The laws of Æthelberht of Kent, the first page of the only manuscript copy, the *Textus Roffensis*, from the collection of the Dean and Chapter of Rochester Cathedral, now housed in the Kent County Archives in Maidstone. The photograph is from the frontispiece of H. G. Richardson and G. O. Sayles, *Law and Legislation from Æthelberht to Magna Carta* (Edinburgh, 1966).

D. ÆTHELBERHT'S "CODE"

in LISI OLIVER, THE BEGINNINGS OF ENGLISH LAW 60–81
(Toronto, 2002)[†] [footnotes renumbered]

Þis syndon þa domas þe Æðelbirht cyning asette on AGustinus dæge.[1]

1. **G**odes feoh ⁊ ciricean XII gylde.   [1]

2. **B**iscopes feoh XI gylde.

3. **P**reostes feoh IX gylde.

4. **D**iacones feoh VI gylde.

5. **C**leroces feoh III gylde.

6. **C**iricfriþ II gylde.

7. **M**[æthl]friþ[2] II gylde.

8. **G**if cyning his leode to him gehateþ ⁊ heom mon þær yfel gedo, II bóte, ⁊ cyninge L scillinga.   [2]

9. **G**if cyning æt mannes ham drincæþ ⁊ ðær man lyswæs hwæt gedo, twibote gebete.   [3]

10. **G**if frigman cyninge stele, IX gylde forgylde.   [4]

11. **G**if in cyninges tune man mannan of slea, L scilł gebete.   [5]

12. **G**if man frigne mannan of sleahþ, cyninge L scilł to drihtinbeage.   [6]

[†] Copyright © The University of Toronto Press Incorporated 2002. Boldface in the Anglo-Saxon text indicates that the scribe has decorated the upper-case letter. Although he is not totally consistent, this is a good clue to what he regarded as separate clauses. In the notes I have replaced Professor Oliver's boldface renditions of the manuscript text with italics.

[1] This is in red ink, different from the black of the text proper. The diphthong in Latin "Augustinus" is anglicized to a monophthong.

[2] Only a hook from what could have been the *t* remains legible in the manuscript. The restoration is based on the transcription made by Francis Tate in 1589.

D. ÆTHELBERHT'S "CODE"

in LISI OLIVER, BEGINNINGS OF ENGLISH LAW 60–81
(Toronto, 2002)[†] [footnotes renumbered and integrated]

These are the decrees which King Æthelberht set in Augustine's time.

1. God's property and the church's [is to be compensated] with 12–fold compensation.[1]

2. A bishop's property [is to be compensated] with 11–fold compensation.

3. A priest's property [is to be compensated] with 9–fold compensation.

4. A deacon's property [is to be compensated] with 6–fold compensation.

5. A cleric's property [is to be compensated] with 3–fold compensation.

6. [Violation of] church peace [is to be compensated] with 2–fold compensation.

7. [Violation of] assembly peace [is to be compensated] with 2–fold compensation.

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

9. If the king drinks at a person's home, and a person should do anything seriously dishonest[3] there, let him pay two[-fold] restitution.

10. If a freeman should steal from the king, let him compensate with 9[-fold] compensation.

11. If a person should kill someone in the king's dwelling,[4] let him pay 50 shillings.

12. If a person kills a free man, 50 shillings to the king as lord-payment.

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[†] Copyright © The University of Toronto Press Incorporated 2002. Professor Oliver's commentary (*id.*, 82–116) is not reproduced here, but is well worth looking at if one is puzzling over the possible meaning of various provisions. In the notes have replaced Professor Oliver's boldface renditions of the manuscript text with italics.

[1] As discussed in Chapter One, the block of church laws almost surely represents the most recent addition to the body of laws; previous editions have therefore grouped them under a single number. These first seven clauses are syntactically ambiguous, as *gylde* can be technically translated as a dative/instrumental noun (*as compensation*) or a subjunctive verb (*let him compensate*). This block of laws could thus also be translated along the template: *[For] God's property and the church, let him pay 12[-fold compensation]*. Other than in these clauses, *gelde* appears in this text four times with a nominal reading (§10, §28.1, §75, §83) and twice with a verbal reading (§30, §70.1). Felix Liebermann, *Die Gesetze der Angelsachsen* (Halle: M. Niemeyer), 3:4 argues for a nominal reading on the basis of other Germanic parallels, where, for example, the term *angylde* 'single compensation' is attested; in his Glossary (*Gesetze*, 2:103) he enters these terms as compounds, such as *siexg~* 'six-fold compensation' or *nigong~* 'nine-fold compensation.' This could be an instrumental use of the dative, or a denominal adverbial suffix, as in *twibote* in §8 and §9 (*Gesetze*, 2:216). As comparative evidence disambiguates the Old English grammatically ambiguous structure, I have followed Liebermann's lead in translating *gylde* as a noun.

[2] According to J. M. Wallace-Hadrill, *Early Germanic Kingship in England and on the Continent* (Oxford: Clarendon, 1971), 38, the term *leod*, with its Frankish equivalent *leudes*, "may reveal a social rank common to Franks and Kentings; or just possibly one of Augustine's Frankish interpreters may have had a hand in writing down the Kentish vernacular and used an English verbal equivalent of something he was familiar with at home." But the Germanic term is derived from an Indo-European root **leudh-* 'offspring, people' (See Julius Pokorny, *Indogermanisches etymologisches Wörterbuch* (Bern: Francke), 684), and therefore its appearance in written records of the Franks and the Kents could simply be a case of common retention unattested in other remaining Germanic texts. Given the skimpy records which have come down to us in the early West-Germanic vernaculars, I would hesitate to place too much reliance on this term to argue strongly for a Frankish/Kentish connection here.

[4] See Christine Fell, "A 'friwif locbore' Revisited," *Anglo-Saxon England* 13 (1984): 157–66 for the interpretation of *lyswæs* as 'seriously dishonest.'

[5] Whitelock translates *tun* as 'estate'; see, however, discussion in Commentary under *Theft*.

13. **G**if cyninges ambiht smið oþþe laadrincmannan ofslehð, [med]uman leodgelde[1] forgelde.   [7]

14. **C**yninges mundbyrd, L scillinga.   [8]

15. **G**if frigman freum stelþ, III gebete, ⁊ cyning age þæt wite ⁊ ealle þa æhtan.   [9]

16. **G**if man wið cyninges mægdenman geligeþ, L scillinga gebete.   [10]

    16.1. **G**if hio grindende þeowa sio, XXV scillinga gebete.   [11]

    16.2. **S**io þridde, XII scillingas.

17. **C**yninges fedesl, XX scillinga forgelde.   [12]

18. **G**if on eorles tune man mannan /*1v*/[2] ofslæhþ, XII scilł gebete.   [13]

19. **G**if wið eorles birele man geligeþ, XII scilł gebete.   [14]

20. **C**eorles mundbyrd, VI scillingas.   [15]

21. **G**if wið ceorles birelan man geligeþ, VI scillingum[3] gebete.   [16]

    21.1. **A**et þære oþere ðeowan,[4] L scætta.

    21.2. **A**et þare þriddan, XXX scætta.

22. **G**if man in mannes tún ærest geirneþ, VI scillingu*m* gebete.   [17]

    22.1. **S**e þe æfter irneþ, III scillingas.

    22.2. **S**iððan gehwylc scilling.

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[1] Thus restored by Liebermann, presumably on the model of §24. The lower part of the *d* in [*med*] is still legible in the manuscript.

[2] There is a space here roughly equal to the length of the verb *of slæhþ*.

[3] Nasal extension line above *u*. This is the first use of the archaic Dative of Quantity; see the discussion in Chapter One.

[4] *n* added later above *a*.

13. If [a person] kills the king's official [?] smith[1] or ?herald/guide, let him pay an ordinary person-price.[2]

14. [For violation of] the king's protection, 50 shillings.[3]

15. If a freeman steals from a freeman, let him pay 3[-fold], and the king obtains that fine or all the possessions.[4]

16. If a man lies with the king's maiden, let him pay 50 shillings.

    16.1. If she should be a "grinding" slave, let him pay 25 shillings.[5]

    16.2. If she should be [of the] third [rank], 12 shillings.[6]

17. [For] feeding of the king, let him pay 20 shillings.[7]

18. If a person kills someone in a nobleman's dwelling, let him pay 12 shillings.

19. If a person lies with a nobleman's cupbearer,[8] let him pay 12 shillings.

20. [For violation of] a freeman's protection, 6 shillings.[9]

21. If a person lies with a freeman's cupbearer,[10] let him pay with 6 shillings.

    21.1. For that second [rank of female slave], 50 sceattas.[11]

    21.2. For that third [rank], 30 sceattas.

22. If a person breaks [as the] first into someone's dwelling, let him pay with 6 shillings.

    22.1. He who breaks in next, 3 shillings.

    22.2. Afterwards, each a shilling.

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[1] Liebermann takes *ambiht smið* as a compound meaning 'official smith'; as in other medieval manuscripts, the scribe often leaves a space between the component elements of compounds. The manuscript break between the two elements could, however, represent a word boundary, giving the meaning of 'official [or] smith.' Whether *laadrinc man* should be interpreted as 'lead-warrior man [=guide]' or 'bringing-warrior-man [=herald/messenger]' is unclear, although Old Norse parallels seem to give preference to the latter. See discussion in Commentary under *King*.

[2] This term provides a literal—if somewhat inelegant—translation of the Kentish *leodgeld*. Unlike the *wergild* 'man-price' of §31, the first component of this compound is gender-neutral. I think it is likely that the two are, in fact, synonyms, but maintain the distinction in translations to preserve the difference inherent in the manuscript.

[3] The 'king's protection' is the right to peace for members of the king's household, retinue, and guests. Injury or damage done to any of these constitutes a violation of protection.

[4] Griffith translates: "the king shall take the fine and all the [stolen] goods." But it makes no sense to assume that the stolen goods would not be returned to the original owner. Following Liebermann and Whitelock, I take the second 7 here to be the adversative 'or' rather than the conjunctive 'and.' See parallels in §§23, 30, 80.

[5] The "grinding slave" is responsible for the production of meal from grain; see discussion in Commentary under *King*.

[6] *sio* can either be a 3rd person singular subjunctive or a feminine demonstrative modifiying *þridde*. In the latter case, the clause would read "[For] the third [rank]..." I have chosen the former, as it parallels the use of *sio* in §16.1.

[7] The term *fedesl* 'feeding' probably refers to the responsibility of the king's subjects to provide him with sustenance: the *feorm* of later texts. Should a person default that duty or wish to commute it to a monetary payment, he owes 20 shillings. See Lisi Oliver, "*Cyninges fedesl*: The Feeding of the King in Æthelberht ch. 12," *Anglo-Saxon England* (1998): 59–75, and references therein.

[8] This figure is a woman—the noun is feminine—despite the fact that the modern *butler*, derived from *birele*, is almost always male.

[9] Whitelock, *EHD*, 392 states that the sense of *ceorl*, which I translate as 'freeman' throughout, is 'peasant proprietor.'

[10] See parallel in §19.

[11] The Kentish *shilling* was a gold piece containing 20 sc*eattas*; the *sceatta* was a smaller gold piece equal in weight to a grain of barley. See discussion in Commentary under *Monetary System*.

23. **G**if man mannan wæpnum bebyreþ ðær ceas weorð, 7 man nænig yfel ne gedeþ, VI scillingum [18]
gebete.

    23.1. **G**if wegreaf sy[1] gedón, VI scillingum gebete. [19]

    23.2. **G**if man þone man of slæhð, XX scillingu*m* gebete. [20]

24. **G**if man mannan ofslæhð, medume leodgeld C scillinga gebete. [21]

    24.1. **G**if man mannan ofslæhð, æt openum græfe, XX scillinga forgelde, 7 in XL nihta ealne [22]
leod[2] forgelde.

    24.2. **G**if bana of lande gewiteþ, ða magas healfne leod forgelden. [23]

25. **G**if man frigne man geb[inde]þ,[3] XX scilɫ gebete. [24]

26. **G**if man ceorlæs hlafætan ofslæhð, VI scillingum gebete. [25]

27. **G**if læt ofslæhð, þone selestan LXXX scɫɫ[4] forgelde. [26]

    27.1. **G**if þane oþerne ofslæhð, LX scillingum forgelde.

    27.2. **Ð**ane þriddan, XL scilling*um* forgelde(n).[5]

28. **G**if friman edorbrecþe gedeþ, VI scillingum gebete. [27]

    28.1. **G**if man inne feoh genimeþ, se man III gelde gebete. [28]

29. **G**if friman edor gegangeð, IIII scillingum gebete. */2r/* [29]

30. **G**if man mannan ofslea, agene scætte 7 unfacne feo gehwilce gelde. [30]

31. **G**if friman wið fries mannes wif geligeþ, his wergilde abicge, 7 oðer wif his agenu*m* scætte [31]
begete 7 ðæm oðrum æt þam[6] gebrenge.

32. **G**if man rihthamscyld þurh stinð, mid weorðe forgelde. [32]

33. **G**if feaxfang geweorð, L sceatta to bote. [33]

34. **G**if banes blice weorðeþ, III scillingum gebete. [34]

---

[1] *i* changed to *y* by scribe.

[2] Manuscript reads *leo_d*.

[3] Thus restored by Liebermann, presumably on the model of §81. The lower part of all characters is still visible.

[4] Added later above last *x* of numeral.

[5] I follow Liebermann in emending this to the singular *forgelde*.

[6] Liebermann suggests emending this to *ham* 'home'; see fn to translation.

23. If a person provides someone with weapons where strife arises, but[1] he does no harm, let him pay with 6 shillings.

    23.1. If highway robbery should be done, let him [i.e., the one who provided the weapons] pay with 6 shillings.

    23.2. If a person kills that man [who is being robbed] let him [i.e., the one who provided the weapons] pay with 20 shillings.

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].

25. If a person binds a freeman, let him pay [with] 20 shillings.

26. If a person kills a freeman's loaf-eater,[2] let him pay with 6 shillings.

27. If [a person] kills a freedman[3] of the first rank, let him pay [with] 80 shillings.

    27.1. If he kills [one of] that second [rank], let him pay with 60 shillings.

    27.2. [For one of] that third [rank], let him pay with 40 shillings.

28. If a freeman breaks into an enclosure,[4] let him pay with 6 shillings.

    28.1. If a person takes property therein, let that man pay 3[-fold] as compensation.

29. If a freeman enters an enclosure [?with intention to rob], let him pay with 4 shillings.

30. If a person should kill someone, let him pay [with] his own money or[5] unblemished property, whichever.

31. If a freeman lies with a free man's wife, let him buy [him/her] off [with] his/her wergild[6] and obtain another wife [for the husband] [with] his own money and bring her to the other man at home.[7]

32. If a person pierces through the rihthamscyld,[8] let him pay with [its] worth.

33. If seizing of hair occurs, 50 sceattas as restitution.

34. If exposure of a bone occurs, let him pay with 3 shillings.

_____

[1] Another adversative use of ⁊ 'and'; see parallels in §§15, 30 and 80.

[2] Etymologically, the members of the household center themselves around the *hlaf* 'loaf': the *hlaford* 'lord' (< guardian of the loaf), the *hlæfdige* 'lady' (< shaper of the loaf) and the *hlæfæta* 'dependent' (< eater of the loaf).

[3] The exact ramifications of the rank *læt* are unclear, as the term occurs nowhere else in Old English; this designation may also include indigenous Welshmen. See discussion in Commentary under *Freedman*.

[4] *edorbryþ* literally means 'fence-breaking'; that is, breaking through the fence surrounding an enclosure, thereby violating the security of the property (and it is thus translated by Liebermann, *Gesetze*, 2:60). See discussion in Commentary under *Breaking and Entering*.

[5] Another example of the adversative ⁊; see parallels in §§15, 23, 80.

[6] As *wif* is neuter and the possessive pronoun *his* can be masculine or neuter, it is grammatically ambiguous whether the *wergild* is that of the man or the woman.

[7] As stated in the fn to the edition, Liebermann suggests an emendation to *ham* 'home.' I am not convinced this is necessary. Modern German still retains the idiom "bei ihm," which is more familiar perhaps in the French "chez lui," in both instances meaning roughly "at his home." Although we do not find this idiom elsewhere in English, as we have no text which predates this one, I would not rule out the possibility that we are seeing here the remnants of an idiomatic use of the pronoun which does not survive long in the Anglo-Saxon territories. The choice of one interpretation over the other does not materially affect the translation.

[8] This word appears nowhere else in Old English, and its meaning is uncertain. See discussion in Commentary under *rihthamscyld*.

35. **G**if banes bite weorð, IIII scillingum gebete. [35]

36. **G**if sio uterre hion gebrocen weorðeþ, X scillingum gebete. [36]

    36.1. **G**if butu sien, XX scillingum gebete. [37]

37. **G**if eaxle gelæmed weorþeð, XXX sciꝈ gebete. [38]

38. **G**if oþer eare nawiht[1] gehereð, XXV sciꝈ gebete. [39]

39. **G**if eare of weorð[2] aslagen, XII sciꝈ gebete. [40]

40. **G**if eare þirel weorðeþ, III sciꝈ gebete. [41]

41. **G**if eare sceard weorðeþ, VI sciꝈ gebete. [42]

42. **G**if eage of weorð, L scilling*um*[3] gebete. [43]

43. **G**if muð oþþe eage woh weorðeþ, XII sciꝈ gebete. [44]

44. **G**if nasu ðyrel weorð, VIIII scillingum gebete. [45]

    44.1. **G**if hit sio an hleore, III sciꝈ gebete. [46]

    44.2. **G**if butu ðyrele sien, VI sciꝈ gebete. [47]

45. **G**if nasu ælcor sceard weorð, gehwylc VI sciꝈ gebete. [48]

46. **G**if ðirel weorþ, VI sciꝈ gebete.[4] [49]

47. **S**e þe cinban forslæhð, mid XX scillingum forgelde. [50]

48. **Æ**t þam feower toðum fyrestum, æt gehwylcum VI scillingas. [51]

    48.1. **S**e toþ se þanne /2v/ bi standeþ, IIII sciꝈ.

    48.2. **S**e þe ðonne bi ðam standeþ, III sciꝈ.

    48.3. **A**nd[5] þon*ne* siþþan gehwylc, scilling.

49. **G**if spræc awyrd weorþ, XII scillingas. [52]

50. **G**if widobane gebroce[n][6] weorðeþ, VI sciꝈ gebete. [52.1]

51. **S**e þe earm þurh stinð, VI scillingum gebete. [53]

52. **G**if earm forbrocen weorð, VI sciꝈ gebete. [53.1]

53. **G**if þuman of aslæhð, XX sciꝈ. [54]

54. **G**if ðuman nægl of weorðeþ, III sciꝈ gebete. [54.1]

55. **G**if man scytefinger of aslæhð, VIIII sciꝈ gebete. [54.2]

56. **G**if man middelfinger of aslæhð, IIII sciꝈ gebete. [54.3]

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[1] Changed from *nowiht* by scribe.

[2] *o* on erasure.

[3] There is a character above the line which Liebermann reads as an open ^{a}, and thus renders the term *scillinga*. However, the scribe never uses such a character elsewhere, and furthermore, this cannot account for the long tail off the *a*. It seems far more likely that this is a *u* with an appended nasal suspension stroke, giving a dative plural *scillingum*; note that this is within the section in which the "Dative of Quantity" is used. (See discussion in Chapter One under *Chronological Layering*.)

[4] Liebermann postulates that a word may be missing from this clause. This seems likely, as §44 has already dealt with the piercing of the nose, and the amounts of restitution are different in the two clauses.

[5] Changed from *ond* by scribe.

[6] Manuscript reads *gebroced*.

35. If cutting of a bone occurs, let him pay with 4 shillings.

36. If the outer *hion* [?=covering of the skull][1] becomes broken, let him pay with 10 shillings.

    36.1. If both [?outer covering and skull] should be [broken], let him pay with 20 shillings.

37. If a shoulder becomes lamed, let him pay [with] 30 shillings.

38. If either ear hears nothing, let him pay [with] 25 shillings.

39. If an ear becomes struck off, let him pay [with] 12 shillings.

40. If an ear becomes pierced, let him pay [with] 3 shillings.

41. If an ear becomes gashed, let him pay [with] 6 shillings.

42. If an eye becomes gouged out, let him pay [with] 50 shillings.

43. If mouth or eye becomes damaged, let him pay [with] 12 shillings.

44. If a nose becomes pierced, let him pay with 9 shillings.

    44.1. If it [i.e., the piercing] should be on the cheek, let him pay [with] 3 shillings.

    44.2. If both [cheeks] should be pierced, let him pay [with] 6 shillings.

45. If a nose becomes gashed otherwise, let him pay [with] 6 shillings for each [gash].

46. If [?it] becomes pierced, let him pay [with] 6 shillings.[2]

47. He who breaks a jawbone, let him pay with 20 shillings.

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.

49. If speech becomes damaged, 12 shillings.

50. If a collarbone becomes damaged, let him pay [with] 6 shillings.

51. He who stabs through an arm, let him pay with 6 shillings.

52. If an arm becomes broken, let him pay [with] 6 shillings.

53. If [a person] strikes off a thumb, 20 shillings.

54. If a thumbnail becomes off, let him pay [with] 3 shillings.

55. If a person strikes off a shooting finger [=forefinger], let him pay [with] 9 shillings.

56. If a person strikes off a middle finger, let him pay [with] 4 shillings.

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[1] The term *hion* appears nowhere else in Old English, and its meaning is uncertain. See discussion in Commentary under *Personal Injury*.

[2] See footnote to §46 in the Old English text. On the basis of other Germanic parallels, Liebermann suggests that the word *þrotu* 'throat' may have been inadvertently omitted by the scribe because of the *þ* of the following *þirel*. See Liebermann, *Gesetze*, 3:11.

57. **G**if man goldfinger of aslæhð, VI sciłł gebete.   [54.4]

58. **G**if man þone[1] lytlan[2] finger of aslæhð, XI sciłł gebete.   [54.5]

59. **Æ**t þam neglum gehwylcum, scilling.   [55]

60. **Æ**t þam lærestan wlitewamme, III scillingas.   [56]

    60.1. **A**nd[3] æt þam maran, VI sciłł.

61. **G**if man oþerne mid fyste in naso slæhð, III sciłł.   [57]

    61.1. **G**if dynt sie, scilling.   [58]

    61.2. **G**if he heahre handa dyntes onfehð, sciłł forgelde.   [58.1]

    61.3. **G**if dynt sweart sie buton wædum, XXX scætta gebete.   [59]

    61.4. **G**if hit sie binnan wædum, gehwylc XX scætta gebete.   [60]

62. **G**if hrif wund[4] weorðeþ, XII sciłł gebete.   [61]

    62.1. **G**if he þurhðirel weorðeþ, XX sciłł gebete.   [61.1]

63. **G**if man gegemed weorðeþ, XXX sciłł gebete.   [62]

    63.1. **G**if man cearwund sie, XXX sciłł gebete.   [63]

64. **G**if man gekyndelice lim awyrdeþ, þrym leudgeldum hine /*3r*/ man forgelde.   [64]

    64.1. **G**if he þurhstinð, VI sciłł gebete.   [64.1]

    64.2. **G**if man inbestinð, VI sciłł gebete.   [64.2]

65. **G**if þeoh gebrocen weorðeþ, XII scillingum gebete.   [65]

    65.1. **G**if he healt weorð, þær motan freond seman.   [65.1]

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[1] The demonstrative here serves to close the section enumerating damage to the fingers.

[2] *i* made into *y* by scribe.

[3] Changed from *ond* by scribe.

[4] Either *hrif* is the subject of the verb with *wund* serving as predicate, or the two form a compound subject; see parallel §68 and footnote to translation.

57. If a person strikes off a goldfinger [i.e., ringfinger], let him pay [with] 6 shillings.

58. If a person strikes off the little finger, let him pay [with] 11 shillings.

59. For each of the nails, a shilling.

60. For the least disfigurement of the appearance, 3 shillings.

    60.1. And for the greater, 6 shillings.

61. If a person strikes another in the nose with [his] fist, 3 shillings.

    61.1. If it should be a blow, a shilling.

    61.2. If he receives a blow [from] a raised hand, let him [who struck the blow] pay a shilling.[1]

    61.3. If the [bruise which arises from the] blow should be black outside the clothing, let him pay 30 sceattas [in addition].

    61.4. If it should be inside the clothing, let him pay 20 sceattas [in addition] for each [bruise].

62. If the abdomen becomes wounded, let him pay [with] 12 shillings.[2]

    62.1. If he becomes pierced through, let him pay [with] 20 shillings.[3]

63. If a person becomes cured [after having been wounded], let him [i.e., the person who caused the wound] pay [with] 30 shillings.

    63.1. If a person should be grievously wounded, let him pay [with] 30 shillings.[4]

64. If a person damages the genital organ, let him pay him with three person-prices.

    64.1. If he stabs through [it], let him pay [with] 6 shillings.

64.2   If a person stabs into [it], let him pay [with] 6 shillings.[5]

65. If a thigh becomes broken, let him pay with 12 shillings.

65.1   If he becomes lame, then friends[6] must arbitrate.

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[1] It is not clear what distinguishes these different types of blow. I am tempted to take §61.1 as the same as §61.2, inserted by scribal oversight; note that the amounts of restitution are identical. Then the crucial distinction would be between §61 and §61.2. Liebermann suggests that §61.2 may be struck with the open hand as opposed to a fist. Possible also is that the difference is between a right-handed and left-handed blow: Grimm claims that the Norse cognate of *heah* was used to distinguish the right hand. See Jacob Grimm, "*Review* of Thorpe, Ancient Laws," in *Kleinere Schrifte* (Hildesheim/Zürich/New York, 1991), 318–9. But I think the interpretation is likely more straightforward: a blow delivered with raised hand is restituted by a(n additional) shilling because the windup literally allows it to deliver more punch.

[2] This could also be translated: "*If an abdominal-wound occurs*..." As *hrif* appears rarely as the first element of a compound, I have chosen to take it as the subject of the verb with *wund* as a predicate adjective.

[3] That is, the wound goes right through the injured man. *he* cannot refer to either the stomach (*hrif*, neuter) or the wound (*wund*, feminine).

[4] See discussion of these clauses in Commentary under *Personal Injury*.

[5] Liebermann, *Gesetze*, 3:13, points out that these sums seem remarkably small compared to the fine stipulated for damage to the penis and speculates that perhaps §64.1 and §64.2 refer to another body part which has been omitted in the copying. But one could also interpret these clauses as referring to the scrotum as a whole; this eliminates the discrepancy, since the scrotum can be pierced without impairing the ability to engender children.

[6] The term *freond* can mean either 'friends' or 'kinsmen.' Note, however, that elsewhere in this text 'kinsmen' is rendered by *mægas*. Although D. H. Green, *Language and History in the Early Germanic World* (Cambridge: Cambridge UP, 1998), 57 claims that "the meaning 'kinsman' is clear when frēond is employed in a legal context," all his examples are later. Alexander Callander Murray, *Germanic Kinship Structure: Studies in Law and Society in Antiquity and the Early Middle Ages* (Toronto: Pontifical Institute of Medieval Studies, 1983), 136, suggests that this should be seen "not a strict kin group at all, but as a kindred-based group composed of interested relatives, friends and dependents"; similarly Thomas Charles-Edwards, "Anglo-Saxon Kinship Revisited," in *The Anglo-Saxons from the Migration Period to the Eighth Century: An Ethnographic Perspective*, ed. J. Hines (Woodbridge: Boydell, 1997), 180. It is not clear whether this clause refers to friends of the injured man or to representatives chosen by both parties. See discussion in Chapter One under *Chronological Layering*.

66. **G**if rib forbrocen weorð, III sciłł gebete.   [66]

67. **G**if man þeoh ðurhstingþ, stice gehwilce VI scillingas.   [67]

    67.1. **G**yfe ofer[1] ynce, scilling.   [67.1]

    67.2. **Æ**t twam yncum, twegen.

    67.3. **O**fer þry, III scłł.

68. **G**if wælt[-]wund[2] weorðeþ, III scillingas gebete.   [68]

69. **G**if fot of weorðeþ, L scillingum forgelde(n).[3]   [69]

70. **G**if seo micle[4] ta of weorðeþ, X scłł forgelde(n).[5]   [70]

    70.1. **Æ**t þam oðrum taum gehwilcum, healf gelde ealswa æt þam fingrum ys cwiden.   [71]

71. **G**if þare mycclan taan nægl of weorþeð, XXX scætta to bote.   [72]

    71.1. **Æ**t þam oþrum gehwilcum, X scættas gebete.   [72.1]

72. **G**if friwif locbore leswæs hwæt gedeþ, XXX sciłł gebete.   [73]

73. **M**ægþbot sy[6] swa friges mannes.   [74]

74. **M**und þare betstan widuwan eorlcundre, L scillinga gebete.   [75]

    74.1. **Ð**are oþre, XX scłł.   [75.1]

    74.2. Ðare þriddan, XII scłł.

    74.3. **Þ**are feorðan, VI scłł.

75. **G**if man widuwan unagne genimeþ, II gelde seo mund sy.[7]   [76]

76. **G**if man[8] mægþ gebigeð[9] ceapi, geceapod sy[10] gif hit unfacne is.   [77]

    76.1. Gif hit þonne facne is, ef[t][11] þær æt ham gebrenge, ⁊ him man his scæt agefe.   [77.1]

    76.2. **G**if hio cwic bearn gebyreþ, healfne scæt age gif ceorl ær swylteþ. */3v/*   [78]

    76.3. **G**if mid bearnum bugan wille, healfne scæt age.   [79]

    76.4. **G**if ceorl agan wile, swa an bearn.   [80]

    76.5. **G**if hio bearn ne gebyreþ, fæderingmagas fioh agan ⁊ morgengyfe.   [81]

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[1] The *f* is added later in the space following *gy*, and the *e* is then written above the *o* of *ofer*.

[2] Either *wælt* is the subject of the verb with *wund* serving as predicate, or the two form a compound subject; see §63.1 and §62, both of which contain similar ambiguities.

[3] I follow Liebermann's suggestion that this should be emended to the singular *forgelde*; see §27.2.

[4] Changed from *mycle* by scribe.

[5] I follow Liebermann's suggestion that this should be emended to the singular *forgelde*; see §27.2 and §69.

[6] There is a point added later in a different ink to separate *mægþbot* from *sy*. Liebermann says the *y* is on an erasure.

[7] *y* on an erasure.

[8] Changed from *mon* by scribe.

[9] Liebermann reads this as a barred *d*; both in the manuscript and the facsimile it looks to me like any other *ð* written by this scribe.

[10] *y* on an erasure.

[11] I follow Liebermann's suggestion in emending the manuscript reading of *ef* to *eft*.

66. If a rib becomes broken, let him pay 3 shillings.[1]

67. If a person stabs through a thigh, for each thrust 6 shillings.

    67.1. If [the width of the wound] is over an inch,[2] a shilling;

    67.2. for two inches, two [shillings];

    67.3. over three [inches], 3 shillings.

68. If a "welt-wound" occurs, let him pay 3 shillings.[3]

69. If a foot becomes [struck] off, let him pay with 50 shillings.

70. If the big toe becomes [struck] off, let him pay 10 shillings.

    70.1. For each of the other toes let him pay half the amount already discussed for the fingers.

71. If the big toenail becomes [struck] off, 30 sceattas as restitution.[4]

    71.1. For each of the others, let him pay 10 sceattas.

72. If a free woman in charge of the locks does anything seriously dishonest,[5] let her pay 30 shillings.

73. Compensation for [injury to/offense against] a maiden shall be as for a free man.

74. [For violation of] protection of the foremost widow of noble rank, let him pay 50 shillings.

    74.1. [For a widow] of the second [rank], 20 shillings.

    74.2. [For a widow] of the third [rank], 12 shillings.

    74.3. [For a widow] of the fourth [rank], 6 shillings.

75. If a person takes a widow who does not belong to him, the [payment for violation of] protection shall be 2[-fold] as compensation.

76. If a person buys a maiden with a [bride-]price, let the bargain be [valid], if there is no deception.

    76.1 If there is deception, afterwards let him bring [her to her] home, and let him be given his money.

    76.2 If she bears a living child, let her obtain half the goods [belonging to the household] if the husband dies first.

    76.3 If she should wish to dwell with the children, let her obtain half the goods [of the household]..[6]

    76.4 If she should wish to take a man [i.e., another husband], provision as for one child [i.e., the inheritance is split equally between the mother and each of the children].

    76.5 If she does not bear a child, her paternal kin should obtain [her] property and the morning-gift..[7]

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[1] This section seems to have been displaced in the usual top-to-bottom enumeration of the personal injury laws: note that it comes between two clauses concerning injury to the thigh.

[2] A term similarly borrowed from Latin *uncia* 'one-twelfth' is used for measuring the width of wounds in Old Irish law; see discussion in Chapter One under *Chronological Layering*.

[3] Previous editors translate this along the lines of "If a sinew becomes wounded ..."; see discussion in Commentary under *Personal Injury*.

[4] At 20 *sceattas* to the shilling, this represents half the sum for the 3–shilling thumbnail.

[5] Translation of this passage taken from Christine Fell, "The 'friwif locbore' Revisited," *Anglo-Saxon England* 13 (1984): 157–166. See discussion in Commentary under *Women and Children*.

[6] For translation of this and the following clause, see Carole A. Hough, "The Early Kentish 'divorce laws': a Reconsideration of Æthelberht, chs. 79 and 80," *Anglo-Saxon England* 23 (1994): 19–34.

[7] See discussion of these clauses in Commentary under *Women and Children*.

77. **G**if man mægþman[1] nede genimeþ, ðam agende L scillinga, ⁊ eft æt þam agende sinne   [82]
willan ætgebicge.

   77.1. **G**if hio oþrum mæn in sceat bewyddod sy,[2] XX scillinga gebete.   [83]

   77.2. **G**if gængang[3] geweorðeþ, XXXV sciⱢ, ⁊ cyninge XV scillingas.   [84]

78. Gif man mid esnes cwynan geligeþ be cwicum ceorle, II gebete.   [85]

79. **G**if esne oþerne[4] ofslea unsynningne, ealne weorðe forgelde.   [86]

80. **G**if esnes eage ⁊ foot of weorðeþ aslagen, ealne weorðe hine forgelde.   [87]

81. **G**if man mannes esne gebindeþ, VI sciⱢ[5] gebete.   [88]

82. **Ð**eowæs wegreaf se III scillingas.   [89]

83. **G**if þeow[6] steleþ, II gelde gebete.   [90]

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[1] *a* is a correction for *o*.

[2] *y* is on an erasure.

[3] Deformed *g* here looks like a later interpolation; it is on an erasure.

[4] Written above following words.

[5] As discussed in Chapter One, I would expand this as the dative *scillingum* and connect chronologically the section concerning the *esne* with those sections dealing with the *ceorl* and personal injuries.

[6] *w* written in another hand.

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

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

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

78. If a person lies with a servant's[1] wife while the husband[2] is alive, let him pay 2[-fold what he would have paid were she unmarried].

79. If a servant should kill another [who is] guiltless, let him pay [the dead man's master] the entire worth.

80. If a servant's eye or foot becomes struck off, let him pay him [i.e., the servant's master] the entire worth.[3]

81. If a person binds a person's servant, let him pay [with] 6 shillings.

82. A slave's highway robbery shall be [paid for with] 3 shillings.

83. If a slave steals, let him pay 2[-fold] as compensation.

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[1] The *esne*—here translated as 'servant'—"was probably a poor freeman from whom a certain portion of labour could be demanded in consideration of his holdings, or a certain rent ... reserved out of the produce of the hives, flocks or herds committed to his care. He was a poor mercenary, serving for hire, or for his land, but was not of so low a rank as the þeow or wealh." See Joseph Bosworth, *An Anglo-Saxon Dictionary* (Oxford: Clarendon), 1898. F. L. Attenborough, *The Laws of the Earliest English Kings* (Cambridge: University Press, 1922), 178 points out that the original meaning "appears to have been 'harvester' (cf. Gothic *asans*, 'harvest')."

[2] The term *ceorl* can mean 'man,' 'freeman' or 'husband,' although the primary sense here is clearly 'husband.'

[3] 7 can mean either 'and' or 'or'; the latter seems more likely here, but see discussion in Commentary under *Esne*. Other adversative uses of this ligature can be found in §§15, 23, 30.

E. THE LAWS OF ETHELBERT

A.W.B. Simpson, in ON THE LAWS AND CUSTOMS OF ENGLAND: ESSAYS IN HONOR OF SAMUEL E. THORNE
M. Arnold *et al.* ed. (Chapel Hill, NC, 1981) 3–17[†]

Professor S. E. Thorne from time to time used the opportunity provided by a public lecture to try out a new way of looking at a historical problem—one of these lectures, for example, delivered at Gray's Inn in 1959, and still unhappily difficult to obtain, revitalized the study of the early history of the Inns of Court.[1] I was myself privileged to hear one such lecture many years ago in Oxford. In this essay, which began as a lecture, I should like to follow his example by floating the idea that the laws of Ethelbert need to be looked at in a curious way to be understood, but I must disclaim at once anything more than the modest hope that I can raise problems which wiser heads may settle.

The earliest known event in Anglo-American legal history is naturally of some special interest to a law teacher at my university, for it was the promulgation of the laws of King Ethelbert of Kent and, if it is realistic to give the event a location, it may well have happened in Canterbury itself. It is there that lie the mortal remains of the king and of Bertha his queen, buried in the mausoleum of St. Peter and St. Paul, now familiar to tourists as St. Augustine's Abbey, which he started to build before his death to house the bodies of the kings of Kent and the archbishops of Canterbury. There was an element of compromise about the site, adjacent as it was to a pagan shrine; indeed, two cult objects from the shrine have survived, and were found in modern excavations beneath the Abbey church.[2] Ethelbert died on the twenty-fourth day of February in A.D. 616, almost exactly thirteen and a half centuries ago. He had ruled approximately fifty-six years, since about A.D. 560, and he belonged to only the third generation after the invasion. His reign is about as close to us as it is to the traditional date of the founding of Rome—753 B.C.; inevitably, King Ethelbert is a shadowy figure. What little we know of him has come down to us principally because he was the king to whom Pope Gregory sent Augustine's mission, a mission that was to some degree at least successful. As the Venerable Bede put it, Ethelbert was the first king of the English to enter the Kingdom of Heaven and, because Augustine brought salvation, that represented success.[3] If Bede is correct on his entry (and it is hardly a historical question), it must, I think, have caused something of a stir, for Ethelbert, according to the genealogies, was a great-grandson of Hengist (who, with his brother Horsa, according to one view, was some sort of horse), and a direct descendant through only seven generations of the god Woden; descent from the god was standard in the genealogies of the Saxon monarchs. For Ethelbert was a king in a very different sense from the essentially secular sense understood today. He was a divine figure, part priest, part god, part ruler, part general; and he ruled a people, not a territory. Only because of their contemporary location did his dominion extend as far north as the Humber, and as far west as around Worcester. Furthermore, he was but one king amongst a number of Saxon kings; there may indeed have been more than one king in Kent. He was, however, a superior king, the third such to enjoy *imperium* over all the southern kingdoms. The *Anglo-Saxon Chronicle* calls such superior kings *bretwaldan*, though it is not at all clear in what their overlordship consisted. But in modern terminology, Ethelbert, our first lawgiver, is best, I think, described as a tribal chief, and a paramount chief as well.

King Ethelbert's place in history principally depends upon Bede's account of his conversion to Christianity, and his association with the establishment of the see of Canterbury. To legal historians, however, his fame has another basis; at some point after his conversion, traditionally in 597, but before the death of Augustine in ca. 605 (both dates, I fear, being irredeemably uncertain), he was responsible for the promulgation, perhaps in 602 or 603, of a set of laws that have, by the skin of their teeth,

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[1] Samuel E. Thorne, "The Early History of the Inns of Court with Special Reference to Gray's Inn," *Graya*, no. 59 (1959), pp. 79–96.

[2] Pope Gregory advised in favor of the use of pagan temples for Christian purposes, so long as they were well built and purified. See Bede, *Historia Ecclesiastica Gentis Anglorum* I.30 (Letter to Mellitus, A.D. 601), ed. Bertram Colgrave and R. A. B. Mynors (Oxford, 1969), II.4 (p. 149).

[3] Bede, *Historia*, II.5 (p. 149).

survived.[4]   Although it is possible to raise doubts about the precise state of our text, in the main in this essay l shall avoid discussion of the textual difficulties, and proceed generally on the assumption that they have survived in something closely resembling the original form.   These laws have two special claims upon our attention.   The first is that they are the earliest set of written laws of any Germanic people in Europe [to be written in a Germanic language. Ed.]   The second is that they constitute the earliest text, so far as we know, ever written in the English language.   Bede, in the history he wrote a century and a quarter later, extols the virtues of Ethelbert, and tells us that "Among other benefits which he conferred upon the race under his care he established with the advice of his counsellors a code of laws after the Roman manner.   These are written in English and are still kept and observed by the people."[5]   The laws have survived in a single manuscript, the *Textus Roffensis*, in the cathedral library at Rochester; at one point it was even dropped in the sea, and no doubt over the centuries it has had other near escapes.   The manuscript dates from around 1120, and was probably copied from a Canterbury manuscript that has long been lost.   The *Textus Roffensis* also contains the only text of the later Kentish laws of Hlothere and Eadric (ca. 670) and of Wihtred (ca. 695).   Other collections of preconquest laws survive, such as the laws of Ine of Wessex (ca. 690); some laws, which we know once existed, such as the laws of Offa of Mercia, have been lost.   But in English history the laws of Ethelbert have no rival in antiquity, and they possess the particular interest that must attach to the very first collection of all.   There is indeed no reason to believe that there ever were any earlier English or Germanic laws.[6]   They provide us, then, with the first information we have on English law, which was to become one of the two great systems of legal thought produced in western Europe, the common-law system.   It is a curious reflection that some seventy years earlier, at the other end of Europe, the Emperor Justinian in Byzantium had been responsible for producing the great codification of Roman law, the *Corpus Iuris Civilis*, which was to become the basis for the other great system—Roman or civil law.   But as the common law was, as it were, just beginning in A.D. 600, Roman law already possessed an intellectual history stretching back to the early Roman code, the Twelve Tables, promulgated, so tradition has it, in 451 B.C.; the common-law system arrived late on the scene.

   The text of the laws begins with a preamble, no doubt a later addition to the original text, which states that "These are the dooms which Aethelbert established in the lifetime of Augustine."   The word *domas*, commonly rendered as "dooms," is almost untranslatable, and the same may be said for Bede's description or title—*decreta iudiciorum*.   The nearest equivalent is "judgments," and the difficulty we have in finding an equivalent for the contemporary description is not without its significance.   Today, of course, we draw a distinction between legislation on the one hand and adjudication on the other; the nature of the two activities and the distinction between them provides endless amusement for legal philosophers.   Essentially, however, legislation involves the idea of laying down abstract general rules to deal with situations that, it is thought, will arise in the future: adjudication on the other hand involves giving decisions in particular cases after they have arisen.   But this distinction was not part of the intellectual stock of ideas of the seventh century.   So what we think of as the *laws*, the legislative code, that is, of King Ethelbert, consisted in the eyes of contemporaries as a set of judgments pronounced by a king (and his council of elders)[7] who did not think there was any critical difference between pronouncing abstract decisions of a general character for the future and giving particular decisions in concrete cases.   The king and his counselors proceed to give judgments without waiting for any actual disputes to come before them.   *If* this or that happens, this is the judgment.   Ethelbert then in a sense legislated without knowing that this was what he was doing, without realizing that he was employing a new and immensely important social technique.   For, since Ethelbert's time, legislation has become a major instrument of social control, though it took a very long time for its potentiality to be realized.   For example, in one recent year, Acts of the British Parliament and statutory instruments covered nine thousand pages of print in the standard edition.   The predominant function of modern government has come to be legislating.   King Ethelbert, I fear, started it all.

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[4] The basic edition is in F. Liebermann, *Die Gesetze der Angelsachsen*, 3 vols. (Halle, 1903–16), at 1:3–18.   A convenient text with translation is in F. L. Attenborough, *The Laws of the Earliest English Kings* (Cambridge, 1922), at pp. 4–17.

[5] Bede, *Historia*, II.5 (p. 151).

[6] There are earlier Welsh laws.   [I do not know to what this refers.   The *Pactus legis Salicae*, however, antedates Aethelberht by about a century. Ed.]

[7] Bede, *Historia*, II.5 (p. 150), says "cum consilio spientium" ("with the advice of wise men").

His laws modestly comprise a mere ninety distinct clauses.[8] Now the first problem that confronts anyone who compiles a collection of this kind is determining a suitable arrangement and, when the collection is the first ever, the problem is particularly acute. Though some have seen in the laws nothing more than a loose association of ideas, it seems to me that the arrangement is in the main quite systematic. The laws are largely concerned with prescribing money payments, as "compensation"[9] (if that is the right concept, and it probably is not) for wrongs. We start with sixteen clauses dealing with situations where the compensation payable depends upon the status in society of the victim, and we start from the most important end—the church and churchmen.[10] We then proceed down the social scale through the king[11] to noblemen[12] and finally to commoners.[13] We then have four clauses (17–20), rather oddly inserted at this point, dealing with secondary participation in wrongdoing—the sort of thing we call aiding and abetting—and these fix appropriate levels of compensation. For example, clause 20 deals with liability for lending weapons that are used in homicide, a matter that still gives rise to legal problems in our time. I guess the compiler could not think where these clauses should come, but put them in early because they involved an element of general principle. The next six clauses (clauses 21–26) deal with killings, and the payment of the wergild, literally the "man-price" or "man-value," which was payable to the kin of the dead person. The text, and we must remember that our manuscript was written five hundred years after Ethelbert's time, is somewhat disorderly between clauses 24 and 33. Thus, clause 24 seems out of place in the middle of the section on homicide because it deals with compensation for putting bonds on a freeman. But the text is defective at this point, and I suspect in any event that both clauses 24 and 25 may be corrupt. We move on in clauses 27–29 to deal with breaking and entering, and then again we have three clauses that seem to be in the wrong place. Clause 30 deals with the payment of wergild, and should come earlier with the other clauses on homicide. Clause 31 is in like case, though perhaps it would fit in later in the section on the family. Clause 32 is a mystery, for it deals with damage to a *hamscyld*, and nobody knows what this was with any degree of certainty, more particularly because the word occurs only here: "the enclosure of a dwelling," Attenborough's translation, is a plausible conjecture.

We then proceed to deal with assault, battery, and grievous bodily harm, and this in minute detail. For clauses 33 to 72 contain an alarming list of possible acts of violence, and for each a precise sum by way of compensation is provided. The arrangement within this section is basically anatomical. We begin at the top, with pulling of hair in clause 33. The next clause is for harder pulls, involving an element of scalping. With odd lapses we then move down the Anglo-Saxon human anatomy, reaching the fingernails by clause 55 and eventually the toenails by clause 72. One cannot but admire the dogged determination with which the laws attempt (but of course fail) to cover every possible form of mayhem, and to fix with precision the appropriate sum of money. Only in one place, clause 65, is there any sign of flagging; here the legislation gave up, and left the assessment for laming to friends. "If a thigh is broken," the clause says, "12 shillings shall be paid as compensation. If he becomes lame, the settlement of the matter may be left to friends." After we have completed this gory catalogue we move on in clauses 73–84 to deal with aspects of what we now call family law, and finally, by a natural sequence of thought, we conclude with six clauses concerned with law relating to the family retainers, that is to say, servants and slaves. The dooms are, in the main, tidily arranged in a systematic way.

The money payments (to use a neutral term) referred to in the laws are presented in terms of three concepts—*bot*, *geld*, and *wite*. It is quite radically mistaken to think of the laws as dealing with crimes, a modern and wholly irrelevant conception. *Bot* is usually translated as *compensation*, and appears in the laws when damage has been caused or rights violated. *Geld*, which means value, is the concept involved whether there is something in the nature of total loss—death, a foot struck off, genitals destroyed—or where, as in the case of theft from the church, the sum payable is a multiple of the thing's value. *Wite* appears in only one clause, clause 9: "If a freeman robs a freeman, he shall pay threefold compensation

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[8] The division into numbered clauses is not a feature of the original MS.

[9] In the original, *bot*, a word etymologically connected with "better."

[10] Cl. 1.

[11] Cl. 2–12 incl.

[12] Cl. 13–14.

[13] Cl. 15–16.

[*bot*] and the king shall take the fine [*wite*][14] or [?and] all the man's goods." In two other clauses (clauses 2, 84), payment is to be made to the king as well as to the immediately wronged person, but these clauses do not indicate under what description the money is payable. Clause 6 provides for a payment of fifty shillings to the king when a freeman is killed for infringement of his rights as lord (*to drihtingbeage*); this probably corresponds to the concept of *manbot* found in later laws (e.g., Ine, clauses 70, 76), a payment for the infringement of the lord's rights as lord; it is therefore a form of *bot*.

Now the laws of Ethelbert and of other Anglo-Saxon kings are often called "codes," but if we mean by a code a comprehensive statement of the law in general, or even the law on one particular subject, it is quite obvious that Ethelbert's laws do not constitute a code in that sense at all; the dooms deal with only a limited selection of matters. Before they were promulgated, all the law was customary law, depending upon traditions accepted by the older and more important members of the community, and in particular by the paramount chief or king and his advisers and counselors. Most law at most stages in human history has been customary law of this kind, and much contemporary law even today is of this character. After the promulgation of Ethelbert's laws, most Kentish law continued to be customary law, and the first question that this observation suggests is why they were promulgated at all. Why was the king not content to leave matters to be regulated in the traditional way by orally transmitted custom? What was the problem or the event that prompted King Ethelbert and his wise men to have recourse to what T. F. T. Plucknett once called the "desperate expedient" of written legislation, something that had never been used before in England? No doubt, sooner or later, someone would have taken the plunge, but the earliest laws of Wessex are nearly a century later (ca. 695) and the lost laws of Offa of Mercia (757–96) nearly two; later legislators were indeed inspired to some degree by the example of King Ethelbert. So it is reasonable to ask why it was first done when it was first done.

One explanation was suggested a very long time ago by the very first historian to consider the matter—the Venerable Bede himself—and it has been adopted by virtually all subsequent historians in one form or another. Bede presents the legislation as a consequence of the success of St. Augustine's mission.[15] For the story of this mission we are mainly dependent upon Bede's *Ecclesiastical History of the English People*, which he completed in A.D. 731. Gregory the Great, later St. Gregory, was elected pope in the year 590. The story is that one day before he became pope he was in the slave market in Rome, and spotted a group of particularly handsome boys up for sale. On inquiry he was told that they were from Britain and were pagans. He remarked, rather rudely, with a sigh: "Alas that the author of darkness should have men so bright of face in his grip, and that minds devoid of inward grace should bear so graceful an outward form."[16] Conversation proceeded, and he was told that the boys were *Angli*, and came from the kingdom of Deira, whose king was Aelle. Having cracked three perfectly appalling puns, only one of which is, mercifully, generally known,[17] he unsuccessfully asked the pope to send a mission to England. One may well wonder what the good Gregory was doing in the slave market anyway, and the answer may be that he was considering buying some English slaves. We know from a letter of his in 595 or thereabouts that he had a plan to buy some English slaves and train them as missionaries to the English.[18] His missionary ideas were put into effect only when he become pope himself, and in 596 St. Augustine, prior of the monastery of St. Andrew in Rome, was put in charge of the mission, which set out for England; Augustine was to be consecrated bishop if his mission was successful. En route, the nerve of the whole party cracked at the prospect of going to a "barbarous, fierce, and unbelieving nation whose language they did not even understand," but Pope Gregory succeeded in restoring morale, and as part of the process promoted Augustine to be abbot. About forty strong, the party reached the Isle of Thanet, probably in the spring of 597, and, after some initial nervousness, King Ethelbert came over to Thanet across the Wantsum Channel and met them. He allowed them to conduct their mission, and to move to Canterbury, where they operated from the Church of St Martin's, just outside the city, which still exists as

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[14] *Wite* means "punishment," "fine," "torture," "misery," "penance." Here it seems reasonable to translate it as "fine."

[15] Bede, *Historia*, II.5 (p. 151).

[16] Ibid., II.1 (p. 135).

[17] Pun number two indicates that the English shall he saved from the wrath of God (*de ira*); pun three suggests that Aelle's land ought to resound to cries of "Alleluia."

[18] The letter is printed in Arthur James Mason, *The Mission of St. Augustine to England according to the Original Documents, Being a Handbook for the Thirteenth Centenary* (Cambridge, 1897), p. 17.

the oldest continuously used Christian building in the country. Ethelbert was soon converted and baptized, traditionally on Whit Sunday, 2 June 597, and, by Christmas that year, mass baptisms were under way—ten thousand at a time. In 601, Pope Gregory sent Augustine the *pallium*, together with reinforcements, Mellitus, Justus, Paulinus, and Rugianus. By 601, Augustine was performing so many miracles that Gregory was impelled to write him a cautionary letter on the subject. Work began on the building of new churches and the restoration of old ones and on the monastic mausoleum of St. Peter and St Paul, now known as St. Augustine's, where Augustine and King Ethelbert were to be buried, with their successors. In 604, Mellitus was consecrated bishop and set to work on the East Saxons, whose king was Ethelbert's nephew Saeberht; and on his success, Ethelbert built the Church of St. Paul's in the city of London, which was his see. Justus was consecrated the first bishop of Rochester, where Ethelbert built St. Andrew's. Probably in 605, Augustine died and was succeeded by Laurentius, and in 616 Ethelbert [died]; our laws were promulgated sometime before Augustine's death in 605 and probably after 601.

The whole story of St. Augustine's mission is presented by Bede as a success story. Ultimately, a historian cannot judge the matter, for what St. Augustine was bringing to the English was salvation, and historical evidences do not throw any light on his success in that. Insofar as the mission was outwardly successful, some credit must presumably go to Ethelbert's Frankish queen, Bertha, who was a Christian when they married, and to her bishop, the shadowy figure Liudhard, and also to the Christian community that must have existed in Kent before Augustine arrived. Bede does himself bear witness to some setbacks; thus he recounts the disastrous attempt by Augustine to establish relations with the Celtic church.[19] He also recounts how, after Ethelbert's death, official support for Christianity collapsed—Eadbald, Ethelbert's son, promptly reverted to pagan ways and married his stepmother.[20] On the death of the converted King Saeberht, his three sons expelled the missionaries from amongst the East Saxons. Bishops Mellitus and Justus fled to Gaul, and Laurentius nearly followed but, as he lay asleep in St. Augustine's, St. Peter flogged him and told him to pull himself together. The marks so impressed King Eadbald that he became a Christian, and matters began to look up again.[21]

Now, part of the evidence for the success or failure of the mission must be sought in the laws, and Bede himself explained the laws partly by reference to the success of Augustine's mission. In speaking of the laws he says: "Among these he [i.e., Ethelbert] set down first of all what restitution must be made by anyone who steals anything belonging to the church or bishops or any other clergy; these laws were designed to give protection to those whose coming and whose teaching he had welcomed."[22] The obvious reference is to the first clause of the laws, which states that "God's property and the church's shall be compensated twelvefold. A bishop's elevenfold. A priest's property ninefold; a deacon's property sixfold; a clerk's property threefold. Breach of the peace shall be compensated doubly when it affects a church or a meeting place." The idea, in the form now generally accepted by historians, is that Augustine and his followers constituted a new class or category in society, whose place in the scheme of things was simply not defined by customary law. Existing law, it is supposed, would have defined how compensation was to be made for theft from, for example, a commoner or nobleman, but some decision had to be taken on the going rate for various grades of churchmen. This need, the argument runs, generated the laws of Ethelbert. I find this explanation most unsatisfactory, and I wish both to question it and to suggest alternatives.

Bede's explanation relies exclusively on clause 1, which it certainly explains, but it does not seem to explain the rest of the laws—the other eighty-nine clauses, which do not mention the church at all. Indeed, to be fair to Bede, he does not as it were press his explanation. And in the case of clause 1 there are difficulties.[23]

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[19] Bede, *Historia*, II.2 (p. 139).

[20] Ibid., II.5 (p. 151).

[21] The view that Bede overstated the success of St. Augustine's mission may well be correct; but to be fair he does record the setbacks.

[22] Bede, *Historia*, II.5 (p. 151).

[23] H. G. Richardson and G. O. Sayles, *Law and Legislation from Aethelberht to Magna Carta* (Edinburgh, 1966), pp. 2ff., argue that cl. 1 is an interpolation, an argument related to their general skepticism over Ethelbert's conversion. But they do not face up to the problem of explaining the interpolation—there was *some* version of cl. 1 in Bede's time. Nor do they provide any positive explanation of Ethelbert's venture into legislation.

The first is the scale of compensation laid down, which contrasts oddly with that provided by clause 4, which states that "If a freeman robs the King, he shall pay back a ninefold amount." It seems hardly conceivable that a priest's property and that of the king ranked at the same level. Furthermore, insofar as the later laws deal with the matter at all, they indicate no tradition of such extraordinary treatment for the church. Thus the Kentish laws of Wihtred (695) equate the position of the church with that of the king, providing that the *mundbyrd* (protection) of the church should be fifty shillings—the same as that provided in Ethelbert's laws for the king (clause 8).[24]

The second difficulty is that, apart from clause 1, the laws do not deal with the special position of the church and churchmen at all; for example, there is no special ruling on the *mundbyrd* of the church, though there is on that of the king and of commoners, nor on slaying of or injuries to priests or churchmen, or injury to church property. The Kentish laws of Hlothere and Eadric (ca. 673–86) again contain no reference to the church. Wihtred's laws, nearly a century later, are the earliest laws to concentrate upon fitting the new institution into society, for they contain no less than fifteen clauses, out of twenty-eight, which explicitly deal with the church and its position in society or presuppose its existence,[25] and seven more of obvious Christian significance;[26] the contrast with the laws of Ethelbert is very striking.

The third is that there is independent evidence in Bede's *History* that St. Augustine was particularly interested in the problem with which the first clause deals, and the passage in the laws seems to be quite out of line with the church's view on theft from the church. In 600 or 601; Augustine sent to Pope Gregory a series of nine questions that, Bede tells us, seemed urgent, and Pope Gregory promptly replied to them.[27] The third question Augustine asked Gregory was "how one who steals from the church should be punished." Pope Gregory's reply was in some ways not very helpful, for he stated: "My brother, you must judge from the thief's circumstances what punishment he ought to have. For there are some who commit theft though they have resources, while others transgress in this matter through poverty. So some must be punished by fines and some by a flogging, some severely and some more leniently." He added that "love must dictate the method of correction, so that we do not decide on anything unreasonable." Turning then from the question of *punishment* to that of *compensation*, he said: "You should also add that they ought to restore whatever they have stolen from a church. But God forbid that the church should make a profit out of the earthly things it seems to lose and so seek to gain from such vanities." From this passage it seems likely that Gregory knew that legislation was intended (hence the phrase "you should add"),[28] and he gave advice as to the form it should take. What is very surprising is that there seems little connection between Gregory's advice and the solution adopted by the laws.

Any explanation of Ethelbert's legislation that depends exclusively on clause 1 is, therefore, built upon an unsure foundation. There are certainly grounds for suspecting the authenticity of the clause in the form we now have it and, even assuming it to be genuine, we still have to explain the rest of the legislation and the disparity between Gregory's advice and the laws. So far as this is concerned, there are again a number of explanations that are possible. The most radical is that the correspondence between Augustine and Gregory is spurious and never happened. But assuming that it did, it seems to me that we can still accept Bede's explanation, but explain the disparity in two ways. The first is that Augustine's hold over Ethelbert was not very great, and Ethelbert's conversion somewhat skin deep, a view for which there is other evidence. The second is that Gregory was dealing in a set of conceptions largely alien to Ethelbert and his counselors, with ideas they did not understand. Gregory is recommending *punishment*, graded according to guilt, on the one hand, and simple *compensation* on the other; he distinguishes what is to be done to the thief, and what is to be done to put things right for the victim, between criminal and civil law. The laws of Ethelbert have, in fact, only the slightest reference to punishment in one clause; the

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[24] Wihtred, cl. 2. For the text of Wihtred's laws, see Liebermann, *Gesetze*, 1:12–14; and Attenborough, *Laws*, pp. 24–31. The evidence of the *Penitential of Theodore*, attributed to Theodore of Tarsus, archbishop of Canterbury, A.D. 668–90, also does not suggest so privileged a position for the church; the compensation for theft from churches is fourfold only. See J. T. McNeill and H. M. Gamer, *Medieval Handbooks of Penance* (New York, 1965), at p. 186.

[25] Wihtred, cl. 1–4, 6–8, 16–22, 24.

[26] Wihtred, cl. 5, 9–15.

[27] Bede, *Historia*, I.27 (p. 79).

[28] *Addes etiam* is the Latin.

predominant notion with which they are concerned is *bot*—we translate this "compensation"—as an alternative to simple retaliation, rather than as economic restitution, and in the case of a thief, retaliation would normally involve killing.[29] To provide an alternative to retaliation one needs a substantial payment, and this is what the laws offer; we cannot regard it as either a civil or a criminal remedy.

It is natural enough to expect to find elsewhere in the laws, if not an explicit reference to the church, at least a reflection of Christian influence. But there is one other clause that surprisingly reveals a curious lack of this influence, and this again seems to support the view that Ethelbert was not very strongly influenced by Augustine. One of the other questions that Augustine posed to Pope Gregory relates to marriage. His fifth question was, "Within what degree may the faithful marry their kindred; and is it lawful to marry a stepmother or a sister-in-law?" Gregory replied that in no circumstances must there be marriages between those twice removed, and that marriage to a sister-in-law or stepmother is gravely sinful. The English who have contracted such marriages in ignorance are to be received into the church, but must in future abstain from sexual relations; for the future they are to be excommunicated. If we turn to the laws of Ethelbert, we might expect appropriate provisions in the clauses dealing with marriage and the family, but if Augustine tried (one suspects that Queen Bertha would try, too) to convince King Ethelbert and his counselors, he dramatically failed. Discussion of the subject may, how ever, have prompted clauses 75 and 76, which provide compensation (presumably to a guardian) when a widow is married by someone who is not entitled to marry her. The clause, however, clearly recognizes that in some situations someone had a right to marry a widow, and we can guess that the right resided either in a brother-in-law or in a stepson. Ironically enough, King Ethelbert's own widow was married by his son Eadbald—apparently the widow was not Bertha but some subsequent wife. The *Anglo-Saxon Chronicle* records that in marrying the widow he followed heathen custom. Bede recounts, however, with some satisfaction, that no good came of this, for Eadbald was "afflicted by frequent fits of madness and possessed by an unclean spirit." Bede obviously thought it served him right.

Bede's explanation for the promulgation of the laws is therefore problematical and, even if it does explain clause 1, fails to explain the main body of the legislation. All Bede offers as a makeweight is the statement that Ethelbert's legislation was imitative of Roman legislation—the laws, he says, were promulgated *iuxta exempla Romanorum*. One may look in vain in the laws for any Roman influence on their *substance*; there is no question of any borrowing of Roman law conceptions or rules; nor were the laws written, as one might have expected, in Latin. It is perhaps conceivable that some account of the codification of the Emperor Justinian had filtered through from the East, as perhaps had knowledge of the code of Theodosius. But mere imitation of Roman written codes provides a very unsatisfactory explanation of the major part of Ethelbert's laws. I think there are other ways in which the laws can be explained in terms of Christian influence and the Augustinian mission, without having recourse to the wilder speculations of those who suppose that there may have been earlier models.[30] If one looks at the laws, they are mainly concerned to provide scales of money payments for various kinds of wrongs, in the form of either *bot* or *geld*, as I have explained. Whether what is involved is homicide, or theft, or scalping, the laws provide for an appropriate payment, and they give the impression of a society in which anything from murder down to a punch-up could be sorted out by, as it were, writing a check. But it is about as certain as can be that seventh-century Kent was not like that at all. Whether it was a more or less violent society than we have today it is quite impossible to tell—one may guess that it was a society in which the boundary between peacetime and wartime was not as clear as today, but it is quite possible that, in peacetime, it was fairly peaceful. It was, however, a society in which the institution of the blood feud existed, and one in which the likely and acceptable reaction to wrongdoing was not payment of money but retaliation, by either the victim or his kin. This we know not simply from comparative evidence, but from the later Saxon laws, which expressly recognize the legitimacy of retaliation and the feud. Thus, for example, the earliest laws of Wessex, those of Ine (ca. 690), have this

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[29] Thus Wihtred's laws (A.D. 695), cl. 25 and 26, provide that if a man is killed while thieving no wergild is payable; if he is caught, i.e., detained, the king is to decide whether he be killed, sold beyond the sea, or ransomed for his wergild. Ine's laws (ca. A.D. 690) are similar. For the text of this latter code, see Liebermann, *Gesetze*, 1:88–123; and Attenborough, *Laws*, pp. 36–61.

[30] Richardson and Sayles attempt to explain the laws without reference to Christian influence because they reject the authenticity of cl. 1, reject the evidence for Ethelbert's conversion, and reject the connection between literacy and the church, they end up vaguely premising ghostly earlier models. In the process, Bede's argument has to be rejected on weak grounds. See *Law and Legislation*, pp. 1–13, 157–69.

provision on theft: "If a thief is taken he shall die the death, or his life shall be redeemed by the payment of his wergeld." And later on we have, for example, this: "He who kills a thief shall be allowed to declare with an oath that he whom he killed was a thief trying to escape, and the kinsman of the dead then shall swear an oath to carry on no feud against him. If however he keeps it secret, and it afterwards comes to light, then he shall pay for it." And some four centuries after the laws of Ethelbert, King Edmund, recognizing the prevalence of the blood feud as a reaction to violence, produced a special code regulating an institution that he was powerless to stop.[31] Indeed, much Anglo-Saxon legislation is concerned with the provision of alternatives to retaliation and the blood feud, and forms part of the long process whereby eventually the law comes to recognize no right of retaliation at all, but only a right of self-defense, provocation alone counting at most as a mitigating factor. It is quite inconceivable that this process had proceeded far in King Ethelbert's time.

The position some sixty or so years later is made abundantly clear by a work compiled from the opinions of Theodore, the then archbishop of Canterbury. In this, the *Penitential of Theodore*, opinions are given as to the appropriate scale of penance for killing:

> 1. If one slays a man in revenge for a relative, he shall do penance as a murderer for seven or ten years. However, if he will render to the relatives the legal price, the penance shall be lighter, that is [it shall be shortened] by half the time.
> 2. If one slays a man in revenge for a brother, he shall do penance for three years. In another place it is said that he should do penance for ten years.
> 3. But a murderer, ten or seven years.[32]

There is here explicit recognition of the feud, combined however with condemnation of it. The church dealt in ideals but accepted realities.

What Ethelbert's laws were plainly concerned with was to provide, in the form of fixed money payments, an alternative to retaliation and the feud. It is clear from the laws that a system already existed whereby this could be agreed upon by the injured party or his kinsmen, and clause 65 indeed retains this in the case of laming. But haggling and bargaining between the quarreling families is a difficult and indeed dangerous operation, and one can see the enormous advantage of having a fixed tariff providing definite alternatives to counter-violence. This the laws provided, and I suspect that Christian influence lay behind this. There is indeed some direct evidence for this view in a passage written by King Alfred. Somewhere about 892, Alfred compiled a set of laws and wrote a long introduction to them. In it he explains that his laws incorporate much earlier legislation going back to Ethelbert's laws. He tells us: "After it came about that many people had received the faith of Christ, many synods were assembled throughout all the earth, and likewise throughout England, after they had received the faith ... they then established, for that mercy which Christ taught, that secular lords might with his permission receive without sin compensation in money for almost every misdeed at the first offence, which compensation they then fixed."[33]

What was involved, according to this passage, was the establishment of the idea that it was not sinful to accept compensation, and the point of this is that in societies where the feud exists it is regarded as the *duty* of the injured person or his kin to retaliate—they behave dishonorably if they do not do so. Recidivists could of course expect no mercy at all; only first offenders could enjoy the new system. What the laws of Ethelbert were concerned to introduce into society was a new idea—that it was not wrong to take money instead of blood. This represents a dramatic change, and we can see in the laws the attempt inspired by the church to introduce a new and merciful alternative to the tradition of retaliation. It seems to me, however, that it is not conceivable that this alternative was originally compulsory, and if this is right the laws involve legislation in a restricted sense—they are permissive laws only; their unreality reflects their idealistic quality, which resembles the penitentials, and is the best evidence of their Christian genesis. They provide as it were a recommended alternative that *may* be used, and the alternative system is made more likely to be used by being as precise as possible. It may well be that the money payments

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[31] For Edmund's code, see Liebermann, *Gesetze*, 1:186–91; and A. J. Robertson, *The Laws of the Kings of England from Edmund to Henry I* (Cambridge, 1915), pp. 8–11.

[32] See McNeill and Gamer, *Medieval Handbooks of Penance*, p. 187.

[33] Liebermann, *Gesetze*, 1:15.

were fixed at a higher level than was realistic, and the outcome of a settlement in reality would be either the surrender of the wrongdoer into debt slavery, or the payment of some lesser sum; this is suggested by modern studies of the feud, but there is no way of telling what actually happened in Ethelbert's time. A realization of this, and of the fact that laws can represent aspirations only, is the key to understanding Anglo-Saxon legislation.

There are, I think, two other ways in which promulgation of the laws of Ethelbert is related to the influx of Christianity. The first arises in the following way. We naturally think of Augustine as bringing a religion to Canterbury, or at least furthering the spread of one that already was practiced there. The Christian church, however, also brought with it another enormously important possession and this was technological—churchmen knew how to read and write. This made possible the laws of Ethelbert. Given the illiteracy of society, one may well wonder what the point of having written laws was at all—there would be little point in distributing copies amongst a population unable to read or write. The written text probably served as an *aide memoire*, from which the laws could be read out by clerics to leading and important citizens. We have indeed an early illuminated manuscript from the ninth century that illustrates this—it shows Moses reading out the tables of the law, and the Anglo-Saxon scribe was no doubt depicting a scene with which he was familiar.[34] The audience may indeed have come to learn the laws by heart—some later laws are in alliterative prose. The use of the local language—Old English—and not Latin, the natural language of Augustine and his followers, connects with the function of the text, for there would be no point in reading out Latin laws to Anglo-Saxon elders.[35] Later, when law becomes the preserve of lawyers, the use of the vernacular ceases to be important, and English law came to be expressed in languages not known by the populace—Latin and Norman French. What is a little mysterious, however, is the alphabet used.[36] The Latin alphabet could not cope happily with Old English, and the text of the laws is written in a combination of the Latin alphabet and certain runic characters taken from the Germanic runic alphabet—which was used only for magical purposes or for inscriptions. The idea of combining the two was developed in the Celtic church, and so there lies behind the text of the laws Irish or Celtic influence. We can only guess at how this came about: there were contacts between the Celtic church and the Franks, and Augustine himself attended two disastrous synods with the British church. The use of the mixed alphabet suggests, however, that Christianity in seventh-century Kent had closer links with Celtic Christianity than Bede's own account records; Bede of course had little use for Celtic Christianity.

A further aspect of Christian influence on the laws is suggested by their similarity to a peculiar and at times entertaining form of early Christian literature—the penitentials.[37] The Christian notion of penance for sin gave rise to an obvious problem: what was the right form and quantity of penance for each particular sin? In the Celtic Christian communities of the fifth century there evolved a special form of literature directed to working out a comprehensive set of answers to all possible problems. One of the earliest surviving penitentials is that attributed to Finnian of Clonard, an Irish monk who died in about A.D. 550. The following extracts are typical:

But if he is a cleric and strikes his brother or his neighbor or sheds blood, it is the same as if he had killed him, but the penance is not the same. He shall do penance with bread and water and be deprived of his clerical office for an entire year, and he must pray for himself with weeping and tears, that he may obtain mercy of God, since the Scripture says: "Whosoever hateth his brother is a murderer," how much more he who strikes him.

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[34] British Library Additional MS 10546, reproduced in R. H. Hodskin, *A History of the Anglo-Saxons*, 3d ed., 2 vols. (London, 1952), 2:pl. 76, facing p. 611.

[35] Richardson and Sayles (see *Law and Legislation*, p. 9) seem to assume that written laws could have no function unless literacy was widespread. This is a mistake; indeed, in modern times in colonial territories, written laws have commonly operated in illiterate societies. Reading is only one means of access to a written text.

[36] For discussion, see Richardson and Sayles, *Law and Legislation*, pp. 159 ff., where it is argued that long before Augustine's time, English was being written in Kent, the local inhabitants having themselves combined the use of the Roman and the runic alphabets.

[37] See McNeill and Gamer, *Medieval Handbooks*; and Thomas Pollock Oakley, *English Penitential Discipline and Anglo-Saxon Law in Their Joint Influence* (New York, 1913).

But if he is a layman, he shall do penance forty days and give some money to him whom he struck, according as some priest or judge determines. A cleric, however, ought not to give money, either to the one or to the other.

If a cleric commits theft once or twice, that is, steals his neighbor's sheep or hog or any animal, he shall do penance an entire year on an allowance of bread and water and shall restore fourfold to his neighbor.

If however he does it not once or twice but of long habit, he shall do penance for three years.[38]

Another example, though later than Ethelbert's time, is the penitential of Theodore of Tarsus, archbishop of Canterbury from 668 to 690, which, curiously enough, takes a milder view of theft than does Ethelbert's clause 1. A typical passage states that "Money stolen or robbed from churches is to be restored fourfold; from secular persons, twofold."[39] There is an obvious similarity between the penitentials that set out to assign to each sin the exactly appropriate penance, and the early laws that attempted to set out for each wrong the precisely appropriate compensation, and it may well be that the penitentials are the source of the technique attempted by the apparently secular laws of Ethelbert: this again would suggest a Celtic influence at work in seventh-century Kent. If, however, we are to understand the earliest known English legislation, we must concentrate attention not so much upon their detailed content as upon providing a general explanation of their genesis and their function; and to do this requires us to think ourselves back into a world in which legislation could perform a rather different function from anything we encounter today. The laws are an expression of aspirations, not a compulsory and enforceable set of regulations.

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[38] McNeill and Gamer, *Medieval Handbooks* p. 88.

[39] Ibid., p. 187.

F. NOTES ON THE ANGLO-SAXON DOOMS

A TABLE OF WERGELDS

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

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

NOTES AND QUESTIONS

1. What does this table suggest about social structure in Kent (Aethelberht) and Wessex (Ine) in the seventh century?

2. What did the Anglo-Saxons think about law-making? Consider the following:

From the *Prologue* to the laws of Hlothhere and Eadric: "Hlothhere and Eadric, kings of Kent, extended the laws which their predecessors had made, by decrees which are stated here below."

From the *Prologue* to Wihtred's laws:[1]

> 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, who was called Gefmund; and every order of the Church of the province expressed itself in unanimity with the loyal laity [assembled there]. There the notables, with the consent of all, drew up these decrees, and added them to the legal usages of the people of Kent, as is hereafter stated and declared.

From the *Prologue* to Alfred's Laws:[2]

> 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, being 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 Aethelberht, 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.

3. Where might the Anglo-Saxons have gotten their ideas about law? Professor Simpson suggests that there may be influence from Ireland. Here are some further provisions from the so-called Irish laws. These are from an Irish Penitential of c.800:[3]

> 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.

4. The most extensive provisions about marriage and the status of women are those in Aethelberht 72–78 (above, pp. 35–37).

5. Provisions about inheritance are scattered throughout the Anglo-Saxon codes. Consider, for example, the provisions from Aethelberht 76.2–76.5 (above, p. 35). Here are the provisions from Ine 38, Alfred 41, 2 Cnut 70:[4]

> Ine 38. If a *ceorl* and his wife have a child, and the *ceorl* dies, the mother shall keep her child and bring it up. She shall be given 6s [a year] for its care—a cow in summer and an ox in winter. The relatives shall keep the homestead until the child has grown up.

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[1] From F. L. Attenborough, ed. and trans., *The Laws of the Earliest English Kings* (Cambridge, Eng., 1922; repr. New York, 1963), 24. The book contains no copyright notice and would appear to be in the public domain.

[2] S&M no. 5.

[3] John T. McNeill and Helena M. Gamer, *Medieval Handbooks of Penance* (New York, 1938; repr. 1990), 165, 164. Copyright © 1938, 1990 Columbia University Press.

[4] S&M nos. 4, 5, 13.

Alfred 41. We now ordain that any one who has bookland left him by his kinsmen is not to give it outside his kindred if there is written or oral evidence (*gewrit odhdh gewitnes*) that to do so was forbidden by the man who originally acquired it or by those who gave it to him. And this should be proved in the presence of the kindred, and with the witness of the king or of the bishop, by any one [wishing to annul such an alienation].

2 Cnut 70. And if anyone, whether through negligence or through sudden death, departs this life without having made a will, his lord shall take no more of his chattels than his lawful heriot. Rather, by his direction, the goods are to be most justly apportioned to the widow, the children, and the near relatives—to each the share that is rightfully his.

6. One of the great themes in the study of Anglo-Saxon institutions is the decline of the kindred. It's a theme that can be exaggerated. Anglo-Saxon kindreds were small to start off with. The evidence of language suggests a rather narrow group, bilateral terminology but preference for the patriline. Then too, the documents show that the blood feud was still alive at the end of the period. Here are some relevant texts from the dooms:

Abt 30—individual responsibility (above, p. 29).

Alf 42—surrounding the house and demanding justice:[5]

> 42. 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 my fight for his blood-relative, should the latter be unjustly attacked, except against his own lord—that we do not permit. …

2 Aethelstan 2—everyone must have a lord:[6]

> 2. 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—further isolating the individual:[7]

> 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.

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[5] S&M no. 5.

[6] S&M no. 7.

[7] S&M no. 9.