

**ANGLO-SAXON CONSTITUTIONAL HISTORY (CONT'D)**  
**ANGLO-SAXON LAW AND CONSTITUTION AS VIEWED FROM THE LAW “CODES”**

**I. AETHELBERHT'S LAWS**

1. The Anglo-Saxon laws differ from the contemporary laws on the Continent
  - a. Written in the vernacular rather than bad Latin
  - b. Extend into the 11th century, whereas the main Continental series stop in the 9th
2. Bede (*Mats.* p. II-3)

In the year of our Lord's incarnation 616, which is the 21st year after Augustine with his companions was sent to preach to the nation of the English, Ethelbert, king of the people of Kent, after his temporal kingdom which he had held most gloriously for 56 years, entered into the eternal joys of the heavenly kingdom. ... King Ethelbert died on 24 February ... and was buried in the chapel of St Martin within the church of the blessed Apostles Peter and Paul, where also Queen Berhta lies buried. Among the other benefits which in his care for his people he conferred on them, he also established for them with the advice of his councillors judicial decrees after the examples of the Romans, which, written in the English language, are preserved to this day and observed by them; in which he first laid down how he who should steal any of the property of the Church, of the bishop, or of other orders, ought to make amends for it, desiring to give protection to those whom, along with their teaching, he had received.

- a. Can we believe any of this?
  - i. On balance, it seems likely that Æthelberht became a Christian, at least in some sense.
  - ii. It certainly looks as if the document that we have is the one that Bede had, at least insofar as the first 7 chapters are concerned. Bede may have had a prologue that we don't have. Compare the prologue to the code of Wihtred (c. 695):

During the sovereignty of Wihtred, the most gracious king of Kent, in the fifth year of his reign, the ninth Indiction, the sixth day of Rugern, in a place called Barham, there was assembled a deliberative council of the notables. There were present there Berhtwald, the chief bishop of Britain, and the above-mentioned king; the bishop of Rochester was called Gefmund; and every order of the Church of the province expressed itself in unanimity with the loyal laity.

- iii. Augustine's mission is probably not responsible for introducing writing in Roman characters to Kent. Liudhard, Queen Berhta's bishop, is a possibility, as are the Franks in general.
- iv. The manuscript of the code is late (12th century; see *Mats.*, p. II-23), but Lisi Oliver demonstrated that it contains archaisms that no forger after the 9th century could have known.

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þu sýndon þa domas þe æðelþylc cýnny  
nætte on ađustinus dæge.

**G**ODES FEOW. TEL  
píccan. xii. gýlde. Biscopes feoh.  
xi. gýlde. Preostes feoh. ix. gýlde.  
Diacones feoh. vi. gýlde. Clepo  
ces feoh. iii. gýlde. Cipic fýp.  
ii. gýlde. M. fýp. ii. gýlde. Gif cýnny hif  
leode to him gehateþ ȝheom mon þaþ ȝfel zedo.  
ii. bote. ȝcýnny. l. seillinga. Gif cýnny æt  
mannes ham dýnceþ. ȝðeþ man hý ȝpes. hý æt  
zedo. cpi bote zebete. Gif fýz man cýnnyge  
stele. ix. gýlde fop gýlde. Gif meýnnyges tu  
ne man mannan of slea. l. seill. zebete. Gif man  
fýz ne mannan of sleah. cýnnyge. l. seill. to  
dýlhem beage. Gif cýnnyges ȝmýl. fýnd olþe  
leodpne mannan of sleh. ȝðeþ man leod zelde  
fop zelde. Cýnnyges mýndbýp. l. seillinga. Gif  
fýz man fýeum seah. iii. zebete. ȝcýnnyge aze þ  
píte ȝealle þa elþe. Gif man þis cýnnyges meý  
den man zelyþ. l. seillinga zebete. Gif lno ȝm  
dende þeopafio. xxv. seillinga zebete. Dio þpude  
xii. seillinga. Cýnnyges fedes. l. x. seillinga  
fop zelde. Gif on ceoples tme man mannan

Text de eam Roffu. p. Emulstu epia / ref. ilon.

- v. The first 7 chapters are probably somewhat later than the base text.
- b. What does Bede mean by:
  - i. 'judicial decrees' (*decreta iudicialia; domas*)
  - ii. 'according to the examples of the Romans' (*iuxta exempla Romanorum*)
- 3. (*Mats.*, p. II-24: "Godes feoh 7 ciricean XII [twelf] gylde. Biscopes feoh XI [endlefan] gylde. Preostes feoh IX [nigon] gylde. Diacones feoh VI [siex] gylde. Cleroces feoh III [ðrim] gylde. Ciricfriþ II [twæm] gylde. M[æthl]friþ II [twæm] gylde." Literally: "God's and the church's property 12 by payment. Bishop's property 11 by payment. Priest's property 9 by payment. Deacon's property six by payment. Clerk's property 3 by payment. Church-peace 2 by payment, assembly-peace 2 by payment.")

The problems of:

- a. The extreme terseness of the language suggests that we are dealing with the beginnings of literacy.
- b. The self-understood.
- c. Authenticity: (1) apodictic rather than casuistic; (2) makes distinctions that no Kenting in his period would have understood; (3) compensates the bishop more than the king; (4) violates Gregory I's instructions to Augustine. Conclusion: c. 1–7 were added later.
- 4. Method.
  - a. juristic elaboration, e.g., the anatomical elaboration of cc. 33–72, e.g. c. 48 For the foremost four teeth, for each 6 shillings. 48.1. [For] that tooth which is beside there, 4 shillings. 48.2. [For] that [tooth] which is beside that one, 3 shillings. 48.3. And [for] each of the others, a shilling.
  - b. reasoning by analogy, *ciricfirth = mæthlfrith*.
- 5. Organization
  - a. the Church cc.1–7
  - b. the king cc. 8–17
  - c. eorls cc. 18–19
  - d. ceorls cc. 20–71
    - 20–31 *mundbyrd, wergeld*, prop. offenses
    - 32–71 personal injury These provisions have their own internal organization, from head to toe of the human body. They also have in them more linguistic archaisms than do the other provisions. They may be derived from an earlier oral text that some people committed to memory.
  - e. women cc.72–78
  - f. servants, lower status persons cc. 78–83 (brief overlap here)
- 6. The conceptual economy of the laws
  - a. *wergeld*. literally 'man-price'
  - b. *bot*, 'compensation', *gebete*, 'let him/her pay as compensation'

- c. *mundbyrd*, ‘area of protection’
  - d. *frith*, ‘peace’ occurs only in cc. 6-7, but it’s there
  - e. *wite*, payment to king similar to what we would call a ‘fine’
  - f. This is clearly not criminal law, but it’s not quite civil law either.
  - g. These are probably not absolute liability offenses. As O.W. Holmes, Jr., said in answer to the argument that the Germanic peoples were primitive and did not know the difference between intentional and negligent harm: “Even a dog distinguishes between being stumbled over and being kicked.” We know practically nothing about how disputes were resolved in Æthelberht’s Kent. We are told that there was a *mæthl*, an assembly, and we might imagine that disputes were resolved there. There are also indications in the laws that disputes were resolved by negotiation between the kin-groups of the offender and the victim. This may be how ideas of intention, negligence, and contributory negligence worked their way into a system that formally did not recognize them.
7. Despite all the detail, there’s a lot missing in Æthelberht’s laws. We know practically nothing about courts and procedure. Personal status features prominently but not how one acquired or lost status. Property, succession, and contract are all mentioned, but there is little about how these institutions worked. This is a problem, once more, of the self-understood.
8. The sorts and conditions of men; Æthelberht’s laws and Ine’s laws (c. 700) compared. (*Mats.* p. II-47)

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

- a. In neither Æthelberht’s laws nor in Ine’s is there a *wergeld* for the king. If you kill the king, that’s war.
- b. The *wergeld* for an *eorl* is the same in Æthelberht’s laws and Ine’s, 6000 silver pennies. Ine also has a secondary class of *eorlas* who get half. It is thought that these people are the descendants of the British nobility.
- c. The *wergeld* for an ordinary free peasant (*ceorl*) in Æthelberht’s laws is twice that Ine’s (2000 vs. 1000 d.). This difference may have lasted a long time. In Domesday Book in 1086 most of the peasants in the counties that made up the former Wessex were serfs. Kent is notable for the number of free peasant landholders that it had.
- d. Price lists from London in the first half of the 10th century value an ox at 30 pennies, a cow at 20, a pig at 10, a sheep at 5. Probably no ordinary *ceorl* in Æthelberht’s Kent could



command 400 sheep, and very few kingroups of *ceorlas* could. Æthelberht's laws suggest that the relationship between the various payments has been carefully thought out. Whether any of the amounts, however, bore any resemblance to what actually got paid is a question that we might well ask.

9. Various views of what the code was all about:

- a. The motivation that might be derived from Bede, that the purpose of the laws was fitting the Church into the society, won't work. C.1–7 are suspect and nothing else in the laws tells us about the church, contrast Wihtred at the end of the century, which has a great deal about the church.
- b. Establish that compensation may take the place of blood revenge. We may have doubts.
- c. Establish something like an Irish or an English penitential. For example, from an Irish penitential of roughly 800:

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

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

- d. What the customary law was.
- e. Mystification.
- f. An ideal that was not meant to be applied.
- g. What happens at the beginning of literacy.

II. THE ANGLO-SAXON “CONSTITUTION” IN SUMMARY

1. The role of the king (see Edgar's coronation oath 975, *Mats.* p. II–3):

“In the name of the Holy Trinity, I promise three things to the Christian people of my subjects: first that God's Church and all Christian people of my realm shall enjoy true peace; second, that I forbid to all ranks of men robbery and wrongful deeds; third that I urge and command justice and mercy in all judgments, so that the gracious and compassionate God who lives and reigns may grant us all His everlasting mercy.”

- a. keep the peace internally
- b. war, external peace, territorial expansion, personal aggrandizement, *fyrð*, *brycbot*, *burghbot*

- c. patron of warriors (not only by giving rings but also land), “civil servants” (thegns), monasteries—>art, religion, poetry
- d. economy—laws about sales, merchants, borough charters, money
- 2. Strong local institutions—hide, tithing, hundred, shire, borough—a device for taxation, levying an army, administering justice (no distinction between criminal and civil)
- 3. Social structure—king, lord, freemen, slaves, certainly not a democracy, but certainly too a notion of free men—the free peasant.
- 4. The church
- 5. Kingship, lordship, kinship—an attempt to get a sense of the dynamics.
  - a. Great increase of the power of the king
  - b. Lordship becomes more important than kindred ties.
  - c. What is the relationship between the increasing importance of kingship and lordship and the seeming decline of the kindred?
- 6. Bertha Phillpotts’ theory of the decline of the kindred.
  - a. Where kindred is strong and can pay lordship is weak—Scandinavia, the Low Countries vs. Iceland, England, Normandy, Central and South Germany.
  - b. The main disintegrating force of the kindred is migration by sea.
  - c. Granted the bilateral nature of the Germanic kindred it is a constantly shifting group.
- 7. The kindred as evidenced by:
  - a. Anglo-Saxon kinship terminology: maternal and paternal aunts and uncles are distinguished; hence the terminology is bilateral, but there is a preference for the patriline: *tacor*, means brother-in-law, in the sense of husband’s brother, but *aðum* is used generically for wife’s brother, sister’s husband, and son-in-law.
  - b. The laws (*Mats.*, p. II-49)

Abt 30 (p. II–29): “If a person should kill someone, let him pay [with] his own money or unblemished property, whichever.”

Abt 24: If a person kills someone, let him pay an ordinary person-price, 100 shillings.

24.1. If a person kills someone, let him pay 20 shillings at the open grave, and let him pay the entire person[-price] in 40 nights.

24.2. If the killer departs from the land, let his kinsmen pay a half person[-price]

Alf 42 (p. II–47): “We also command that any one knowing his enemy to be at home shall not fight him before demanding justice of him [in court]. If [the accuser] has strength to surround and besiege his enemy inside [the latter’s house], let him be held there seven nights and not attacked so long as he will remain inside. Then after seven nights, if the [besieged enemy] will surrender and give up his weapons, let him be kept unharmed for thirty nights while news of him is sent to his kinsmen and friends. ... If, however, [the accuser] lacks the strength to besiege his enemy, he shall ride to the alderman and ask him for aid; if the latter refuses him aid, he shall ride to the king before beginning a fight. ... We declare furthermore that one may fight for his lord without incurring blood-feud, if the lord has been attacked. So also the lord

may fight for his man. In the same way one may fight for his blood-relative, should the latter be unjustly attacked, except against his own lord—that we do not permit. ...”

2 Æthelstan 2 (p. II-47): “And with regard to lordless men from whom no justice is to be obtained, we have ordained that their kindred be commanded to settle them in homes where they will be subject to folkright, and to find them lords in the popular court (*folcgemote*). And if, by the day set, the kindred will not or cannot do so, he shall thenceforth be an outlaw, to be treated as a thief by any one who meets him. ...”

Edmund 2.1 (p. II-47): “2.1. Henceforth, if any man slays another, [we order] that he by himself shall incur the blood-feud, unless he, with the help of his friends, buys it off by paying the full wergeld [of the slain man] within twelve months, no matter of what rank the latter may be. If, however, his kinsmen abandon him, refusing to pay anything in his behalf, then it is my will that the whole kindred, with the sole exception of the actual slayer, be free of the blood-feud so long as they give him neither food nor protection. If, on the other hand, one of his kinsmen later gives him such assistance, the former shall forfeit to the king all that he has, and he shall incur the blood-feud [along with the slayer] because the latter has already been disowned by the kindred. And if any one of the other kindred takes vengeance on any men besides the true slayer, he shall incur the enmity of the king and all of the king’s friends, and he shall forfeit all that he has.”

8. The relationship of the king to the laws (*Mats.*, p. II-47):

“I then, King Alfred, have collected these [dooms] and ordered [them] to be written down—[that is to say,] many of those which our predecessors observed and which were also pleasing to me. And those which were not pleasing to me, by the advice of my *witan*, I have rejected, ordering them to be observed only as amended. I have not ventured to put in writing much of my own, [because I did not know] what might please those who shall come after us. So I have here collected the dooms that seemed to me the most just, whether they were from the time of Ine, my kinsman, from that of Offa, king of the Mercians, or from that of Æthelberht, the first of the English to receive baptism; the rest I have discarded. I, then, Alfred, king to the West Saxons, have shown these [dooms] to all my *witan*, who have declared it is the will of all that they be observed. . . .”