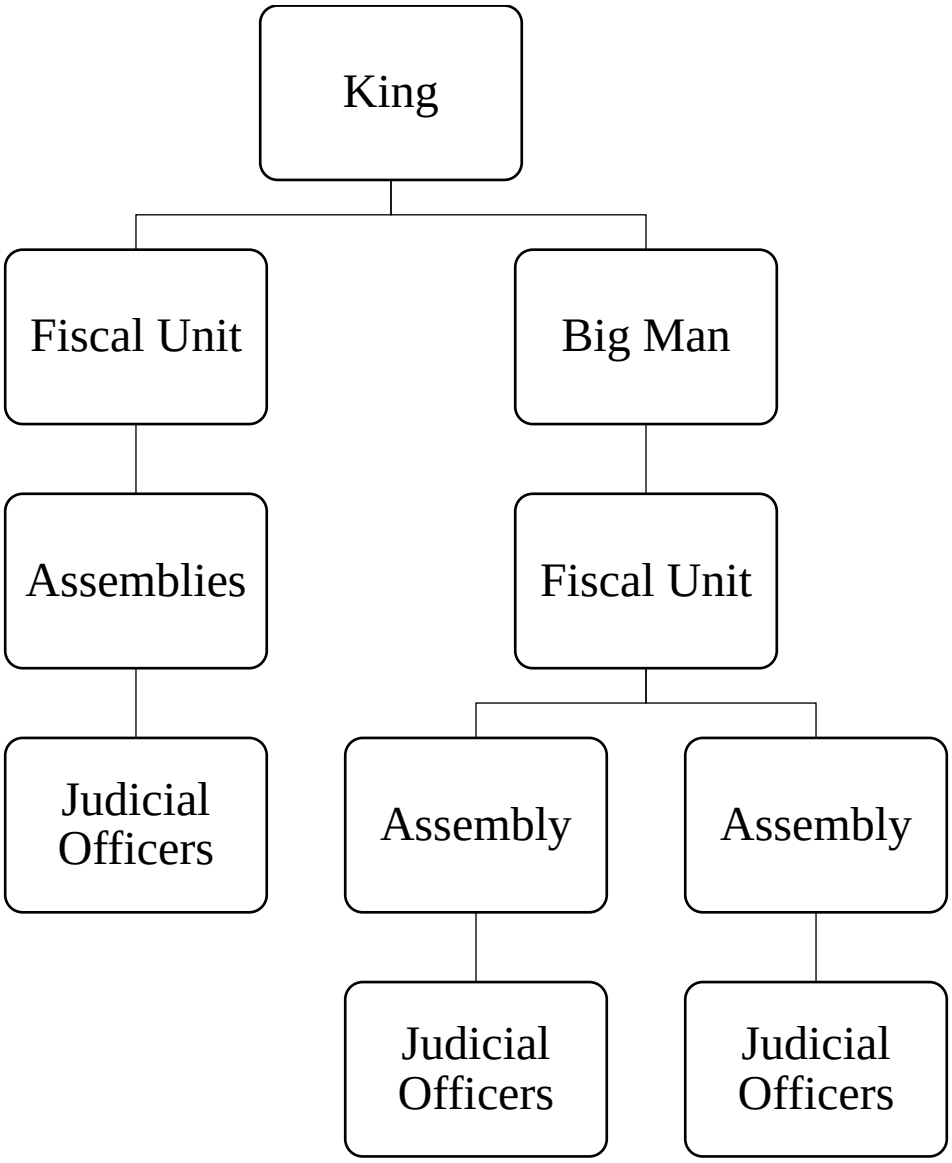


Figure 3: Germanic political and fiscal hierarchy

## Conclusion

In this chapter, we saw that continental Europe's Germanic population and the Anglo-Saxons shared a large collection of customs ranging from how agreements were valued to the framework of judicial offices. However, whenever examining the similarities between Germanic customary laws of the *gentes*, historians inexplicably ignore the early English, treating England as divorced from the Continent. With shared language comes an internal exchange of ideas and often overlapping if not outright mutual tradition. Reaching from Scandinavia and sweeping through continental Europe like a pendulum to caress the British Isles, the Germanic peoples of the Middle Ages held an abundance of legal institutions in common.

We saw that they all treated marriage as a contract between families, whereby each side monetarily invested in the union, as well as recognizing divorce as an option in the event the relationship decayed or someone was unfaithful. The early Germanic peoples solved disputes by means of violent feuds, but at some point, the institution of wergild was overhauled in such a way to discourage bloody anarchy, an innovation that appears universally shared among every Germanic population. The Romans had no word in Latin for *wergild*, and so some of the Germanic *gentes* simply Latinized the term; in instances where this did not occur, the Latin *pretium* awkwardly stood in its place. This proved problematic because it was also used to describe the present made to the woman during marriage. Nevertheless, the institution of wergild saturated every Germanic culture without exception. Furthermore, concepts of legal jurisdictions, public

assemblies, and courtly officials overlapped to a great extent among the continental Germans and the Anglo-Saxons, fully on display in the laws.

Where Latin was the dominant language, just because the Germans found corresponding lexemes in the popular tongue does not abolish the notion that the legal philosophy disagreed. Political units and assemblies differed in name from one another in Anglo-Saxon England and on the Continent, but the characteristics are far too similar to ignore. In English, Frankish, and Alemannic laws the assemblies were referred to as *things* and the jurisdictions *hundreds*. Lacking documentary evidence on the Continent detailing jurisdictions does not invalidate the connection to England's hundred divisions, especially when the Franks and Alemanni merely used the Latin for *hundred* with *centenus*. While a generous number of statutes found in the *Leges Alamannorum* nearly mirror ones found in the *Lex Salica*, the two constitutions display individual aspects divergent enough to justify treating them as mostly separate from a cultural standpoint. Folding the *Leges Alamannorum* into the *Lex Salica* just because the former code was a product of Salic Frankish political supervision irresponsibly precludes Alemannic agency in the codification of their own laws.

Treating the West Germanic laws as pieces to a puzzle where the final image provides a comprehensive tapestry of shared custom is a viable approach, even when so many pieces are missing from the collection or when an ample number of pieces that should join flawlessly do not. But just because pieces are missing or broken, when there are enough combined, an image indeed emerges, even if it is not exhaustively detailed. The next chapter is an examination of the Scandinavian law codes, which were issued

more than half a millennium later than the continental codes, and how in spite of this, still maintained elements of ancient Germanic custom. These help to fill in some of the gaps and support the impression of a pan-Germanic legal ideology.

# CHAPTER 3: CONNECTING WEST AND NORTH GERMANIC CUSTOM THROUGH LEGAL DISCOURSE

Even though the North Germanic peoples promulgated their laws more than 500 years after those of the West Germanic peoples, they shared an assortment of institutional similarities indicative of common cultural ancestry. Once the Scandinavian peoples converted to Christianity, they, too, recorded their laws but in Nordic vernaculars as opposed to Latin.[191] Aside from the numerous centuries between the written laws of Æthelberht and the earliest Scandinavian laws committed to writing, the Nordic vernaculars employed are many—Old Icelandic, Old Swedish, Gutnish, and Old Norwegian are the primary languages in which the earliest Scandinavian laws were recorded in Latin script. Comparing the earliest Kentish laws with those that make up the *Leges Barbarorum* is challenging because each corpus was written in a different language of the Indo-European family: Old English and vernacular Latin, respectively. While Old English and the Scandinavian vernaculars derive from a common branch (Germanic) of Indo-European, they span multiple sub-branches and language groups, which incorporate a multitude of dialects and lexicons.

By and large the law texts in West and North Germanic polities comprise statutes of personal injury tariffs to be levied against an offender and paid to the victim, the amount of which was dependent upon the type of injury inflicted and the social rank of the victim. The denominations of compensation and the fines associated with its payment

[191] Latin copies of Scandinavian laws are translations from their respective North Germanic vernaculars. Just as with the Anglo-Saxons, vernacular copies appeared before Latin ones.

hinged on the monetary value assigned to each social category as *wergild*. The institution of compensation and its replacement of the blood-feud lies at the heart of every constitution of Germanic origins and therefore provides a springboard from which to compare customs of West and North Germanic culture. This chapter will address the similarities between the personal injury tariffs and recompense as well as the language of compensation among the Germanic peoples. It will also discuss shared cultural norms institutions of a more specific nature, primarily the treatment of women and the institution of inheritance, especially as inheritance pertains to women.

## The problem of wergild

Wergilds are the focus of so many studies because it is the easiest place to begin, for the institution appears—even if not in specific name—in every Germanic law code, whether the code was written in Latin or a Germanic vernacular. The institution even appears in laws promulgated by Germanic peoples such as the Visigoths, who were more assimilated to Roman culture than others.[192] As discussed in Chapter 1, the Visigothic Code is more Roman than Germanic, inspired greatly by the Theodosian Code, although many ancient customs still found their way into the text. In some instances, these customs mingle with contemporary statutes, yet most often they recurrently appear under their own title so as to distinguish ancient laws from those enacted by a Visigothic king. Caution must be heeded, for not all statutes in the Visigothic Code branded "ancient" are

[192] Book VI of the Visigothic Code details punishments and compensation for injuries (Title IV) and homicide (Title V).

of Germanic origins.[193] Ancient laws that are Germanic, however, are fairly obvious, especially those that invoke a system of compensation. In spite of occurrences of Germanic custom appearing in the Visigothic Code, medieval jurists treated the compilation as Roman law, and when those same jurists referenced the Theodosian Code, their source was likely the Breviary of Alaric or the *Lex Romana Visigothorum*.[194]

Regrettably, the institution of wergild and the consequences of not paying it (blood feud) spans beyond Germanic culture and even Indo-European peoples. Compensation for insult and injury appears in the *Lex talionis*, that is, Table VIII.2 of the Roman Twelve Tables, offering the earliest written instance of compensation in Western Europe. The Celtic-speaking Indo-Europeans, both continental and insular, had a tradition of monetary values associated with social rank. Two insular examples include Brehon law of the Irish and Cymric law of the Welsh. Brehon law designates social "grades," each quantified by an honor-price, or *éraic*, which was paid by the killer to a slain person's family. A similar institution exists in Cymric law, known as *galanas*, the fine paid by the perpetrator to the family of the accosted or murdered.[195] A shared institution of compensation could easily be explained by geography, given that Celtic-

[193] See *Forum Judicum*, Book V, Title VII, Statute XVI on manumitting slaves of the court. Germanic custom provides the right for a freeman to manumit his slaves without question. Under Visigothic law, if he and his slaves are members of the king's court, slaves cannot be manumitted without the king's permission. Any manumission of a royal slave without the expressed consent of the king is deemed invalid.

[194] Ian Wood, "The Code in Merovingian Gaul," in *The Theodosian Code* (Ithaca: Cornell University Press, 1993), 161–177.

[195] Entry for "galanas" in the glossary of Dafydd Jenkins, trans., *The Law of Hywel Dda: Law Texts from Medieval Wales* (Llandysul, Dyfed: Gomer Press, 2000), 346. Further referred to as *Cyfraith Hywel*. The term is known among medieval legal scholars as much as *wergild*, and it even appears in English dictionaries: "Galanas," Merriam-Webster.com. Accessed September 27, 2017. https://www.merriam-webster.com/dictionary/galanas.

and Germanic-speaking peoples have a long history of living adjacent to one another, therefore some customs and institutions could easily have been shared. On the other side of the world, the *Manusmṛti* of Hindu tradition assigns bovine values to the different castes, which translates to recompense paid for insults, injuries, and homicide.[196] Outside of Indo-European cultures, moreover, we find that African and Arab tribes also practiced compensation and vengeance before the rise of Islam.[197]

Although the institution of compensation is not unique to the Germanic-speaking peoples, it is indeed a crucial element of their jurisprudence. There is no single law code of Germanic origins that forgoes the system of wergild. Recompense and the tariffs associated with personal injury are the foundational elements shared among all ethnolinguistic Germans.

## Personal injury tariffs

In association with wergilds is what Lisi Oliver called the "body legal," that is, the schedule of fines accompanying injuries received to specific parts of the body. The notion of compensation for homicide may not be exclusive to the Germanic peoples but they took assault statutes a step further by detailing recompense for specific wounds by establishing fines in accordance to perceived importance of the body part injured. The values assigned to different injuries stand apart from other Indo-European cultures and provide some insight into Germanic pragmatism. For instance, in the laws of Æthelberht

[196] Manu, *The Ordinances of Manu*, trans. Arthur Coke Burnell and Edward Washburn Hopkins (London: Trübner & Co., 1884), XI.128, 129, 130.

[197] Matthew S. Gordon, *The Rise of Islam* (Indianapolis: Hackett Publishing Company, Inc., 2008), 5.

a severed thumb is worth twenty shillings, the forefinger nine shillings, the middle finger four, the ring finger six, and the little finger eleven shillings.[198] The high price for severing a thumb was warranted, for the loss of the appendage rendered the hand incapable of holding a sword or axe, potentially disqualifying the owner from serving in the *fyrd*. All the other continental Germanic laws catalog injuries and the values of fines associated with the wounds save for the surviving Visigothic Code. These schedules are no doubt relics of customary law and they appear in some of the later-published Scandinavian laws as well.

The *Gutalagen* of Gotland does not assign values to each finger, though it stresses the thumb and the hand's ability to hold a weapon: "A thumb is [fined at] two marks of silver. If a finger is so stiffened that it has no holding power, then the fine is the same as if it were lost. If a man is damaged in one hand, but can still hold a sword or a sickle but cannot lift the weapon, then the fine is two marks [of silver]."[199] A section of wounds also appears in the *Gulaþing* law, although its details differ considerably from the earlier continental and English codes in that the focus is more on the circumstances in which the injuries were received and the nature of those injuries. The values of fines are contingent upon whether a blade meets bone marrow when thrust into the victim, or whether the sword is pushed so far into the body that it exits the other side—there are even increasing payments each time the victim's lip quivers in pain.[200] The later *Frostaþing* law contains

[198] Æthelberht, 54.
[199] *Gutalagen*, 23.
[200] Laurence M. Larson, trans., "The Older Law of the Gulathing," in *The Earliest Norwegian Laws: Being the Gulathing Law and the Frostathing Law* (New York: Columbia University Press, 1935), 139. Henceforth *Gulaþing*.

a schedule of fines for mutilation and maiming more akin to those found on the Continent and in Anglo-Saxon England.[201]

Recompense for homicide and mutilation is easy enough to trace back to customary law, especially because as canon law became more prominent in these societies such statutes began to disappear. The Visigothic Code is a perfect example due to it being more Roman than Germanic and the absence of many features found in other Germanic law codes. Teasing out customary law among canon law is not always so straightforward, especially among the Scandinavian laws, for the two are heavily entwined. However, certain elements of customary law are more recognizable than others, and this becomes increasingly apparent when exploring the rights of women and the laws of inheritance, especially inheritance as it pertains to women.

## The terminology of compensation in North Germanic laws

The most prolific legal institution appearing throughout the assorted Germanic law codes is that of the wergild, that is, the system of personal worth and compensation. This institution of value assigned to social rank and the foundation upon which fines were assessed and paid does not appear in this form morphologically or lexically in all Germanic laws; however, the institution itself underpins each of the codes spanning from the fifth century to the thirteenth, occurring in both West and North Germanic laws. Within the continental laws, which were written in Latin, the term *wergild* appears in Germanic vernacular rather than being morphologically Latinized.[202] A keyword analysis

[201] Cf. *Frostaþing*, 4.42–49.
[202] Spellings include: *wergild, wirgild, wirigild, widrigild, guidrigild*.

of the Kentish and West Saxon laws of England show that the term appears sparingly,[203] at least in the earliest laws and, where it is absent, it often appears in the form of a metonym (see Table 4 below). Such metonyms include *bót*, *mann-bót*, *mæg-bót*, and *mann-weorþ* in the Kentish and West Saxon dooms. Where the *wergild* is the worth of a person, the *bót* is the actual compensation paid to the injured party and therefore directly associated with the wergild. The term *bót* appears inflected in a number of statutes in Æthelberht's code, along with *mæg-bót*;[204] forms of both *mann-bót* and *mæg-bót* can be found in Ine, statutes 70 and 76. The metonym *mann-weorþ* (man-worth) stands in the place of *wergild* in Hlothhere and Eadric.[205]

Table 4. Anglo-Saxon juridical terms associated with wergild and its payment[206]

| Legal Term | Definition | Kings & Statutes |
|---|---|---|
| *wergild* | man-price | Æthelberht 31<br>Wihtred 8, 25, 26<br>Ine 33, 34, 34.1, 54.1, 72 |
| *bót* | fine, payment | All |
| *mann-bót* | man-fine | Ine 70, 76 |
| *mæg-bót* | man-fine | Æthelberht 74<br>Ine 76 |
| *mann-weorþ* | man-worth | Hlothhere and Eadric 1, 3, 4 |

[203] Instances where they appear: Æthelberht, 31; Wihtred, 8, 25, 26; Ine, 33, 34, 34.1, 54.1, 72.

[204] Æthelberht, 74, as *mægþbót*

[205] Hlothhere and Eadric, statutes 1, 3, and 4.

[206] The term *wergild* is most prolific in the laws of Ine of Wessex (r.688 to 726) but only appears once, inflected as *wergelde*, in Æthelberht of Kent (r.589–616). Even variations of *bót* are rare in the written laws before Alfred the Great, although when payment is mentioned the institution of wergild is implied.

It should come as no surprise that the North and West Germanic legal codes share an institutional vocabulary, as the dialects all descend from a common ancestor. Although it is known that the Scandinavian laws written in later centuries employed the institution of compensation, the term *wergild* does not occur in the North Germanic laws save for in the *Gutalagen* as *vereldi*. Similar to the West Germanic *wergild*, the term *vereldi* is a compound derived from the combination of Old West Norse *verr* "man" and *giald* "payment." The absence of any specific institutional lexeme for *wergild* in the other Nordic dialects suggests that *vereldi* was borrowed from a West Germanic language at some point leading to the recording of the *Gutalagen*.[207] Yet, while there is no term for *wergild* elsewhere in the Scandinavian sources, the institution of recompense for crimes committed is indeed a principal component of Nordic jurisprudence, which is attested by numerous lexical innovations whose meanings describe the actual fine paid in compensation and do not extend beyond legal practice (see Table 5). In Old Swedish, we see *ættarbot*; in Old Icelandic, it is *baugr*, *baug-gildi*, or, in a strictly legal meaning as the plural *mann-bætr*;[208] and in Old Norwegian we find variations of *manngjǫld* as well as *baugr*. In both Old Norwegian and Old Icelandic *baugr* means "ring" and is associated with the wergild ring, that is, the payment of wergild, which was calculated in ounces of

[207] I would like to thank Stephen Brink for bringing this to my attention at the 2017 NRN Conference in Aberdeen. Finding a Nordic equivalent to *wergild* proved challenging, but once Professor Brink suggested that the occurrence of *vereldi* throughout the *Gutalagen* was merely a West Germanic borrowing, I came to realize that its appearance in the laws of Gotland is unusual. Christine Peel came to the same conclusion in her English translation of the laws. See Peel, *Guta Lag*, 85, n9/10–11.

[208] Nominative, singular *bót*, nominative, plural *bætr*, meaning "recompense."

silver.[209] The lexeme *baugr* is curious in that it derives from the Proto-Germanic **baugaz* but is only found in West Nordic laws[210]—the meaning and use of *baugr* are identical in the *Gulaþing* law and *Frostaþing* law of Norway and the Icelandic *Grágás*.[211] Conversely, *bót* is a descendant of Proto-Germanic **bōtō*, carrying the same definition in all Germanic languages and appearing in all vernacular law codes.[212]

Table 5. Nordic juridical terms associated with wergild and its payment[213]

| Legal Term | Definition | Nordic Dialect |
|---|---|---|
| *vereldi* | wergild | Gutnish |
| *ættarbot* | kin-payment | Old Swedish |
| *manngjǫld* | man-debt | Old Norwegian |
| *baugr* | wergild ring | Old Norwegian |
| *baugr, baug-gildi, mann-bætr* | ring payment, man-fine | Old Icelandic |

[209] Frederic Seebohm, *Tribal Custom in Anglo-Saxon Law: Being an Essay Supplemental to (1) 'The English Village Community', (2) 'The Tribal System in Wales'* (London; New York: Longmans, Green, and Co., 1902), 235; Andrew Dennis, Peter Foote, and Richard Perkins, trans., *Laws of Early Iceland: Grágás, the Codex Regius of Grágás, with Material from Other Manuscripts*, vol. 1 (Winnipeg: University of Manitoba Press, 1980), 261.

[210] Vladimir E. Orel, "*bauʒaz," *A Handbook of Germanic Etymology* (Leiden; Boston: Brill, 2003), 39. In Old English literature the term *beág* occurs in regard to payments, especially in *Beowulf*.

[211] In Old English: *beág*, *beáh*, although not associated with wergild in the dooms.

[212] Guus Kroonen, ed., "*bōtō," *Etymological Dictionary of Proto-Germanic*, Leiden Indo-European Etymological Dictionary Series 2 (Leiden; Boston: Brill, 2013), 72.

[213] Although modeled after the Norwegian *Gulaþinglǫg*, the Icelandic *Grágás* is not a single code of law, rather it is a compilation of laws accumulated over generations. A number of statutes appear in the compilation more for posterity and were not in effect at the time the extant manuscripts were produced. Because of its connection to the *Gulaþinglǫg*, and the fact that the vast majority of early Icelandic settlers and migrants were of Norwegian stock, the term of *baugr* rests at the center of the institution of wergild. The word literally translates to English as "ring" but was associated in jurisprudence with the payment of wergild.

## Women: protections and status

Early Germanic society was by no means egalitarian. With the exception of some special circumstances,[214] an adult free woman had a wergild less than that of an adult free man in every legal code or compilation published by a Germanic society, and in the Norwegian codes women are often grouped with children. Custom, however, afforded Germanic women a comparatively large allotment of protection and power insomuch that they could indeed become powerful landowners and matriarchs in their own right.[215]

Where the laws are quiet or ambiguous, other literature provides some insight. Icelandic sagas contain a wealth of juristic examples of cases presented before the Althing and the outcomes of lawsuits. The feud between two women lies at the heart of *Brennu-Njáls saga*, for instance. Sensibilities were offended over the seating arrangements at a wedding feast, and Hallgerd, whose husband Gunnar was friends with the titular character of Njál, set on a path to restore her honor through methodical manipulation of the legal system and the men in her life to commit acts of violence and mayhem. In a feat of social mathematics, Bergthora, the wife of Njál and the matriarch who offended Hallgerd at the wedding feast, responded in kind.[216] Bloodshed seeped through social ranks as each woman convinced men of increasing status to murder one another,[217] eventually leading to the mutual destruction of each faction, with the

[214] See *Grágás* I, 181.

[215] Carol J. Clover, "Regardless of Sex: Men, Women, and Power in Early Northern Europe," *Speculum* 68, no. 2 (1993): 366.

[216] On the zero-sum game of honor and feuding, see William Ian Miller, *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland* (Chicago: University of Chicago Press, 1990), 30–34.

[217] See Miller's table ibid., 183.

exception of Hallgerd, who survived and slipped away into obscurity.[218] Both women exercised appreciable influence over the men in their lives through artful machinations and direct commands, their husbands deleteriously powerless to put an end to the violence. In the pair of Vínland sagas, Freydís Eiríksdóttir, half-sister to Leif Eiríksson and daughter to the infamous Eirík the Red, appears as a strong-willed woman who, in the *Grœnlendinga saga*, actually finances the exploration and settlement of North America.[219]

Despite the layperson's view that Germanic barbarians raped and pillaged their way across Europe, the laws of the Germanic peoples exhibit a particular distaste for rape through heavy fines or severe punishments. While all Germanic laws retained a significant oral element, those of England appear to lean on orality more than others, especially the earlier laws, so there is much missing within written law that was likely addressed based on custom and oral transmission rather than adhering to written jurisprudence. It is not until Alfred the Great that we see written any compensation or punishment for rape, and what mention of compensation we see entails slave women and young girls under an undisclosed age. Although the laws of each Germanic society differ, the age when a girl becomes a woman is often shown as fourteen or fifteen winters. Under Alfred the compensation for raping the slave of a *ceorl* is five shillings paid to the *ceorl* and sixty shillings to the king for violating the peace, the latter fine equivalent to

[218] Robert Cook, trans., *Njal's Saga* (London: Penguin Classics, 2001), chap. 91. This is the last mention of Hallgerd in the saga; however, the feud that she instigated continues to escalate over the next fifty-eight chapters.

[219] Einar Ólafur Sveinsson and Matthias Þórðarson, eds., "Grœnlendinga Saga," in *Eyrbyggja Saga*, Íslenzk Fornrít 4 (Reykjavík, 1935), chap. 8.

killing a slave under Ine's reign,[220] and violating an underage girl demands a wergild payment as if the girl is an adult.[221]

Because the *Grágás* laws borrowed from the earlier Norwegian laws, statutes regarding the violation of women are quite similar, if not more detailed than the earlier laws. The *Frostaþing* law provides a statute regarding the seven women on whose account a man has a right to kill, which is nothing more than a kinship list either through marriage or blood, including the man's wife, his mother, daughter, sister, his foster-daughter, his daughter-in-law, and finally his brother's wife.[222] The statute does not offer the actual offenses justifying the right to kill but, because it lies in the section on personal rights, the offenses must be related to assaults of any kind. More specificity is provided in *Grágás*, which names six women for whom a man has the right to kill: his wife, his daughter, his mother, his sister, his foster-daughter, and his foster-mother.[223] Aside from trivial differences in the women for whom a man may fight and kill, *Grágás* specifies the offense as forcible intercourse. If an offender was beaten or killed during the act of rape, no atonement was made, for the beating or killing was deemed justified.

In Gotland, entire statutes are devoted to protecting women, although they are not necessarily grouped together. We find in *Gutalagen* 18 protections for pregnant women and the fines paid for causing miscarriages by striking. Statutes 20 and 20a describes the rights of a woman who becomes pregnant as a consequence of adultery: if she could

[220] Alfred, 25; Ine, 23.3.
[221] Alfred, 29.
[222] *Frostaþing,* 4.39.
[223] *Grágás* I, K ‡ 90

prove that the adulterer indeed sired the child, she received consolation payment and the man took custody of the child. If a woman was sexually violated in Gotland, any person she told of the assault within twenty-four hours could act as a witness in the suit against her assailant as if that person were present during the attack,[224] a condition which provided women with significant flexibility when bringing charges against their assailants.

Germanic litigation leaned heavily on witnesses and their oaths, and social rank determined the weight of a witness's oath; therefore, in theory, a woman could choose to whom she told of her assault, selecting witnesses of higher social standing, whose oaths carried more authority. The institution of oaths and social tiers in Germanic polities ultimately, however, favored the wealthy and influential—and men—over the common free person. An influential man surrounded himself with members of the same social stratum, and so oaths intrinsically meant more than those a free person could attain. In the above example of adultery, a man could deny a child sired as a result of an illicit act with only two witnesses, whereas a woman required six witnesses. Lastly, *Gutalagen* 23 concerns assaults on women, which lists the fines payable for unwanted contact ranging from simply pulling a lace to seizing a woman by her breast. Notwithstanding social inequality, the legal theory in Gotland offered considerable latitude to female victims of assault. To put assaults into perspective, the fine for seizing a woman by the wrist or elbow was equivalent to punching a man in the face (half a mark of silver).[225] A man found guilty of raping an unmarried woman was fined twelve marks of silver, whereas

[224] *Gutalagen*, 22.
[225] *Gutalagen*, 19 for men striking men, *Gutalagen* 23 for men seizing women.

the violation of a married woman resulted in a death sentence.[226] To compound things, if the man committing the sexual assault was married and therefore committing adultery by force, the victim's family could choose as punishment a wergild payment or death.[227]

If the laws are any indication, the Germanic peoples clearly frowned upon sexual assaults, and while not every political entity exacted heavy punishments for abuses against women, many did.[228] In the Alemannic laws compensation for women was calculated as twofold that of men,[229] although sexual assaults were not concomitant to wergild, rather paid as separate fines.[230] The Salic Franks, too, had fines divorced from wergild though not from social status. A statute on rape (*rapio*) in the *Pactus Legis Salicae* determines that if a freedman rapes a freedwoman, he is liable to pay twenty solidi as compensation to the woman or her family and ten solidi to the *graphione* (the count), and if he assaults a woman of higher status than himself, he pays composition with his life ("*de uita sua conponat*").[231] Whereas neither the Burgundians nor Lombards had clear written legislation addressing rape, sexual violence is implied in their statutes regarding the kidnapping of women along with the restitution paid, which was 900 solidi in both political landscapes, a hefty fine compared to other Germanic legislation.[232]

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[226] *Gutalagen,* 22.

[227] *Gutalagen,* 20.

[228] The absence of any written laws punishing sexual assaults before Alfred is perplexing, although it should not be assumed that there was no customary law enforcing punishments similar to Germanic peoples in Northern Europe and Scandinavia. Alfred's introduction of punishments for sexual assaults appears more as a consequence of Christianity than Germanic custom.

[229] *Leges Alamannorum,* 59.2.

[230] See, for example, *Leges Alamannorum,* 60.

[231] *Pactus Legis Salicae,* 130.

[232] *Lex Gundobada,* 7; *Edictum Rothari,* 186. In the former, the scribe uses a Latin-German hybrid term to specify the compensation: *novigild*, "ninefold."

## Women shall inherit

Inheritance was more fluid, especially in England, as many surviving legal documents convey. According to Scandinavian laws, preferred was the first-born son as the heir of his father's estate. Nevertheless, provisions for a female to inherit occur throughout the ancient Nordic laws —this is primarily the case when a father had no sons, then his daughters inherited all. The Icelandic *Grágás* laws state this outright at the beginning of the section on inheritance:

> A son free born and a lawful heir is to inherit on the death of his father and mother. If a son does not exist, then a daughter is to inherit. If a daughter does not exist, then the father is to inherit, then a brother born of the same father, then the mother. If she does not exist, then a sister born of the same father is to inherit. If she does not exist, then a brother born of the same mother is to inherit. If he does not exist, then a sister born of the same mother is to inherit.[233]

As we can see, daughters, mothers, grandmothers, aunts, and nieces all had options to inherit when a patriarch died, even if a male heir was preferred. The laws are not clear regarding a daughter inheriting before she is of age, but there is no reason to believe that the situation differed from when a boy inherited before he was accepted as a man. Adulthood for males fluctuated slightly depending on legal circumstances. Gutnish and Icelandic laws did not hold boys under twelve responsible for homicide,[234] whereas Norwegian laws held the father responsible for a boy's actions until he reached eight winters; between the ages of eight and fifteen, a boy was only responsible for half atonement in cases of theft, assault, and homicide:

[233] *Grágás* II, K § 118.
[234] Peel, *Guta Lag*, 98, n14/15.

> A father is accountable for the deeds of his child till it is eight winters old; but a boy of eight winters shall be entitled to a half atonement, and shall pay atonement at the same rate, till he is fifteen winters old. Similarly, if a minor injures a man's property, let him pay a half compensation or offer a threefold oath, if the case is important enough to call for a threefold oath.[235]

It was not until males reached fifteen winters that they could legally claim and dispose of an inheritance or alienate land.[236] Curiously, with the exception of the above quote, nearly every statute in the Norwegian laws describing the rights and protections of minors is in fact a statute regarding women. Whereas women were provided their own statutes in *Grágás* and the *Gutalagen*, they were coupled with minors in the *Gulaþing* law and the *Frostaþing* law. It can be assumed that children of both sexes under a certain age were dependents of their father, therefore the father was held accountable for their actions. The intermediate years are problematic. Unlike with males, the laws provide no provisions for intermediate years for women—a female is either a girl or an adult; there are no buffer years. Accountability in the case of homicide in adult women introduces different variables. Was she under the influence of a man when she committed the homicide? What were the circumstances leading to the death of the victim? Just as with a male, circumstances surrounding a homicide committed by a woman factored in to issuing the punishment. A woman who simply murdered a man was punished equally as if she were a man: she was outlawed. However, if she were in the throes of adultery, staggered by the death of her husband, or attempting to restore her or her family's honor, punishment was light or overturned. Germanic women were surely treated differently from men, but the laws indicate that they were punished less severely for crimes and that

[235] *Frostaþing,* 4.36.
[236] See *Gutalagen,* 20; *Gulaþing,* 190; *Frostaþing,* 4.34; *Grágás* II, K § 118.

they could accumulate wealth through marriage and inheritance, standing on their own within society.[237]

We know that the Anglo-Saxon dooms say little if anything on the treatment of women, and they contain no information on inheritance at all. The Angles, Jutes, and the Saxons who migrated and settled to the British Isles eventually found pride in their written word. This pride left for us a trove of poetry, prose, histories, and an abundance of legal documentation, the latter of which offering insights into how early English litigation and law enforcement functioned. Surviving wills illustrate that fathers often left land and property to their daughters and that mothers controlled their own estates, which they in turn willed to their own daughters. The will of Ælfgar, ealdorman of Wiltshire, dated between 946 and 951,[238] bequeaths three estates at Cockfield, Ditton, and Lavenham to his daughter Æthelflæd. Stoke (probably Stoke-by-Nayland, Suffolk) received estates at Peldon and Mersea with the stipulation that Æthelflæd have use of the land "as long as is agreeable to her, on condition that she holds it lawfully. . ."[239] Another will, recorded within the same decade, is by a woman named Wynflæd who grants her daughter substantial moveable and immoveable property, including but not limited to jewelry, an estate at Ebbesborne, and the men and goods at Charlton.[240] The men referenced in the will are likely slaves, as the document distinguishes them from freemen,

[237] We must consider custom as less rigid than the written laws, more fluid and capable of reacting to individual, localized situations. With the exception of Anglo-Saxon laws, women in Northern Europe and Scandinavia required men to represent them in a court of law.

[238] Dorothy Whitelock, ed., *Anglo-Saxon Wills* (Holmes Beach: W.W. Gaunt, 1986), 104. Henceforth *Wills* and Whitelock's assigned number.

[239] *Wills,* II; S1483.

[240] *Wills,* III; S1539.

and the term *yrfes* has an ambiguous definition, referring simply to inherited property or goods.[241]

To put into context how women were received by Germanic societies, consider the Welsh neighbors of the West Saxons, whose laws prevented women from inheriting land under any circumstance. In *Cyfraith Hywel* dating back to the tenth century,[242] as translated by Dafydd Jenkins, it is said:

> According to the men of Gwynedd a woman is not entitled to have patrimony, since she is not entitled to two status in one hand, that is, her husband's patrimony and her own. And since she is not entitled to patrimony, it is not right that she should be given save where her sons will be entitled to patrimony.[243]

Women were so far removed from the land under Welsh law that they were forced to vacate their homes upon the death of their husbands. The *Cyfnerth* Redaction states that only if a woman can prove that she is pregnant when her husband dies may she remain in the family home. If she is indeed not pregnant, then she has to pay a fine to the king and immediately leave the home.[244] This makes it abundantly clear that a woman's role in Welsh society centered on bearing children, and without attachment to a male, she essentially existed within social purgatory.

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[241] ". . . **7** æt Ceorlatune hio hyre an ealswa þere manna **7** þæs yrfes b[ut]an þam freotmannon . . ."

[242] The earliest manuscript comes down to us from the end of the twelfth century, some 250 years after the law code was first issued. See Hywel, *Welsh Medieval Law: Being a Text of the Laws of Howel the Good; Namely the British Museum Harleian Ms. 4353 of the 13th Century*, trans. A.W. Wade-Evans (Oxford: Clarendon Press, 1909), vii.

[243] Jenkins, *Cyfraith Hywel*, 107.

[244] Ibid., 54.

## Conclusion

As we have seen, the institution of wergild and compensation seems to be the obvious starting point in comparing West and North Germanic cultures due to its omnipresence throughout Germanic laws; however, the institution is not unique to the Germanic peoples and occurs in some form in neighboring laws such as those of the Welsh and in laws as far away as the Indian subcontinent. In spite of this institution appearing in other ethnolinguistic groups, recompense for insult, injury, or death is an underlying component of Germanic legislation. The system is so central to Germanic custom that a shared institutional vocabulary associated with it spans across the Germanic sub-branches of the Indo-European language family.

Another cultural similarity among the West and North Germanic peoples discussed is that women shared an expanded social role which afforded them more rights and protections than their non-Germanic, European counterparts. It must be reiterated that women were by no means treated equally to men, but they were able to inherit land, share in that inheritance with male kin, and, especially in Scandinavian tradition, they held wealth and influence.

# CONCLUSION

Throughout this thesis aspects of Germanic legal culture have been compared, ranging from continental Europe to Scandinavia. From the histories of written Germanic law to the similarities apparent between even the most distant peoples of ethnolinguistic Germanic origins, there lies enough evidence to support that throughout the Middle Ages these peoples shared a persistent ideological bond stemming from a more centralized ancient culture. These similarities extended to socio-political ranks within society, such as the *gesíþ* of the Anglo-Saxons and the *gasindii* mentioned by the Lombards; the resemblances between the early Anglo-Saxon *eorl* and the Scandinavian *jarl*; equivalent institutions of inheritance; and comparable attitudes toward women. Legal institutions were comparable between the various Germanic *gentes*, who spread a considerable geographic distance from one another, owing similarities to ancient Germanic cultural systems. Ancient custom among the Germanic peoples followed them into new reaches of the world, common custom that they retained and shared over great distances and over the course of a dozen centuries, which aided in infusing an identity uniquely different from the peoples they conquered.

From the earliest Germanic laws, the ideological segregation of the Romans and Germans can be seen, as Germanic kings issued laws for Germans and laws for Romans. The laws issued for Romans were typically abridged versions of the Theodosian Code and, if no Germanic king codified a *lex Romanorum* (law of the Romans), he might defer Romans to their own laws without explicitly stating which code. When within the codes a

Germanic king identified a difference between Romans and Germans, his thinking was small and localized, referring to the people of his *gens* rather than all barbarians. Federations like the Salic Frankish one, which was the parent *gens* of a number of smaller *gentes* (Alemanni and Bavarians, for instance), concluded that each sub-group should be judged by its own laws. So, while the Alemanni were absorbed by the Franks before the promulgation of their own law codes, the Franks insisted that Alemannic laws be issued. The differences between Alemannic laws and Frankish laws are many; however, the similarities among them are uncanny. An argument could be made that the similarities may very well fall under Frankish influence; the same cannot be said of the Burgundians or Lombards, both of whom promulgated law codes before being conquered by the Franks, yet similarities endure.

The dooms of Æthelberht of Kent issued *circa* 600, although much simpler, bear a striking resemblance to the Frankish laws promulgated a century earlier by Clovis I. It is possible that Æthelberht's scribes used the *Pactus Leges Salicae* as a template, yet codes issued by the West Saxons differ enough to suggest that they shared no such Frankish foundation; and the laws become more English than Frankish over the course of the seventh century, with a range of innovations being made, especially pertaining to the administering of justice and the duties of the king's officials. Even if Æthelberht's court copied from the Franks, how can the similarities between the Franks and earlier promulgated laws by Germanic *gentes* be reconciled without acknowledging a foundation in ancient custom?

What's more is that the Scandinavian laws, issued in North Germanic vernaculars more than half a millennium later, comprise traditions dating back centuries that bear exceptional affinities to every other preceding Germanic code. The foundations upon which all Germanic customary laws were constructed include the personal injury tariff, the wergild, and the blood-feud. Details and monetary values differ significantly among the codes, but personalization between Germanic *gentes* certainly does not undermine the concept of a shared culture. Contrarily, the corresponding parallels underscore a shared ethnic ideology, one that appears to permeate cultural *mores* and *leges* of the Germanic peoples.

Legal keywords populate the vast majority of these codes, whether West Germanic or North, such as *wergild*, *bót* (*pretium*), *hundred* (*centenus*), and *hundredman* (*centenius*), but terms alone provide fragile evidence—language does not exist in a vacuum, it is a product of environment. However, in exploring the recurring nature and context of these terms, it has been shown that the definitions are ultimately based in shared custom. Definitions in lexicons change or expand, and sometimes a word in one language has a different meaning in another within the same language family. In Old English, the word *hundred* has many meanings, including the cardinal number, yet in Old Icelandic *hundrað* almost exclusively refers to the cardinal number, not a political unit. As a result of isolation, the *Grágás* compilation of Iceland entails countless legal innovations, making it difficult to identify the *mores* imported from Norway by its migrants. Context provides the decisive boundaries within which historians of law and language should explore.

By means of an inspection of the numerous Germanic constitutions ranging from the Franks in the sixth century to the Icelanders of the twelfth century, a pattern emerges indicative of the retention of older systems in regard to legal concepts and their institutions in nearly every code of law promulgated by ethnolinguistic Germans. Originally asked at the beginning of this paper, when do coincidences give way to overlaps in a shared cultural origin? The answer begins in the comparisons drawn within these pages among the Germanic peoples and their legal customs. More detailed and focused analyses are required to further this study, whether linguistic, legal, or literary, but this thesis hopes to lay the foundation upon which an effort to find evidence of a pan-Germanic ideology or, at the least, a customary consciousness can be built.

# BIBLIOGRAPHY

## Primary Sources


Ashdown, Margaret. *English and Norse Documents: Relating to the Reign of Ethelred the Unready*. Cambridge: Cambridge University Press, 1930.

Attenborough, F. L., trans. *The Laws of the Earliest English Kings*. Cambridge: Cambridge University Press, 1922.

Bede. "Historiam Ecclesiasticum Gentis Anglorum." *The Latin Library*. Accessed October 30, 2016. http://www.thelatinlibrary.com/bede.html.

———. *The Ecclesiastic History of the English People*. Edited by Judith McClure and Roger Collins. Oxford: Oxford University Press, 1994.

Birch, Walter de Gray, ed. *Cartularium Saxonicum: A Collection of Charters Relating to Anglo-Saxon History*. London, Whiting & Company, 1885.

Bishop, Terence, ed. *Facsimiles of English Royal Writs to A.D. 1100*. Oxford: Clarendon Press, 1957.

*Codex iuris Gotlandici: cum notis criticis, variis lectionibus, nova versione suecane, glossariis et indicibus nominum propriorum*. Carl J. Schlyter. Vol. VII. Lund: Berlingska Boktryckeriet, 1852.

Cook, Robert, trans. *Njal's Saga*. London: Penguin Classics, 2001.

Dennis, Andrew, Peter Foote, and Richard Perkins, trans. *Laws of Early Iceland: Grágás, the Codex Regius of Grágás, with Material from Other Manuscripts*. Vol. 1. 2 vols. Winnipeg: University of Manitoba Press, 1980.

———, trans. *Laws of Early Iceland: Grágás, the Codex Regius of Grágás, with Material from Other Manuscripts*. Vol. 2. 2 vols. Winnipeg: University of Manitoba Press, 1980.

Drew, Katherine Fischer, trans. *The Burgundian Code: Book of Constitutions or Law of Gundobad*. Philadelphia: University of Pennsylvania Press, 1996.

———, trans. *The Laws of the Salian Franks*. Philadelphia: University of Pennsylvania Press, 1991.

———, trans. *The Lombard Laws*. Philadelphia: University of Pennsylvania Press, 1973.

Earle, John. *A Hand-Book to the Land-Charters, and Other Saxonic Documents*. Oxford, The Clarendon press, 1888.

*Grágás*. Vilhjalmur Finsen. Copenhagen: Berlingska Boktryckeriet, 1852.

Gildas. *On the Ruin of Britain*. Translated by J.A. Giles. Serenity Publishers, LLC, 2009.

Gomme, E.E.C., trans. *The Anglo-Saxon Chronicle*. London: George Bell and Sons, 1909.

Gregory I. *The Letters of Gregory the Great*. Translated by John R.C. Martyn. 3 vols. Toronto: Pontifical Institute of Mediaeval Studies, 2004.

Gregory of Tours. *Decem Libri Historiarum*. Edited by R. Buchner. Darmstadt: Wissenschaftliche Buchgesellschaft, 1977.

———. "Historia Francorum." *The Latin Library*. Accessed October 30, 2016. http://www.thelatinlibrary.com/gregorytours.html.

———. *The History of the Franks*. Translated by Lewis Thorpe. Harmondsworth; New York: Penguin, 1974.

"Grœnlendinga Saga." In *Eyrbyggja Saga*. Edited by Einar Ólafur Sveinsson and Matthias Þórðarson. Íslenzk Fornrít 4. Reykjavík, 1935.

Harmer, F.E., ed. *Anglo-Saxon Writs*. Translated by F.E. Harmer. Manchester: Manchester University Press, 1952.

———. *Select English Historical Documents of the Ninth and Tenth Centuries*. Cambridge: Cambridge University Press, 2011.

Haugen, Einar, trans. *First Grammatical Treatise: The Earliest Germanic Phonology*. Second Revised Edition. London: Longman, 1972.

Hywel Dda. *The Law of Hywel Dda: Law Texts from Medieval Wales*. Translated by Dafydd Jenkins. Llandysul, Dyfed: Gomer Press, 2000.

———. *Welsh Medieval Law: Being a Text of the Laws of Howel the Good; Namely the British Museum Harleian Ms. 4353 of the 13th Century*. Translated by A.W. Wade-Evans. Oxford: Clarendon Press, 1909.

Julius Caesar. "The Gallic Wars." *The Internet Classics Archive*. Accessed September 21, 2017. http://classics.mit.edu/Caesar/gallic.html.

Justinian. *The Institutes of Justinian: Text, Translation, and Commentary*. Edited by J. A. C. Thomas. Amsterdam; New York: North-Holland Pub. Co.; American Elsevier Pub. Co, 1975.

Larson, Laurence M., trans. *The Earliest Norwegian Laws: Being the Gulathing Law and the Frostathing Law*. New York: Columbia University Press, 1935.

*Leges Burgundionum*. Edited by Friedrich Bluhme. Vol. 3, pt. 3. M.G H., Leges. Hanover, 1863. http://bit.ly/burgundians.

*Leges Langobardorum*. Edited by Friedrich Bluhme. Vol. 4. M.G H., Leges. Hanover, 1868. http://bit.ly/langobards.

*Lex Alamannorum*. Edited by Merkel, Johanne. Vol. 3, pt. 1. M.G.H., Leges. Hanover, 1863. http://bit.ly/alamanni.

*Lex Baiuwariorum*. Edited by Merkel, Johanne. Vol. 3, pt. 2. M.G.H., Leges. Hanover, 1863. http://bit.ly/bavarians.

*Lex Ribuaria*. Rudolphi Sohm. Vol. 5. M.G.H., Leges. Hanover, 1875. http://bit.ly/ripuarians.

*Lex Salica*. Edited by J. Fr. Behrend. 2., Veränderte und verm. Aufl. Weimar: H. Bölhlaus Nachfolger, 1897.

Liebermann, Felix. *Die Gesetze Der Angelsachsen*. Halle, 1903.

Manu. *The Ordinances of Manu*. Translated by Arthur Coke Burnell and Edward Washburn Hopkins. London: Trübner & Co., 1884.

O'Donovan, M.A., ed. *Anglo-Saxon Charters III: Charters of Sherborne*. Oxford: Oxford University Press, 1988.

Peel, Christine, trans. *Guta Lag: The Law of the Gotlanders*. London: Viking Society for Northern Research, 2009.

Pharr, Clyde, trans. *The Theodosian Code and Novels, and the Sirmondian Constitutions*. The Corpus of Roman law (Corpus juris Romani) v. 1. Princeton: Princeton University Press, 1952.

Rio, Alice, trans. *The Formularies of Angers and Marculf: Two Merovingian Legal Handbooks*. Liverpool: Liverpool University Press, 2009.

Rivers, Theodore John, trans. *Laws of the Alamans and Bavarians*. Philadelphia: University of Pennsylvania Press, 1977.

———, trans. *Laws of the Salian and Ripuarian Franks*. New York: AMS Press, 1986.

Robertson, A.J., ed. *Anglo-Saxon Charters*. Translated by A.J. Robertson. Holmes Beach: W.W. Gaunt, 1986.

Sawyer, P.H., ed. *Anglo-Saxon Charters: An Annotated List and Bibliography*. London: Royal Historical Society, 1968. http://www.esawyer.org.uk/about/index.html.

Scott, S. P., trans. *The Visigothic Code (Forum Judicum)*. Boston: The Boston Book Company, 1910.

Stenton, F.M. *Latin Charters of the Anglo-Saxon Period*. Oxford: Oxford University Press, 1955.

Stephenson, Carl, and Frederick George Marcham, trans. *Sources of English Constitutional History: A Selection of Documents from A.D. 600 to the Interregnum*. Revised edition. New York: Harper & Row, 1972.

Sturluson, Snorri. *The Heimskringla, A History of the Norse Kings*. Translated by Rasmus B. Anderson and Samuel Laing. Vol. 2. London: Norrøe na Society, 1906.

Tacitus. "De Origine et Sitv Germanorvm." *The Latin Library*. Accessed November 8, 2015. http://www.thelatinlibrary.com/tacitus/tac.ger.shtml.

———. *Germania*. Translated by J. B. Rives. New York; Oxford: Clarendon Press; Oxford University Press, 1999.

———. *Tacitus: Dialogus, Agricola, Germania*. Translated by William Peterson. London; New York: The MacMillan Co.; William Heinemann, 1914.

Thorpe, Benjamin. *Ancient Laws and Institutes of England Comprising Laws Enacted Under the Anglo-Saxon Kings from Æthelbirht to Cnut*. Vol. 1. Cambridge: Cambridge University Press, 2012.

Whitelock, Dorothy, ed. *Anglo-Saxon Wills*. Holmes Beach: W.W. Gaunt, 1986.

———, ed. *English Historical Documents*. Vol. 1. c. 500–1042. Oxford: Oxford University Press, 1955.

## Secondary Sources

Abels, Richard P. *Lordship and Military Obligation in Anglo-Saxon England*. Berkeley: University of California Press, 1988.

Alkire, Ti, and Carol Rosen. *Romance Languages: A Historical Introduction*. Cambridge: Cambridge University Press, 2010.

Ammon, Matthias. "'Ge Mid Wedde Ge Mid Aðe': The Functions of Oath and Pledge in Anglo-Saxon Legal Culture." *Institute of Historical Research* 86, no. 233 (2013): 515–535.

Amos, Ashley Crandell. *Linguistic Means of Determining the Dates of Old English Literary Texts*. Medieval Academy books number 90. Cambridge, Mass: Medieval Academy of America, 1980.

Arjava, Antti. "The Survival of Roman Family Law after the Barbarian Settlements." In *Law, Society, and Authority in Late Antiquity*. Oxford: Oxford University Press, 2001.

Barber, Charles Laurence. *The English Language: A Historical Introduction*. Cambridge approaches to linguistics. Cambridge: Cambridge University Press, 1993.

Bassett, Steven, ed. *The Origins of Anglo-Saxon Kingdoms*. London; New York: Leicester University Press, 1989.

Blumenthal, Ralph. "View From Space Hints at a New Viking Site in North America." News. *The New York Times*. Last modified March 31, 2016. Accessed September 20, 2017. https://www.nytimes.com/2016/04/01/science/vikings-archaeology-north-america-newfoundland.html.

Bolton, Timothy. *The Empire of Cnut the Great Conquest and the Consolidation of Power in Northern Europe in the Early Eleventh Century*. Leiden: Brill, 2009.

Brooks, Nicholas. "The Laws of King Æthelberht of Kent: Preservation, Content, and Composition." In *Textus Roffensis: Law, Language, and Libraries in Early Medieval England*, 105–136. Turnhout, Belgium: Brepols, 2015.

Chadwick, H. Munro. *Studies on Anglo-Saxon Institutions*. New York: Russell & Russell, 1963.

Clover, Carol J. "Regardless of Sex: Men, Women, and Power in Early Northern Europe." *Speculum* 68, no. 2 (1993): 363–387.

Davis, Graeme. *Comparative Syntax of Old English and Old Icelandic: Linguistic, Literary and Historical Implications*. Bern: Peter Lang AG, Internationaler Verlag der Wissenschaften, 2005.

Deanesly, M. "Early English and Gallic Minsters." *Transactions of the Royal Historical Society* 23 (1941): 25–69.

Denison, David, ed. *Analysing Older English*. Studies in English Language. Cambridge: Cambridge University Press, 2012.

Drew, Katherine Fischer. *Law and Society in Early Medieval Europe*. London: Variorum Reprints, 1988.

———. "Notes on Lombard Institutions/ Lombard Laws and Anglo-Saxon Dooms." *The Rice Institute Pamphlet* 43, no. 2 (1956).

———. "The Barbarian Kings as Lawgivers and Judges." In *Life and Thought in the Early Middle Ages*, edited by R.S. Hoyt, 7–29. Minneapolis: Minnesota Press, 1967.

Evans, Jonathan D. "The 'Heynesbók' Dragon: An Old Icelandic Maxim in Its Legal-Historical Context." *The Journal of English and Germanic Philology* 99, no. 4 (2000): 461–491.

Faith, Rosamond Jane. "Peasant Families and Inheritance Customs in Medieval England." *The Agricultural History Review* 14, no. 2 (1966): 77–95.

Ferguson, Robert. *The Vikings: A History*. New York: Viking, 2009.

Fisher, John H., and Joseph B. Trahern, eds. *Standardizing English: Essays in the History of Language Change, in Honor of John Hurt Fisher*. First edition. Tennessee studies in literature volume 31. Knoxville: University of Tennessee Press, 1989.

Flechner, Roy. "Pope Gregory and the British: mission as a canonical problem." In *Histoires des Bretagnes*, edited by H. Bouget and Magali Coumert, 5:47–65. Brest: Université de Bretagne occidentale, 2015.

Fontaine, Jacques. "Education and Learning." In *The New Cambridge Medieval History*, 1:735–759. Cambridge: Cambridge University Press, 2005.

Fouracre, Paul, and Richard Gerberding. *Late Merovingian France: History and Hagiography 640–720*. Manchester Medieval Sources Series. Manchester University Press, 1996.

Fulk, R.D., and Christopher M. Cain. *A History of Old English Literature*. 2nd ed. Chichester: Wiley-Blackwell, n.d.

Geary, Patrick J. *Before France and Germany: The Creation and Transformation of the Merovingian World*. New York; Oxford: Oxford University Press, 1988.

———. *The Myth of Nations: The Medieval Origins of Europe*. Princeton: Princeton University Press, 2002.

Goetz, Hans-Werner, Jörg Jarnut, and Walter Pohl, eds. *Regna and Gentes: The Relationship Between Late Antique and Early Medieval Peoples and Kingdoms in the Transformation of the Roman World*. Leiden; Boston: Brill, 2003.

Goffart, Walter. *Barbarian Tides: The Migration Age and the Later Roman Empire*. Philadelphia: University of Pennsylvania Press, 2009.

Goffart, Walter A. *The Narrators of Barbarian History (A.D. 550–800): Jordanes, Gregory of Tours, Bede, and Paul the Deacon*. Princeton: Princeton University Press, 1988.

Gordon, Matthew S. *The Rise of Islam*. Indianapolis: Hackett Publishing Company, Inc., 2008.

Grierson, P. "Election and Inheritance in Early Germanic Kingship." *Cambridge Historical Journal* 7, no. 1 (1941): 1–22.

Hamerow, Helena. "The Earliest Anglo-Saxon Kingdoms." In *The New Cambridge Medieval History*, 1:263–290. Cambridge: Cambridge University Press, 2005.

Harding, Alan. *Medieval Law and the Foundations of the State*. Oxford: Oxford University Press, 2002.

Harries, Jill, and Ian Wood, eds. *The Theodosian Code*. Ithaca: Cornell University Press, 1993.

Hawkes, Sonia Chadwick. "Anglo-Saxon Kent c 425–725." In *Archaeology in Kent to AD 1500*, 64–78. CBA Research Report 48. The Council for British Archaeology, 1982.

Herman, József. *Vulgar Latin*. Translated by Roger Wright. University Park, PA: Pennsylvania State University Press, 2000.

Higham, N. J. *The Convert Kings: Power and Religious Affiliation in Early Anglo-Saxon England*. Manchester; New York: Manchester University Press; St. Martin's Press, 1997.

Higham, Nicholas. *Rome, Britain and the Anglo-Saxons*. London: B.A. Seaby Ltd, 1992.

Hogg, Richard M., N. F. Blake, Roger Lass, Suzanne Romaine, John Algeo, and R. W. Burchfield, eds. *The Cambridge History of the English Language*. Vol. 1. 6 vols. Cambridge; New York: Cambridge University Press, 1992.

Holdsworth, Sir William Searle, and Edward Potton. *A History of English Law*. Boston: Little, Brown & Co., 1922.

Hollister, C. Warren. "The Five-Hide Unit and the Old English Military Obligation." *Speculum* 36, no. 1 (January 1, 1961): 61–74.

Hough, Carole. “The Earliest English Text? The Language of the Kentish Laws Reconsidered.” In *Textus Roffensis: Law, Language, and Libraries in Early Medieval England*, 137–156. Turnhout, Belgium: Brepols, 2015.

Hübner, Rudolf. *A History of Germanic Private Law*. Translated by Francis S. Philbrick. Boston: Little, Brown, and Company, 1918.

James, Edward. “The Origins of Barbarian Kingdoms: The Continental Evidence.” In *The Origins of Anglo-Saxon Kingdoms*, 40–52. London; New York: Leicester University Press, 1989.

Jolowicz, Herbert Felix. *Historical Introduction to the Study of Roman Law*. 2nd ed. London; New York: Cambridge University Press, 1954.

Jones, Michael E. “The Legacy of Roman Law in Post-Roman Britain.” In *Law, Society, and Authority in Late Antiquity*. Oxford: Oxford University Press, 2001.

Jurasinski, Stefan A. “The Continental Origins of Æthelberht’s Code.” *Philological Quarterly* 80, no. 1 (2001): 1–15.

Keynes, Simon. “Cnut’s Earls.” In *The Reign of Cnut*, edited by Alexander R. Rumble. London: Leicester University Press, 1994.

———. *The Diplomas of King Æthelred “The Unready” (978-1016): A Study in Their Use as Historical Evidence*. Cambridge: Cambridge University Press, 2005.

Kramer, S. N. “The Oldest Laws.” *Scientific American* 188, no. 1 (1953): 26–29.

———. “Ur-Nammu Law Code.” *Orientalia* 23, no. 1 (1954): 40–51.

Larson, Laurence M. “The Political Policies of Cnut as King of England.” *The American Historical Review* 15, no. 4 (1910): 720–743.

Lawson, M. K. *Cnut: The Danes in England in the Early Eleventh Century*. London: Longman, 1993.

Levy, Ernst. “Reflections on the First ‘Reception’ of Roman Law in Germanic States.” *The American Historical Review* 48, no. 1 (1942): 20–29.

———. *West Roman Vulgar Law: The Law of Property*. Philadelphia: American Philosophical Society, 1951.

Little, A. G. “Gesiths and Thegns.” *The English Historical Review* 4, no. 16 (1889): 723–729.

Loyn, H.R. “Gesiths and Thegns in Anglo-Saxon England from the Seventh to the Tenth Century.” *The English Historical Review* 70, no. 277 (1955): 529–549.

———. “The Term Ealdorman in the Translations Prepared at the Time of King Alfred.” *The English Historical Review* 68, no. 269 (1953): 513–525.

Lyon, Bryce. *A Constitutional and Legal History of Medieval England*. New York: Harper & Row, 1960.

Mack, Katharin. “Changing Thegns: Cnut’s Conquest and the English Aristocracy.” *Albion: A Quarterly Journal Concerned with British Studies* 16, no. 4 (1984): 375–387.

Mathisen, Ralph W., ed. *Law, Society, and Authority in Late Antiquity*. Oxford: Oxford University Press, 2001.

McKitterick, Rosamond. “A Literate Community: The Evidence of the Charters.” In *The Carolingians and the Written Word*, 77–134. Cambridge: Cambridge University Press, 1989.

———. *The Carolingians and the Written Word*. Cambridge: Cambridge University Press, 1989.

———, ed. *The New Cambridge Medieval History*. 5 vols. New York: Cambridge University Press, 1995.

———, ed. *The Uses of Literacy in Early Mediaeval Europe*. Cambridge: Cambridge University Press, 1990.

Miller, William Ian. “Avoiding Legal Judgment: The Submission of Disputes to Arbitration in Medieval Iceland.” *The American Journal of Legal History* 28, no. 2 (1984): 95–134.

———. *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland*. Chicago: University of Chicago Press, 1990.

———. “Choosing the Avenger: Some Aspects of the Bloodfeud in Medieval Iceland and England.” *Law and History Review* 1, no. 2 (1983): 159–204.

Morris, Colin. *The Discovery of the Individual, 1050-1200*. New York: Harper & Row, 1972.

Muller, Henri Francois. “When Did Latin Cease to Be a Spoken Language in France.” *Romanic Review* 12 (1921): 318–334.

Mumby, Julie. “Fathers or Uncles? A Problem in the Old English Tract Known as Wergeld.” In *Textus Roffensis: Law, Language, and Libraries in Early Medieval England*, 157–174. Turnhout, Belgium: Brepols, 2015.

Norberg, Dag Ludvig. *Manuel pratique de latin médiéval*. Paris: A. & J. Picard, 1968.

Oliver, Lisi. “Sick-Maintenance in Anglo-Saxon Law.” *The Journal of English and German Philology* 107, no. 3 (2008): 303–326.

———. *The Beginnings of English Law*. Toronto: University of Toronto Press, 2002.

———. *The Body Legal in Barbarian Law*. Toronto: University of Toronto Press, 2011.

———. “The Language of the Early English Laws.” Unpublished doctoral dissertation, Harvard University, 1995.

———. “Who Wrote Alfred’s Laws?” In *Textus Roffensis: Law, Language, and Libraries in Early Medieval England*, 157–174. Turnhout, Belgium: Brepols, 2015.

Radding, Charles M., and William W. Clark. *Medieval Architecture, Medieval Learning: Builders and Masters in the Age of Romanesque and Gothic*. New Haven: Yale University Press, 1994.

Randers-Pehrson, Justine Davis. *Barbarians and Romans: The Birth Struggle of Europe, A.D. 400–700*. Norman: University of Oklahoma Press, 1983.

Ranković, Slavica, Leidulf Melve, and Else Mundal, eds. *Along the Oral-Written Continuum: Types of Texts, Relations, and Their Implications*. Utrecht Studies in Medieval Literacy 20. Turnhout; Abingdon: Brepols, 2010.

Reynolds, Susan. *Kingdoms and Communities in Western Europe, 900–1300*. Oxford: Clarendon Press, 1986.

Richards, Mary P. "Elements of a Written Standard in the Old English Laws." In *Standardizing English: Essays in Honor of John Hurt Fisher*. Knoxville: University of Tennessee Press, 1989.

Richardson, H. G., and G. O. Sayles. *Law and Legislation from Æthelberht to Magna Carta*. Edinburgh: University Press, 1966.

Rio, Alice. *Legal Practice and the Written Word in the Early Middle Ages: Frankish Formulae, c.500–1000*. Cambridge: Cambridge University Press, 2009.

Sayles, G.O. *The Medieval Foundations of England*. Philadelphia: University of Pennsylvania Press, 1950.

Schutz, Herbert. *The Germanic Realms in Pre-Carolingian Central Europe, 400–750*. New York: Peter Lang Publishing, 2000.

Seebohm, Frederic. *Tribal Custom in Anglo-Saxon Law: Being an Essay Supplemental to (1) "The English Village Community", (2) "The Tribal System in Wales."* London; New York: Longmans, Green, and Co., 1902.

Sirks, Boudewijn. "The Farmer, the Landlord, and the Law in the Fifth Century." In *Law, Society, and Authority in Late Antiquity*. Oxford: Oxford University Press, 2001.

Smith, Scott Thompson. *Land and Book: Literature and Land Tenure in Anglo-Saxon England*. Toronto: University of Toronto Press, 2012.

Stenton, F.M. *Anglo-Saxon England*. 2nd ed. London: Oxford University Press, 1947.

———. *Latin Charters of the Anglo-Saxon Period*. Oxford: Oxford University Press, 1955.

Stephenson, Andrew. *A History of Roman Law, with a Commentary on the Institutes of Gaius and Justinian*. Boston: Little, Brown, and Company, 1912.

Strauss, Mark. "Discovery Could Rewrite History of Vikings in New World." News. *National Geographic*. Last modified March 31, 2016. Accessed September 20, 2017. http://news.nationalgeographic.com/2016/03/160331-viking-discovery-north-america-canada-archaeology/.

Stubbs, William. *The Constitutional History of England: In Its Origin and Development*. 6th ed. Vol. 1. Oxford: Clarendon Press, 1903.

Szarmach, Paul E., ed. *Studies in Earlier Old English Prose*. Albany: State University of New York Press, 1986.

Todd, Malcolm. *The Early Germans*. Oxford: Blackwell Publishers, 1992.

———. *The Northern Barbarians: 100 BC–AD 300*. London: Hutchinson & Co, 1975.

Vinogradoff, Paul. *Roman Law in Mediaeval Europe*. London: Harper, 1909.

Wallace-Hadrill, J.M. *Early Germanic Kingship in England and on the Continent*. Oxford: Clarendon Press, 1971.

———. *The Long-Haired Kings*. Toronto: University of Toronto Press, 1982.

Werner, Martin. "The Liudhard Medalet." In *Anglo-Saxon England*, 20:27–42. Cambridge: Cambridge University Press, 1992.

Williams, Ann. *Kingship and Government in Pre-Conquest England, c.500–1066*. London: Macmillan Press LTD, 1999.

———. *The World Before Domesday: The English Aristocracy 870–1066*. London: Hambledon Continuum, 2008.

Williams, Henrik. "The Origin of the Runes." In *Frisian Runes and Neighbouring Traditions: Proceedings of the First International Symposium on Frisian Runes at the Fries Museum, Leeuwarden 26–29 January 1994*, edited by Tineke Looijenga and Arend Quak, 211–218. Amsterdamer Beiträge zur älteren Germanistik 45. Amsterdam: Rodopi, 1996.

———. "The Romans and the runes: Uses of writing in Germania." In *Runor och ABC: Elva föreläsningar från ett symposium i Stockholm våren 1995*, edited by Staffan Nyström, 177–193. Opuscula 4. Stockholm, 1997.

Wood, Ian. "The Code in Merovingian Gaul." In *The Theodosian Code*, 161–177. Ithaca: Cornell University Press, 1993.

———. "The Mission of Augustine of Canterbury to the English." *Speculum* 69, no. 1 (1994): 1–17.

———. *The Merovingian Kingdoms, 450–751*. London: Longman, 1994.

Wormald, Patrick. *Legal Culture in the Early Medieval West*. London: Hambledon Press, 1999.

———. "The Leges Barbarorum: Law in the Post-Roman West." In *Regna and Gentes: The Relationship between Late Antiquity and Early Medieval Peoples and Kingdoms in the Transformation of the Roman World*. Leiden; Boston: Brill, 2003.

———. *The Making of English Law: King Alfred to the Twelfth Century*. Oxford: Blackwell Publishers, 1999.

———. “The Uses of Literacy in Anglo-Saxon England and Its Neighbours.” *Transactions of the Royal Historical Society* 27 (1977): 95–114.

Wright, Roger. *Late Latin and Early Romance in Spain and Carolingian France*. Liverpool: F. Cairns, 1982.

Yorke, Barbara. *Kings and Kingdoms of Early Anglo-Saxon England*. London: B.A. Seaby Ltd, 1990.

Zilmer, Kristel. “Viking Age Rune Stones in Scandinavia: The Interplay between Oral Monumentality and Commemorative Literacy.” In *Along the Oral-Written Continuum: Types of Texts, Relations, and Their Implications*, 135–162. Utrecht Studies in Medieval Literacy 20. Turnhout; Abingdon: Brepols, 2010.

“Habitat of a Honey Bee: Beehives, Climates & Locations of Honeybees.” *Orkin.Com*. Accessed October 25, 2017. https://www.orkin.com/stinging-pests/bees/habitat-of-a-honey-bee/.

## Tertiary Sources

Akerman, John Yonge. *The Numismatic Chronicle and Journal of the Royal Numismatic Society*. Vol. 7. London: The Royal Numismatic Society, 1845.

Bandle, Oskar, Kurt Braunmuller, Ernst Hakon Jahr, Allan Karker, Hans-Peter Naumann, and Ulf Teleman. *The Nordic Languages: An International Handbook of the History of the North Germanic Languages*. Vol. 1. Berlin; New York: Walter de Gruyter, 2002. https://www.degruyter.com/doi/book/10.1515/9783110148763.1.

*Bosworth and Toller: An Anglo-Saxon Dictionary, Based on the Manuscript Collections of the Late Joseph Bosworth*, n.d. http://www.ling.upenn.edu/kurisuto/germanic/oe_bosworthtoller_about.html.

Cleasby, Richard, and Gudbrand Vigfusson. “An Icelandic-English Dictionary.” Dictionary. *Germanic Lexicon Project*. Last modified 1874. http://lexicon.ff.cuni.cz/texts/oi_cleasbyvigfusson_about.html.

———. *An Icelandic-English Dictionary*, 1874.

Kroonen, Guus, ed. *Etymological Dictionary of Proto-Germanic*. Leiden Indo-European Etymological Dictionary Series 2. Leiden; Boston: Brill, 2013.

Latham, R.E., ed. *Revised Medieval Latin Word-List from British and Irish Sources With Supplement*. Oxford: Oxford University Press, 2012.

Orel, Vladimir E. *A Handbook of Germanic Etymology*. Leiden; Boston: Brill, 2003.