

THE LAWS OF KING ÆTHELBERHT

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PhD THESIS

DECLARATION

I hereby declare that the work presented in this thesis is my own.

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Introduction

King Æthelberht of Kent is calculated by Bede to have reigned for fifty-six years from 560x2-616x8.¹ It was during his reign that Kent received the mission of St. Augustine that began the process of the conversion of the pagan Anglo-Saxon kingdoms to Christianity. A twelfth-century manuscript, the *Textus Roffensis*, attests “the laws which King Æthelberht set down in Augustine’s time”, thus embodying in a single text not merely the earliest instance of English statute law but indeed the earliest surviving piece of continuous Old English prose. As such, Æthelberht’s *Laws* demand close consideration from the student of legal history and of early Anglo-Germanic society alike.

Whilst Æthelberht’s *Laws* have, unsurprisingly, attracted considerable scholarship, much of the work is relatively narrow in focus, or disjointed, or published in a language other than English. Thus, between 1897 and 1916 the great Wilhelmine scholar of early Germanic law, Felix Liebermann, published his monumental *Gesetze der Angelsachsen*² containing an edition of all laws enacted in pre-Conquest England, together with a detailed commentary. Thereafter scholarship tended to become somewhat fragmented, as described below.

As regards the text of Æthelberht’s *Laws*, Liebermann’s edition was made available to English language scholars when it was reproduced, together with an English translation of each of the law codes and brief commentary, by the Cambridge scholar Frederick Attenborough³ in 1922. Attenborough’s commentary was, however, very light and focussed principally on matters of textual difficulty, rather than the wider historical context of the *Laws*. A new edition of the *Laws*, incorporating a new numbering of the various clauses following more closely

¹ But see further on this section 1.3 below, where it is shown that these dates are much more likely to represent not Æthelberht’s regnal years, but his lifespan.

² Felix Liebermann, *Gesetze der Angelsachsen* (Halle: M. Niemeyer, 1897-1916).

³ Frederick Attenborough, *The Laws of the Earliest English Kings* (Cambridge, 1922).

from the manuscript layout, was published by the American scholar, Lisi Oliver,⁴ in 2002. Her original interest had been in the linguistic aspects of the *Laws* and the evidence that they provided for early Old English, which had previously been the subject of her doctoral thesis for Harvard University,⁵ published in 1995. For the first time since Liebermann, and for the first time ever in English, Oliver provided a detailed line-by-line commentary on the specific provisions of the *Laws*.

As regards the historical context of the *Laws*, a number of different analyses of the ending of Roman rule in Britain and the processes by which a series of successor Anglo-Saxon kingdoms emerged in different parts of England, were developed from the 1980s onwards. A particularly welcome development has been a tendency towards inter-disciplinary scholarship, interweaving textual and archaeological study. Most recently, genetic research has very considerably informed our understanding of these processes. Some of this scholarship has developed very quickly, and it is therefore unsurprising that relatively little work has been done recently to place the study of the *Laws* into the context of this emerging scholarship.

Another theme of recent scholarship has been the increased attention given to the pre-Christian religious beliefs of the early Anglo-Saxons in England. One of the novel conclusions developed in this thesis is that the *Laws* may contain traces of the pre-Christian religion, in ways that have hitherto been overlooked, or at least underplayed.⁶

Study of the *Textus Roffensis* was greatly facilitated by the publication in the 1950s of a collotype facsimile,⁷ as part of the Early English Manuscripts in

⁴ Lisi Oliver, *The Beginnings of English Law* (Toronto University Press, 2002).

⁵ Lisi Oliver, *The Language of the Early English Laws* (Doctoral thesis presented to Harvard University, Cambridge, Mass., 1995).

⁶ Section 4.2, below.

⁷ Peter H. Sawyer, (intro. and ed.), *Textus Roffensis Part I*, Early English Manuscripts in Facsimile 7 (Copenhagen: Rosenkilde and Bagger, 1957).

Facsimile series, together with detailed notes concerning the manuscript, its history, its layout and binding, and other works of the same scribe that have also survived. More recently, a colour facsimile has been made available on-line.⁸

Individual provisions of the *Laws* have been the subject of a considerable number of journal articles. During the 1980s and 1990s, the hitherto relatively understudied topic of the position of women in Anglo-Saxon England attracted attention, and this is reflected in a weight of articles from this period concerning various provisions of the *Laws* dealing with women.⁹

Finally in this brief review of scholarship, in the autumn of 2010 a conference devoted to the *Textus Roffensis* was held at the University of Kent in Rochester. As will be described more fully in Chapter 2, the *Textus Roffensis* is not solely a collection of pre-Conquest laws, such that not all of the papers presented there touched upon either Æthelberht or his *Laws*. Even so, the relatively recent publication of certain of the papers presented there represent some of the most recent leading scholarship concerning the matters dealt with in this thesis.

It must be acknowledged at the outset that the *Laws* present challenging material for the legal historian unfamiliar with Anglo-Saxon history, literature and culture. For one thing, the *Laws* are not only set down in Old English, but are attested by a unique manuscript witness dating from more than five centuries after the original text that it purports to reproduce. Further, the *Laws* concern a society of which the majority of its members were engaged in subsistence agriculture, a society moreover untouched by literacy until only a few years prior to the setting down of the *Laws*. It follows, therefore, that a thesis that concerned itself solely with narrow issues of legal analysis only, which neglected sufficiently to describe the nature of the society to which the *Laws* applied, or which failed critically to examine the proofs whereby the *Textus Roffensis* can be considered a reliable witness of the *Laws* as they were originally enacted more than five hundred years earlier, would risk building on very insecure foundations.

⁸ At the Early English Laws Project website: see <http://www.earlyenglishlaws.ac.uk>.

⁹ Discussed at section 4.7 and in chapter 6, below.

Accordingly, the approach of this thesis is to commence with a number of synthesising preliminary chapters that draw together those elements of this broad base of scholarship as are relevant to understanding the society for which the *Laws* were devised and within which the *Laws* operated, by reference to their historic, political, economic, religious and legal background. Only thereafter will it be appropriate to turn to the detailed examination of the legal issues raised by the *Laws*, to which the main body of this thesis is devoted.

Consistently with this multi-disciplinary approach, Chapter 1 of this thesis therefore places Æthelberht's Kent into its historical context, dealing with such matters as the geography and early history of Kent, the early history of Anglo-Saxon England, the nature of the paganism that Augustine and his fellow missionaries encountered on their arrival, the process of the conversion of Kent to Christianity, and evidence from coins.

Chapter 2 considers the history and structure of the *Textus Roffensis* manuscript, and the evidence that it provides for the transmission of Æthelberht's *Laws* from his time to the date of the *Textus Roffensis*. Other manuscripts written by the scribe of the *Textus Roffensis* have also survived, and these works are discussed briefly. Of particular importance is the palaeographical evidence provided by the manuscript, considered in detail.

Chapter 3 is directed at the crucial question of whether the record of the *Laws* set down in the twelfth-century *Textus Roffensis* can be considered an accurate record of how the *Laws* stood in Æthelberht's own time in the very early years of the seventh century, some five hundred years earlier. This involves a detailed examination of the linguistic evidence contained in the *Laws*, by reference to issues of orthography, phonology and morphology, and dialectal changes. Although not all indicia are equally clear, the conclusion can nevertheless be drawn that the *Textus Roffensis* is, withal, an accurate record of the original *Laws*.

In the light of the contextual background of Chapters 1, 2 and 3, Chapter 4 is a detailed commentary on each of the specific provisions of the *Laws*, grouped loosely according to their subject matter. This is, fittingly, the longest chapter of this thesis. It draws heavily on Oliver's work, but as will be seen it is possible to put forward strong and important arguments for new interpretations in a number of critical points of detail.

Chapter 5 deals with the Continental background to Æthelberht's *Laws*, and the legal parallels on which they may have drawn. Consideration is also given to the inferences that may be drawn from Æthelberht's choice of Old English rather than Latin as the language in which the *Laws* are set down.

Chapter 6 examines the protection afforded by the *Laws*, and its efficacy, to persons who would now be termed as the legally vulnerable: women, children, and slaves. Although the extent of such protection appears to modern eyes to be substantially deficient, this reflects in part the inevitable limitation of such a comparison between a modern liberal Western society and an early Medieval society ordered on altogether different lines. More substantially, however, such deficiencies can be shown to be not particularly the result of any indifference on the part of those responsible for drafting the *Laws*, but need to be seen instead in the context of a society that lacked the central powers of enforcement of a modern state.

Chapter 7 considers notions of kingship and royal authority, with particular reference to criteria developed in the writings of the Wilhelmine historian and sociologist, Max Weber, as more recently analysed and placed in a specifically Anglo-Saxon context by David Rollason.

Chapter 8 examines subsequent Anglo-Saxon law codes, summarising developments and discussing the extent to which these later codes continued to draw, albeit at times only nominally, upon Æthelberht's *Laws*.

Finally, Chapter 9 considers the principal conclusions falling to be drawn on these matters.

1. The historical background

1.1 The geography and early history of Kent

As stated in the Introduction, the principal purpose of this thesis is to place *Æthelberht's Laws* in their historical, social and political context. It is accordingly both important and necessary to understand the social and political structures of Kent as they stood in *Æthelberht's* time, and the historical processes that shaped their emergence. It will be necessary to consider the complex relationships that existed between Kent and the rest of Britain, and also with Kent's neighbours on the Continent. As will be seen, many of these issues are complicated, some are poorly understood, and there remains much disagreement amongst scholars not merely as to the analysis of individual points of detail, but even as to the broad sweep of events. A detailed study of the transformation of Kent from the late Roman Empire of c. 375 AD to early Anglo-Saxon England of c. 550 AD could itself be of monograph length.

Kent is of course a promontory, surrounded to the north, east and south by the sea. With the exception of some marshland around Romney reclaimed in the intervening millennium and a half, much of the present-day coastline of Kent is likely not to be so very different from its sixth-century equivalent once due allowance is made for modern drainage methods. The most significant difference relates to the Isle of Thanet, which in the Roman and Anglo-Saxon period was isolated from the Kentish mainland by the Wantsum Channel that, perhaps depending upon the state of the tides, is likely to have been navigable even to the majority of sea-going vessels, save only perhaps the very largest.

The Roman name *Rutupiae* for the port and naval base at present-day Richborough at the southern entrance to the Wantsum Channel appears in a number of texts of the Roman period in various forms as the principal point of entry to Britain from the Continent, and the second century AD geographer Ptolemy includes *Rutupiae* in a list of the towns of the people of Kent. The northern entrance to the Wantsum Channel was also guarded by a fort, at

Regulbi, present-day Reculver, and further forts at *Dubris* (present-day Dover) and *Lemanis* (present-day Lympne) attest to the strategic significance of this part of the coastline in the late Roman period in identifying and intercepting sea-borne raiders from the Continent.

As with its coastline, much of the landscape and land use of Roman and Anglo-Saxon Kent might well have been intelligible to a modern-day inhabitant possessed of a keen eye for a countryside and its soils, as brilliantly described initially by Alan Everitt and subsequently followed by Stuart Brookes and Sue Harrison.¹ Then, as now, the most agriculturally fertile part of Kent was to be found in its northern borders, between the low-lying coastal marshland and the downland, on the easily-worked Oldhaven Beds, Thanet Sands and Brickearths soils. This was in Roman times, as subsequently, the chief corn-growing district of Kent, probably the earliest settled and certainly the most densely-populated, termed by Everitt the “foothills”.

The prosperity of the foothills served to maintain Roman *Durovernum Cantiacorum*, present-day Canterbury, the capital of a Romano-British *civitas* with its origins in the pre-Christian Celtic Iron Age built on the River Stour just above the limit of navigation. Sheppard Frere² identifies the city walls of Roman Canterbury as enclosing an area of some 130 acres: smaller than London (330 acres), Cirencester (240 acres) and *Verulamium* and Wroxeter (both some 200 acres), but about the same size as Roman Winchester, and larger than Colchester, Chichester, Silchester and Exeter (all around 100 acres), and with its own theatre. Canterbury was connected to London by a Roman road, crossing the River Medway at Rochester by a Roman bridge that still stands today, whose course is followed by the present-day A2. Canterbury, indeed, was the hub of the Roman

¹ Alan Everitt, “The Making of the Agrarian Landscape of Kent”, *Archaeologia Cantiana* xcii (1977), pp. 1-31, substantially followed by Stuart Brookes and Sue Harrison, *The Kingdom and People of Kent AD 400-1066* (Stroud: The History Press, 2010), pp. 10-14 including at p.7 a useful map detailing the likely early medieval Kentish coastline.

² Sheppard Frere, *Britannia: A History of Roman Britain* (London: Routledge Kegan Paul, 1967), ch. 12, *passim*

road network of Kent, other roads radiating from it serving Lympne (the modern B2068), Dover (the continuation of the modern A2), Richborough (the modern A257), Sarre (the modern A28) and Reculver, the Roman road surviving in the present day as a straight stretch of a minor road running to the west of Hoath linking the villages of Maypole and Millbank. Allowing for a suburb across the River Stroud and a ribbon development along the Richborough road, both outside the Roman city walls, Frere estimates the population of Roman Canterbury at some 5,000.

South of the foothills region lies an area of chalk downland, extending for some seventy miles from the South Foreland near Dover to the Surrey borders. This region is much less fertile than the foothills, and even today remains relatively sparsely inhabited.

At the southern foot of the downland, the Upper Greensand and Gault soils give rise to a narrow band of well-watered and comparatively fertile countryside, which Everitt termed the Holmesdale. This, like the foothills, is likely to have been settled relatively early and relatively densely.

Further south still lies the Chartland, a stony and, save for a small area near Maidstone, for the most part infertile hill country. Its comparative unsuitability for agriculture means that even today much of this country remains wooded.

This hill country gives way to the south to the Weald, a tract of oak and beech woodland stretching at its maximum extent for nearly a hundred miles between Petersfield in the west and Deal in the east, and for some forty miles north to south. Communication to the west with present-day Sussex appears to have been very significantly impaired. Scholars have generally been content to attribute this to the legacy of the Roman road network and the sheer size and density of the Weald in both Roman and Anglo-Saxon times. This may be an oversimplification, however. The more than five hundred Wealden place-names ending in *-den* provide ample evidence for a lively north-south traffic across the Weald associated with swine pasture, suggesting that the topography was not as

intrinsically impenetrable as generally supposed. The early history of Sussex is particularly poorly-documented, and consequently under-studied and poorly understood. It is a matter for surmise whether the geographical isolation of Sussex was perhaps reinforced by political isolation as well.³ Kelly, for example, notes⁴ the lack of a stable tradition of centralised royal rule on Sussex, which may perhaps have operated to discourage the development of extensive trade links.

Finally, in Roman and Anglo-Saxon times extensive tracts along the north coast of Kent, the margins of the Wantsum Channel and the area around Romney, were marshland. The most productive use that could be made of these areas was sheep farming, attested by the name of the Isle of Sheppey.⁵

Surrounded as it is on three sides by the sea and to the south-west by the – for practical purposes – impenetrable Weald, it is not surprising that Kent should even by Roman times have had a long history as a distinct political unit. *Cantium* was known to Caesar⁶ and equivalent forms were known to Strabo⁷ and Diodorus Siculus⁸ in the first century BC. The concentration of early Anglo-Saxon settlements in the foothills and Holmesdale areas identified by Everitt in the same areas as the location of the major Romano-British sites was cogently considered by Nicholas Brooks⁹ as supportive of the possibility of some degree of continuity from the Celtic and Roman past. Indeed, in some rural areas such as Saltwood a series of drove-roads running at right angles to river valleys intended

³ See the discussion in Susan Kelly (ed.), *Charters of Selsey*, Anglo-Saxon Charters VI (London: Oxford University Press for The British Academy, 1988), pp. lxxiii-lxxxv, drawing heavily upon Martin Welch, *Early Anglo-Saxon Sussex*, 2 pts., BAR, British ser. cxii (Oxford, 1983).

⁴ *Charters of Selsey*, p. lxxvi.

⁵ Lit. OE *sceap-ieg*, “sheep island”.

⁶ Gaius Julius Caesar, *De Bello Gallico*, v. 23.

⁷ G. Anjac (ed.), Strabo, *Geography* (Paris, 1969) iv, 3,3 and iv, 5, 1.

⁸ C.H. Oldfather (ed.), Diodorus Siculus, *History* (univ. ed., 1969), v, 21, 3.

⁹ Nicholas Brooks, “The creation and structure of the kingdom of Kent”, in Steven Bassett (ed.), *The Origins of Anglo-Saxon Kingdoms* (Leicester University Press, 1989) pp. 55-79 at p. 57.

to allow valley communities to access woodland and, in season, pasture, attest to a continuity of settlement pattern from a very early period indeed.¹⁰

A picture thus emerges of Roman Kent as an ordered, settled and well-established community playing a full part in the prosperity of Roman Britain. As previously noted, the Wantsum Channel would have been integral to the handling of sea-borne trade between Britain and the Continent, and was moreover connected by road with London via Canterbury and Rochester by the Roman forerunner of the A2. The garrisons and military infrastructure at the forts of *Regulbi*, *Rutupiae*, *Dubris* and *Lemanis* may also cogently be supposed to have been mainstays of local economic activity. Place-names such as Faversham indicate metal-working activity. Finally, the fertile “foothills” identified by Everitt would have sustained, by the standards of the time, fairly intensive cereal growing, and the Holmesdale too is likely to have been relatively densely settled.

Yet by the end of the first quarter of the fifth century, Roman Britain as a political, economic and social concept had ceased to exist, in a collapse so total and irreversible that can barely be described without hyperbole. Moreover, by the second half of the sixth century, perhaps the greater half of lowland Britain had passed into the political, military and cultural domination of the descendants of settlers of an ethnic Germanic origin from homelands in the North Sea littoral: the Anglo-Saxons. Scholarship does not yet admit of an entirely concluded view even as to the processes whereby Roman Britain declined and eventually collapsed, still less as to the detail and relative weight of the causes. The processes whereby the Anglo-Saxon settlers gained ascendancy have similarly been the subject of competing scholarship, albeit that at least here recent advances in the study of genetics now seem to allow of greater certainty.

¹⁰ As described by Andrew Reynolds in two unpublished lectures: “Assembly-sites and the Emergence of Supra-local Communities in Early Kent”, Institute for Historical Research, 29 April 2009; and “Landscapes of Governance in Anglo-Saxon England”, University College, London, 21 November 2011.

A number of competing explanations and accounts of the decline and eventual disintegration of Roman Britain have been put forward, evolving to take account of the emerging, and the developing understanding of the, archaeological evidence.

Until perhaps the late 1970s,¹¹ the consensus of scholarship¹² was that from around 360 onwards Roman Britain went into a gradual decline, such that by certainly no later than 450 no trace of its political institutions or economic infrastructure remained. Some nuances of view persisted as to the extent that the Christian church may have survived, but otherwise the social fabric of Roman Britain as exhibited by an urbanised, industrialised, money-based economy was accepted as having ceased to exist. Accordingly, the descendants of the formerly Roman subjects in Britain lapsed into, and the influx of Germanic settlers had no understanding of anything other than, a way of life not dissimilar in technology to the pre-Roman Celtic Iron Age, markedly less visible in the archaeological record than the late Roman Britain that preceded it. The majority of proponents of this view also contended for some degree of overlap between the continuance of Roman governance of Britain, and the emergence in the archaeological record of the first Germanic settlers, perhaps as mercenaries. A prevailing view could also be found at this time for continuity of occupation in at least the majority of principal towns from the late Roman period into the Anglo-Saxon period.

From the late 1970s onwards, and for most of the 1980s, scholarly opinion shifted to favour an altogether more cataclysmic discontinuity between Roman Britain and the Anglo-Saxon kingdoms that ultimately succeeded it. On this view, Roman Britain persisted in a more or less recognisable form until around the turn of the fifth century, but then collapsed suddenly over a period of perhaps a quarter of a century. The notion of any degree of overlap between late Roman

¹¹ The author follows here the commendably even-handed exposition given by Ken Dark in the Introduction to his *Britain and the end of the Roman Empire* (Stroud: Tempus Publishing, 2000).

¹² See, for example, Leslie Alcock, *Arthur's Britain* (Harmondsworth and New York, 1971), *passim*, and the later chapters of Sheppard Frere, *Britannia* (London: Routledge & Kegan Paul, 1967).

Britain and the Anglo-Saxon period came to be viewed as much less likely in the light of emerging, and a new appreciation of the, archaeological evidence.¹³ One element at least of the former view was retained, in as much as there remained very little to choose between the former inhabitants of Roman Britain and the influx of Anglo-Saxon settlers as regards technology and social and economic organisation, save that whereas the former were mostly Christian and were accordingly buried in unfurnished graves, those of the pagan Anglo-Saxons who were buried and not cremated¹⁴ tended to be buried with grave goods and so were more visible in the archaeological record. The descendants of the inhabitants of Roman Britain, and the Anglo-Saxon settlers, were both envisaged¹⁵ as engaged in a knock-out competition of military campaigns and political manoeuvring that led, in a by no means predetermined fashion, to eventual Anglo-Saxon political, economic and cultural dominance by the end of the sixth century in the eastern parts of lowland Britain, and of the remainder of the bulk of Britain from Northumbria through the Midlands to Somerset and Hampshire, by the end of the seventh century.

Contemporaneously, Richard Reece¹⁶ argued instead that the key transformation of Roman Britain took place in the second and third centuries rather than the fourth and fifth, in consequence of urbanism having failed to any appreciable purpose, the handful of well-known exceptions aside, to gain traction in Britain. On Reece's view, late Roman Britain was essentially a patchwork of village-sized settlements sited around Romano-British villas. Accordingly, Romano-British "culture" was more apparent than real, such that even its vestige should not long have survived the demise of Roman government. More recently, similar views have been expressed by Neil Faulkner.¹⁷

¹³ See in particular Simon Esmonde Cleary, *The Ending of Roman Britain* (London: B.T. Batsford, 1989) *passim*: a forceful exposition of this view.

¹⁴ See section 1.5 below.

¹⁵ As graphically described in the highly influential collection of papers in Bassett (ed.), *The Origins of Anglo-Saxon Kingdoms*.

¹⁶ Richard Reece, "Towns and country: the end of Roman Britain", *World Archaeology* 12 (1980), pp. 77-92; *My Roman Britain* (Cirencester: Cotswold Studies, 1988).

¹⁷ Neil Faulkner, *The Decline and Fall of Roman Britain* (Stroud: Tempus, 2000).

In the 1990s, Nicholas Higham¹⁸ sought to refine and develop the “dramatic discontinuity” view by dividing late fourth century Britain into an eastern, lowland, highly Romanized zone, and a western, upland zone where Roman civilisation had not taken nearly so close a hold. In the eastern zone, extensive use was made in the early fifth century of Germanic mercenaries, and when in the early fifth century these revolted, as a consequence of the Britons being unable to defend themselves, these areas passed very rapidly into Anglo-Saxon domination. In the west, in contrast, tribal influence initially persisted sufficiently to keep the inhabitants from direct Anglo-Saxon rule, albeit that even here their rulers were by the end of the sixth century subordinate in political and military matters to Anglo-Saxon overlords, notwithstanding that these Anglo-Saxon kings did on occasion find it expedient to retain something of the Roman administrative framework.

Then, at the turn of the new millennium, Ken Dark,¹⁹ upon whose helpful summary of preceding scholarship the last few paragraphs have been based, argued for a very different interpretation of fifth- and sixth-century Britain, whereby the ability of the Britons, on Dark’s view, to retain their political independence longer than the majority of their Western European counterparts enabled more, rather than less, of their Roman heritage to survive.

More recently still, interesting fresh arguments have been advanced by Stuart Laycock²⁰ that British tribal rivalries from the pre-Roman period persisted through the period of Roman occupation and afterwards, and inhibited an effective island-wide response to the challenges faced at the end of Roman rule,

¹⁸ Nicholas Higham, *The English Conquest: Gildas and Britain in the fifth century* (Manchester University Press, 1994); *An English Empire: Bede and the early Anglo-Saxon Kings* (Manchester University Press, 1995); and *The Convert Kings: Power and religious affiliations in early Anglo-Saxon England* (Manchester University Press, 1997)

¹⁹ Ken Dark, *Britannia and the end of the Roman Empire*.

²⁰ Stuart Laycock, *Britannia The Failed State: Tribal Conflicts and the End of Roman Britain* (Stroud: The History Press, 2008)

thereby facilitating the process whereby the former Roman Britain passed under Anglo-Saxon control. It is fair to say that this book draws very considerably in sentiment from the author's own experiences as a humanitarian aid worker in Bosnia and Kosovo, but this observation does not necessarily diminish the force of the underlying scholarship, much of which may yet prove to be of value.

As has previously been observed, such a diversity of competing analyses could only be resolved, if at all, in a work of monograph length, a luxury not permitted to the present author who must, therefore, content himself with the following synthesis of his own views.

In support of the “dramatic discontinuity” view, one struggles to find a sufficient weight of evidence for a significant decline in either population levels or the productivity of the land by the end of the fourth century. Insufficient regard has, however, been paid to the burden of the demands placed upon its inhabitants by the late Roman state in the shape of levies and imposts, by this stage rendered as often in kind as in money, necessary to maintain itself and its military forces. So substantial were these demands made by the state of its citizens that it seems entirely plausible to suppose that by the end of the fourth century economic activity had been choked off to the point where residents of towns and villas were no longer able to maintain themselves in their former style.

This view is consistent with a considerable body of, largely, archaeological evidence suggesting that by the end of the last quarter of the fourth century a significant decline in economic and civic activity had set in throughout Roman Britain. Evidence for this appears most clearly in the towns, in the villas, and – although this did not feature heavily in the economy of Roman Kent – in the pottery industry. The archaeology of late-Roman towns is virtually unanimous in attesting to buildings being abandoned and not being replaced. Both civic buildings and private residences appear to be less well maintained, and such building work as does appear in the archaeological record, whether by way of repair or, less frequently, new construction, is invariably of inferior quality. This trend, moreover, is national and uniform, as appears from the archaeology of

such diverse sites as *Verulamium* (present-day St. Alban's), *Eboracum* (York), *Ratae Corietavorum* (Leicester) and *Londinium* (London).²¹ In the case of villas, no evidence exists for the construction of new villas in the last quarter of the fifth century, nor for any major extensions or refurbishments of existing villas. Instead, much more common are instances of a reduction in the number of rooms being occupied; of formerly well-appointed rooms used for residential purposes instead being given over to manufacturing, agricultural or simply utilitarian purposes; and, as with the towns, a general tailing-off in the quality of construction.²² Evidence from the pottery industry is consistent with, at best, economic stagnation or, more likely, decline both in volumes and in the ranges of styles and decoration.²³

This already unpromising position at the end of the fourth century deteriorated still further, however, in the early fifth century, in consequence of military catastrophe. On the last night of December 406, the waters of the River Rhine froze near Mainz, allowing a barbarian confederation of Alamanni, Burgundians, Vandals and others to cross. In consequence of the chaos that followed, Constantine III, the latest of a trio of self-proclaimed emperors elevated by the army in Britain, was obliged to withdraw substantially all Roman troops remaining in Britain to the Continent in an attempt to deal with the threat. Zosimus, a historian writing in the eastern empire at the turn of the fifth and sixth centuries, then describes²⁴ the emperor Honorius (reg. 395-421) writing to the cities of Britain in 410 with instructions to make their own arrangements for their defence. Whether this account is reliable in its specifics is not clear: for the events of this period, Zosimus was using as his source Olympiodorus of Thebes,

²¹ The author draws heavily here from a series of unpublished papers given at a conference organised in March 2009 by the University of Oxford's Department of Continuing Education, *Towns in Britain AD 300-700: Ideas of Late Antiquity*. Thus: Ros Niblett, "St. Alban's: after the Romans and before the Saxons"; Mark Whyman, "Roman York: the late 4th century and beyond..."; Richard Buckley, "Late Roman and early post-Roman Leicester – recent investigations"; and Derek Kane, "London: decline and revival, AD 300-700".

²² Esmonde Cleary, *Ending*, p. 134

²³ Esmonde Cleary, *Ending*, p. 135.

²⁴ Ludovicus Mendelssohn (ed.), *Zosimus*, *Historia Nova* (Leipzig, 1887) vi. 10.

of whose works only a few fragments have survived. These few fragments, it is true, suggest Olympiodorus to have been a competent historian, but whether Zosimus transmitted him correctly is largely conjecture. As to the more general picture, however, the thrust of the accounts of Orosius and Zosimus is undoubtedly broadly correct. The Byzantine historian, Procopius, also writing in the sixth century, states²⁵ that from this time the Romans never recovered Britain, which was henceforward ruled by “tyrants”, meaning self-styled local emperors. From about 410 Britain ceased to be under Roman military protection. Moreover, although in the short run attempts would no doubt have been made to preserve a Roman civilian administration in the expectation of the military situation being restored, this could not long be sustained.

The subsequent catastrophe is attested by coin finds, by urban archaeology, and by the interpretation of evidence relating to population size. No Roman gold coins have been found in Britain minted later than the reigns of Arcadius and Honorius in the first decade of the fifth century, and those of Constantine III. Specifically, the issues of the later part of the reign of Honorius are not found in Britain. A similar position seems to apply for silver coins, whilst for bronze coins the latest issues are those of 395–402 from the Rome mint. After 411, therefore, coins were no longer supplied to Britain. Since a functioning money economy was an essential plank of the Roman state, it therefore follows that after 411 Britain was no longer part of the Empire. The evidence admits of no other interpretation.

Further, a significant number of coin hoards have been found, generally in southern Britain but with considerable geographic spread, dateable to the early fifth century. The minting dates of the latest coins in a hoard of course provide a *terminus post quem*, but instructively whilst in some cases the coin hoards are accompanied by other late Roman artefacts dating from the late fourth and early fifth centuries, in no cases are the finds accompanied by artefacts of Anglo-

²⁵ Procopius of Caesarea, *De Bello Vandalico* I. ii. 38 (Leipzig, 1905-13).

Saxon manufacture. These considerations plainly support an impression of profound social, economic and military turmoil.

In towns, the cessation of a money economy is likely within a very short period to have brought economic activity to a halt, as urban centres of production such as the pottery industry no longer found buyers for their wares, whilst farmers no longer brought produce to market. The inevitable consequence was rapid and substantial and, in some cases, complete urban depopulation,²⁶ manifested in the archaeological record as a thick layer of black earth, consistent with the organic decay that results, very broadly, from the return of plant life to a former urban setting.

The archaeological evidence for fifth-century Canterbury suggests a substantial, perhaps even a complete, breakdown in civic society. At Whitefriars, a group burial of a man, a woman, two young children and a dog unceremoniously placed in a pit that was not subsequently back-filled was originally dated to c. 550, but has subsequently been reassessed to not later than the last decade of the fourth century. Neighbouring Stow Street exhibits a number of other irregular late fourth century burials. As with Whitefriars, the bodies show no obvious signs of weapon injuries, consistent perhaps with a plague or epidemic. It is significant that both these finds are situated well within the city walls of Roman Canterbury, in breach of Roman laws that prohibited burials within city limits. The onset of the early Anglo-Saxon period is attested by the discovery of Visigothic coinage from Gaul dated to the late fifth century, and by the emergence in the archaeological record from the mid-fifth century onwards of numerous sunken-featured buildings of the *Grubenhäuser* type cutting into late Roman townhouses. Summarising this archaeological evidence, Andrew Richardson²⁷ explains the considerable difficulties in evidencing and dating late Roman continuance into the early Anglo-Saxon period. It is possible that pottery use might straddle the

²⁶ Mike Fulford, "Fourth century towns; eighth century towns, and what happened in between?", unpublished paper presented to the conference *Towns in Britain AD 300-700: Ideas of Late Antiquity*, Oxford University Department of Continuing Education, March 2009.

²⁷ Andrew Richardson, "From Durovernum to Durobernia: Canterbury AD 300-700", *ibid.*

two periods, but on the basis of the available evidence a hiatus between Roman and Anglo-Saxon occupation appears more likely.

Also in Canterbury, excavations near the former Roman public baths indicated that in the later fourth century a number of public buildings from the earlier part of that century became effectively shells, with their interiors taken over by timber structures. It further appears that around this time the public sewer system began to fail, with blockages resulting in the backing up of foul water and consequent flooding. Finally, evidence exists for the encroachment of timber buildings into the town's streets from around 400.²⁸

The third link in the chain relates to evidence for the total population of Britain at the end of Roman rule, as compared with equivalent figures extrapolated from the evidence of the Domesday Book compiled in 1087. This is another matter on which academic opinion has moved considerably in recent decades.²⁹ In a series of exchanges with J.N.L. Myers in *Antiquity* during the 1950s, Sir Mortimer Wheeler pressed the case for estimates of the population of late Roman Britain to be increased from the then consensus of around one million to two million, based upon new evidence emerging from topical archaeological excavations at Verulamium and Silchester. Yet from roughly 1965 onwards, further new evidence from a plethora of Roman finds uncovered during the construction of new motorways, coupled with increasing use of aerial photographs, suggested that fourth century Britain was much more densely settled than had previously been supposed. Some scholars contended for a population size of as high as seven million, but a consensus seems to have emerged around a population level of some four million at 350 AD.³⁰ On any analysis, this contrasts very sharply

²⁸ Kevin Blockley, "The Marlowe Car Park Excavations", *Archaeologia Cantiana* xcvi (1980) pp. 402-5.

²⁹ As summarised by, principally, Peter Fowler in discussion of Della Hookes, "The Anglo-Saxons in England in the Seventh and Eighth Centuries: Aspects of Location in Space", in John Hines (ed.), *The Anglo-Saxons from the Migration Period to the Eighth Century*, Studies in Historical Archaeoethnology Volume 2 (Woodbridge: Boydell, 1997) pp. 65-100 at p. 87.

³⁰ Thus, Helena Hamerow, "The earliest Anglo-Saxon kingdoms", in Paul Foracre (ed.), *The New Cambridge Medieval History Vol. 1 c. 500-c. 700* (Cambridge: Cambridge University Press,

with estimates made by historians of the Norman Conquest on the evidence of the Domesday Book for the population size in c. 1087, where a consensus has emerged for a population of a little above some two million.

These numbers must clearly be used with some caution. It is, for example, plausible that population levels in certain areas of Domesday England that had borne the brunt of brutal campaigns of pacification undertaken during the reign of William the Conqueror³¹ had been reduced to levels significantly below the optimum which the natural resources of these regions might have been able to support. Indeed, some towns appear to have declined markedly in size³² between the end of the Anglo-Saxon period and Domesday. It is also possible that despite nearly half a century of relative peace during the reigns of Cnut (reg. 1016-35) and Edward the Confessor (reg. 1042-66), population levels in England had not yet fully recovered from the ravages of the Viking raids during the reign of Æthelred the Unready (reg. 978-1016). A more authoritative study of these matters would be valuable.

Evidence also exists for a series of plagues during the sixth and seventh centuries, recorded in Bede³³ and also in the *Annales Cambriae*,³⁴ compiled at St. David's from the late eighth century onwards but whose entries for the sixth and seventh centuries are likely to have been reconstructed from Irish annals,³⁵ and

2005) pp. 268-88 at p. 265 n. 8, citing with approval Martin Millett, *The Romanisation of Britain* (Cambridge: Cambridge University Press, 1990), pp. 180 et seq.

³¹ David C. Douglas, *William the Conqueror* (London: Eyre & Spottiswood, 1964, repr. London: Methuen, 1969) ch. 9, especially pp. 219-21. Other standard texts convey a similar picture.

³² R. I. Page, *Life in Anglo-Saxon England* (London: B. T. Batsford and New York: Putnam, 1970) p.148.

³³ *H. E.* iii. 27 (for 664) and iv. 14 (undated).

³⁴ *S. a.* 537, 547, 682-3.

³⁵ As originally explained by Kathleen Hughes, *Celtic Britain in the Early Middle Ages* (Woodbridge: Boydell, 1980), chs. V and VI, pp. 67-100.

which can be linked to the spread of plagues recorded by Continental and, more particularly, Byzantine historians.³⁶

Nevertheless, it can plausibly be contended that a substantial element of, if indeed not even the bulk, of the depopulation of England from a peak of some four million in the late Roman period to some 2.2 to 2.5 million at the time of Domesday³⁷ is likely to have occurred within a relatively short period of perhaps a generation or two around the second quarter of the fifth century following the collapse of Roman Imperial government.

It is fashionable for present-day historians to emphasise the coercion and oppression inherent in Roman rule, and in consequence not unduly to lament its passing. Thus, Neil Faulkner writes:

The view of the Roman Empire that I present is essentially negative. Many classical scholars in the past have portrayed Rome as a model to be emulated – “The Grandeur That Was Rome” – and have argued that it is to be studied for this reason. This book offers an alternative perspective, arguing that Rome was a system of robbery with violence, that it was inherently exploitative and oppressive, and that it was crisis-prone, unstable and doomed to collapse.”³⁸

Certainly, Roman Britain was no model of modern Swedish-style social democracy. Yet its collapse brought no liberation for its inhabitants. Indeed, in the history of England it would seem that perhaps only the Black Death might surpass the collapse of Roman Britain, on a scale of humanitarian disaster.

³⁶ Such as the great plague that afflicted Byzantium in 542 attested by Procopius of Caesarea: *Anecdota*, Book III (Leipzig, 1913).

³⁷ Figures supported by e.g. Christopher Dyer, *Making a Living in the Middle Ages* (London: Penguin, 2003) p. 26.

³⁸ Neil Faulkner, *Decline and Fall*, p. 11.

As with the broad range of views seeking to explain the decline and ultimate collapse of Roman Britain, so to have competing models emerged of the Anglo-Saxon settlement of Britain. Specific issues arise in the context of the early history of the Anglo-Saxon kingdom of Kent, which will be considered in the two following sections. In trying to arrive at a more general overview of the early stages of Anglo-Saxon settlement of Britain, however, difficulties have arisen in reconciling the logical direction of demographic, place-name and literary evidence with a lack of confirmatory archaeological evidence, an apparent conundrum to the resolution of which, as explained below, very recent advances in genetic studies may have the potential to make a significant contribution.

It has long been a consensus that by at least the eighth century the Brittonic languages formerly used by the Romano-British had fallen, at least substantially if not completely, out of use in areas of Britain that had fallen under Anglo-Saxon control, albeit that Bede's frequent citation of both English place-names and their Brittonic equivalents suggests that this may have been a relatively recent phenomenon. The first major attempt to analyse this process more closely was made in 1953, when Kenneth Jackson published his magisterial *Language and History in Early Britain*.³⁹ This consisted of a chronological survey of the Brittonic languages from the first to the twelfth centuries, tracing the emergence from the parent Indo-European of the medieval and modern Gaelic, Welsh, Cornish and Breton. One aspect of his work in particular⁴⁰ has exerted a very significant influence upon our understanding of the Anglo-Saxon migration. Drawing on the earlier work of Eilert Ekwall,⁴¹ Jackson identified a striking correlation between the frequency of Brittonic as opposed to Old English river names, and the phases of the Anglo-Saxon conquest. Within what Jackson termed Area I, everything east of a line from the Yorkshire Wolds to Salisbury Plain and the New Forest, including the East Riding, Nottinghamshire, Leicestershire, Northamptonshire, Oxfordshire, eastern Berkshire and southern Hampshire, Brittonic names are rare, and are confined almost exclusively to

³⁹ Kenneth Jackson, *Language and History in Early Britain* (Edinburgh University Press, 1953)

⁴⁰ *Ibid.*, pp. 220 et seq.

⁴¹ Eilert Ekwall, *English River Names* (Oxford, 1928).

large and medium sized rivers such as the Trent, the Thames, the Thame and the Derwent. Names whose Celtic origin is doubtful form the majority, including the Witham, the Soar, the Welland, the Ouses, the Granta and the Stours. Jackson persuasively identifies this geographic area as corresponding identically with the extent of primarily Anglo-Saxon settlement down to about the first half of the sixth century.

Jackson identified three further areas. Area II is an intermediate central strip, west of Area I and east of a line running approximately along the eastern borders of Cumberland and Lancashire to the Ribble, then south-west to the flat country near Wigan, and then to the sea north of the mouth of the Mersey. From Chester, the line passes up the valley of the Dee and south to the Severn, which it follows to the Bristol Channel, along the northern boundary of Somerset and down through Selwood to the south-west corner of Wiltshire, east along the Wyle valley and then along the boundary between Hampshire and Dorset. In Area II, Brittonic river names are markedly commoner than in Area I, and the proportion of certainly Celtic ones is higher. Instructively, Area II appears to correspond very closely to the expansion of Anglo-Saxon occupation which took place in the second half of the sixth century in southern Britain and the first half of the seventh century in the north.

Area III consists of those parts of Cumberland, Westmorland and Lancashire west of Area II, a strip between Area II and the present Welsh border comprising most of Shropshire, western Worcestershire, all Herefordshire north and east of the Wye, that part of Gloucestershire west of the Severn, and the remainder of south-west England east of the Tamar. Here Brittonic river names are especially common, including often those of mere streams, and the proportion of certainly Celtic names is highest of all. These regions are identified by Jackson with the third and final phase of Anglo-Saxon conquest: in the second half of the seventh century on the Welsh marches, and from the middle of the seventh century to the earlier part of the eighth century elsewhere.

Finally, Area IV is Wales and Monmouthshire, a corner of Herefordshire southwest of the Wye, and Cornwall. Here the nomenclature is overwhelmingly Celtic, consistent with these lands remaining Brittonic in speech until at least the Norman Conquest, much of Cornwall until the end of the Middle Ages and part of it until the eighteenth century, and much of Wales until modern times.

This analysis has remained unchallenged in its material particulars,⁴² and its implications for our understanding of the earliest phases of the Anglo-Saxon settlement are considerable, particularly when taken with the evidence for depopulation considered above, and some of the more lurid accounts in early narrative sources, both Latin and Old English. The following extract from Gildas is typical:

...ita ut cunctae coloniae crebris arietibus omnesque coloni cum praepositis ecclesiae, cum sacerdotibus ac populo, mucronibus undique micantibus ac flammis crepitantibus, simul solo sternerentur, et miserabili visu in medio platearum ima turrium edito cardine evulsarum murorumque celsorum saxa, sacra altaria, cadaverum frusta, crustis ac sigelantibus purpurei cruoris tecta, velut in quodam horrendo torculari mixta viderentur, et nulla esset omnimodis praeter domorum ruinas, bestiarum volucrumque ventres in medio sepultura, salva sanctuarum animarum reverential, si tamen multae inventae sint quae arduis caeli id temporis a sanctis angelis veherentur.⁴³

⁴² Thus: Paul Russell, "Recent work in British Latin", *Cambridge Medieval Celtic Studies* 9 (1985), pp. 19-29; Peter Schrijver, "The rise and fall of British Latin: evidence from English and Brittonic", in Markku Filoppula, Juhani Klemola and Heli Pitkaenen (edd.), *The Celtic roots of English*, Studies in Languages 37 (Joensuu, 2001), pp. 87-110; and the insightful discussion in Chapter 4 of John Baker, *Cultural Transition in the Chilterns and Essex Region, 350 AD to 650 AD* (Hatfield, University of Hertfordshire Press, 2006), pp. 138-86.

⁴³ "All the major towns were laid low by the repeated battering of enemy rams; laid low, too, all the inhabitants – church leaders, priests and people alike, as the swords glinted all around and the flames crackled. It was a sad sight. In the middle of the squares the foundation-stones of high walls and towers that had been torn from their lofty base, holy altars, fragments of corpses, covered (as it were) with a purple crust of congealed blood, looked as though they had been

The wording of the early entries of the Anglo-Saxon Chronicle is terser, but the impression given is very similar:

Her Ælla 7 Cissa ymbsaeton Andredesceaster 7 of slogon ealle þa ðe þær inne eardedon ne wearð þær forþen an Brit to lafe.⁴⁴

Faced with evidence such as this, some perceived the early stages of the Anglo-Saxon settlement to have been an exercise in large-scale ethnic cleansing, with the former Romano-British inhabitants of the conquered areas being killed or driven out in substantially their entirety. Yet on this, archaeologists had consistently counselled caution, pointing out that nothing in the archaeological record supplied evidence for slaughter on such a massive scale.⁴⁵ Proponents of the ethnic cleansing viewpoint countered that at a low level of material culture following the collapse of Roman Britain, burials might not be very visible in the archaeological record, and in any event certain of the soils of southern England are not conducive to archaeological traces remaining. Alternatively, perhaps the archaeological evidence simply remained still to be discovered.

The capacity of the human species to resort to violence when competing for scarce resources is so familiar that it would be unrealistic to suppose that the Anglo-Saxon settlement of Britain was not accompanied by at least local instances of atrocity on both sides. There is no reason to suppose that the former Romano-British inhabitants always and everywhere left Anglo-Saxon settlement

mixed up in some dreadful wine-press. There was no burial to be had except in the ruins of houses or the bellies of beasts and birds – saving the reverence due to their holy spirits, if indeed many were found at that time to be carried by holy angels to the heights of heaven.” Michael Winterbottom (ed. and trans.), *Gildas: The Ruin of Britain and other works* Arthurian Period Sources Vol. 7 (London and Chichester: Phillimore, 1978) Book I. 24, pp. 98/27.

⁴⁴ “In this year Ælle and Cissa besieged Andredesceaster [i.e. Pevensey] and slew all whom they found within, and not one Briton was left alive.” Anglo-Saxon Chronicle “E”, Oxford, Bodleian Library, MS. Laud 636, s.a. 491. Author’s translation.

⁴⁵ Thus Hamerow, “The earliest English kingdoms”, pp. 267-9.

uncontested.⁴⁶ Yet evidence for the rapid depopulation of Roman Britain in the mid-fifth century may suggest that resources, in particular land that had fallen out of cultivation, may not have been so scarce, such that peaceful co-existence and even co-operation may have been possible between different traditions and ethnic groups.

Relatively recent archaeological findings lend weight to this analysis. Thus, a cemetery at Wasperton, Warks., in use continuously from the late Roman period to the seventh-century, shows c. 500 a number of starkly different burial rites taking place contemporaneously. The south-east corner of the cemetery shows a continuity of burial rites from the late Roman period. Elsewhere, cremation and inhumation burials accompanied by Germanic grave goods are also attested. Within a generation or two, however, by the middle of the sixth-century, these differences of funerary rites had largely disappeared.⁴⁷ Similar arguments for a merging of Romano-British and Germanic cultures as a result of largely peaceful interaction have been deduced for the Chilterns and Essex from the spread of Germanic pottery and metalwork.⁴⁸

As previously intimated, modern advances in genetic studies have done much to move the debate forwards. Particularly instructive is a recent paper by Stephen Leslie et al.,⁴⁹ based upon a genetic examination of 2,039 samples from the People of the British Isles collection. The value of this analysis consists in the fact that the samples all consisted of individuals, all of whom had all four grandparents born in rural areas within 80 km of each other, with an average year of birth of 1885. This approach accordingly allowed an investigation of fine-scale population structure in rural areas of the UK before the major population

⁴⁶ For a discussion of the disparate narrative sources for the Anglo-Saxon settlement of Kent, see the following section 1.2.

⁴⁷ Martin Carver, Catherine Hills and Jonathan Scheschkewitz, *Wasperton: A Roman, British and Anglo-Saxon Community in Central England* (Woodbridge: Boydell, 2009), *passim*.

⁴⁸ Baker, *Cultural Transition*, pp. 134-5.

⁴⁹ Stephen Leslie et al., "The fine-scale genetic structure of the British population", *Nature*, Vol. 519, 19 Mar 2015, pp. 309-14.

movements of the twentieth century. This analysis showed clear evidence in the genetic structure of the population of modern England for the Anglo-Saxon migration, but excluded the possibility of substantial widespread ethnic cleansing. It estimated the proportion of Saxon ancestry in central and southern England as very likely to be under 50%, and most likely to be in the range of 10-40%.

On this basis, the displacement of the Brittonic languages by Old English in the areas under Anglo-Saxon control needs to be explained in other ways, such as cultural and economic domination, and no doubt these will be the subject of renewed scholarly interest in coming years. For the present, however, it should be noted that the significant likelihood is that, by the time of Æthelberht, there remained in Kent a substantial proportion of the population descended from the former Romano-British inhabitants. As will be seen in section 4.3 below, this consideration may be of decisive importance in understanding the meaning of *laet*, one of the more obscure terms used in Æthelberht's *Laws*.

1.2 The Anglo-Saxon Kentish origin myth

As has been shown in the foregoing section, the lack of a reliable narrative history for the fifth- and sixth-centuries and the relative paucity of archaeological evidence for the period means that the process whereby early Anglo-Saxon kingdoms such as Kent emerged from post-Roman Britain remains poorly and incompletely understood. Two principal processes for the formation of the early Anglo-Saxon kingdoms can, however, be postulated. The more dramatic process involves the takeover by an alien group of political authority over an existing territory in the early post-Roman period. The alternative, more gradual and less dramatic, process envisages a steady coalescence over successive generations of adjacent settlements, whereby an increasingly hierarchical leadership emerges from small settlements initially organised upon a clannish or tribal basis. This second process might be prompted by considerations of mutual advantage, such as the need for communities to pool resources under a suitable leader in order to

meet an external threat, or by the self-aggrandizement of leaders who installed themselves by force of arms at the head of their own and adjacent communities.

The traditional accounts of the formation of the Anglo-Saxon kingdom of Kent contained in Bede's *Historia Ecclesiastica*, the *Anglo-Saxon Chronicle* and the *Historia Brittonum* fall four-square into the first type of process: the wholesale takeover of an existing territory. Bede,⁵⁰ drawing heavily upon Gildas,⁵¹ describes how two "Saxon" chieftains, Hengist (or Hengest) and Horsa, names meaning "Horse" and "Mare", arrive in Britain in response to an invitation from Vortigern, apparently a title meaning "chief lord", and seemingly a post-Roman leader of the Britons, ostensibly to defend the Britons from Pictish raids, for which purpose they are settled in the eastern part of Britain, *in orientali parte insulae*. Bede then records Horsa's death in battle fighting the Britons, the existence in east Kent in Bede's own time of a monument to Horsa, and recites the descent of Hengist and Horsa through Wihtgisl, Witta and Wecta from the Germanic god Woden. After initially defeating the Picts, the Anglo-Saxons receive reinforcements from their Continental homelands and, following a dispute about supplies, then ally with the Picts and turn against their hosts. In a later chapter Bede⁵² gives a genealogy of King Æthelberht, tracing his descent to Oeric *cognomento* Oisc, the son of Hengist, and restates that Hengist and Oisc first entered Britain at the invitation of Vortigern, reminding his readers that he has already stated this, *ut supra retulimus*.

Nicholas Brooks⁵³ judiciously evaluates this farrago not as a reliable historical account, but as a reflection of stories cultivated at the royal court of Kent by

⁵⁰ Bertram Colgrave and R. A. B. Mynors (trans. and edd.), *Bede's Ecclesiastical History of the English People*. (Oxford: Clarendon, 1969) i. 15, pp. 48 and 50/49 and 51.

⁵¹ Michael Winterbottom (ed. and trans.), *Nennius: British History and the Welsh Annals*, *Arthurian Period Sources* 8 (London and Chichester: Phillimore, 1978), ch. 22-25, pp. 25-28/96-98. Bede does, however, make certain modifications to the account of Gildas. Thus, where Gildas merely refers to an unnamed *superbus tyrannus*, Bede supplies the name Vortigern. Bede also gives the names of Hengist and Horsa, and associates them with Kent.

⁵² *H.E.* ii. 5, pp. 148 and 150/149 and 151.

⁵³ Nicholas Brooks, "The creation and structure of early Kent", p. 59.

English court poets (*scopas*) in the early eighth century and passed on to Bede by his Kentish informant, Abbot Albinus⁵⁴ of the monastery of St. Peter and St. Paul, later known as St. Augustine's, outside Canterbury. Bede describes⁵⁵ the people of Kent (although not necessarily Hengist and Horsa, who may well have been of a different nationality),⁵⁶ the Isle of Wight and that part of the modern-day Hampshire mainland and in Bede's time part of Wessex immediately opposite the Isle of Wight as being of Jutish origin. Against this backdrop, the supposed ancestors of Hengist and Horsa, Wihtgisl, Witta and Wecta seem more likely to represent a lingering claim to the "Jutish" Isle of Wight, renamed *Uecta* or *Uectis* in Latin and *Wiht* in Old English.⁵⁷

The identification of Bede's Hengist with the Hengest of the Old English poetic record is plausible but problematic. Tolkien, followed by Bliss, readily make the identification,⁵⁸ and as readily admit both as historical figures. In this they are enthusiastically followed by Sam Newton, by analogy with aspects of his own analysis of the origins of the Wuffing dynasty of East Anglia.⁵⁹ Sims-Williams seems inclined to admit at least the possibility of a historical basis for the legendary Hengist as providing "a bridge between the continent and England", whilst the late Bruce Mitchell would have none of this and indeed deplored "a tendency towards over-sentimental ... identification of persons with the same name."⁶⁰ Hengist's supposed brother, Horsa, has also prompted scepticism. The

⁵⁴ For Bede's acknowledgement of the assistance received from Albinus, see the Preface to the *Historia Ecclesiastica*, and for Bede's assessment of Albinus' undoubted scholarship, see *H.E.* v. 20.

⁵⁵ *H.E.* i. 15

⁵⁶ See on this the closely-reasoned analysis of Alan Bliss in J.R.R. Tolkien (ed. Alan Bliss), *Finn and Hengest: The Fragment and the Episode* (London: George Allen & Unwin, 1982), pp. 169-80. Though consistent with the general thrust of Tolkien's own analysis, these pages represent Bliss's own original contribution to the debate.

⁵⁷ Patrick Sims-Williams, "The Settlement of England in Bede and the Chronicle", *Anglo-Saxon England* xii (1983) pp. 1-41 at 24-5.

⁵⁸ Above, note 45.

⁵⁹ Sam Newton, *The Origins of Beowulf* (Cambridge: D.S. Brewer, 1993), p. 129.

⁶⁰ Bruce Mitchell, *On Old English* (Oxford: Blackwell, 1988) p. 337.

sober Brooks⁶¹ treats the doubleton as “surely fictitious”, whilst Sims-Williams⁶² also regards Horsa as “unlikely”.⁶³

Archaeological and place-name evidence suggests that the kingdom of Kent is likely initially to have been confined to the east of the River Medway. Whereas the archaeological evidence for east Kent during the pagan period emphasises more opulent Jutish and Frankish traditions, that for west Kent is much more in keeping with the Saxon traditions exhibited by cemeteries of the lower Thames valley in Surrey and Essex.⁶⁴

A series of charters from Christ Church, Canterbury dating from the late eighth- and early ninth- centuries in both Latin and OE record the place-name Eastry in a variety of spellings: (*in regione*) *Eastrgena* (S.128), (*in regione*) *Easterege*, (*in eadem regione*) *Easterege* and (*on*) *Eastorege* (all in S.1264), (*ad*) *Eastræge* (S.1268), and (*to*) *Eastorge* (S.1500). These charters are all considered by commentators to be authentic.⁶⁵ The name Eastry is derived from two elements: the OE adjective **eastor*, meaning “eastern”, and the OE noun **ge*, meaning “district” or “region”, cognate with the German *Gau*. Likewise in two other east Kent place-names: Sturry (the [river] “Stour district”), and Lyminge, (the [river]

⁶¹ Above, note 46.

⁶² Above, note 50.

⁶³ Though something of a by-way, and verging on the over-sentimentality to which Mitchell objects, this author recalls an undergraduate contemporary bearing the surname Gosling, whose younger brother had since preparatory school borne the nickname “Gander”. The author seems no reason to credit the Anglo-Saxons with a sense of humour less developed than late twentieth-century ten-year olds.

⁶⁴ Sonia Chadwick Hawkes, “Anglo-Saxon Kent c. 425-725” in Peter Leach (ed.), *Archaeology in Kent to AD 1500* (London: CBA Research Report 48) pp. 64-78, substantially followed by subsequent commentators including the relatively recent Brookes and Harrington, *Kingdom and People of Kent*, pp. 44-64 on the distinctive material culture of east Kent, and p. 65 on the west Kentish equivalents.

⁶⁵ Thus, Nicholas Brooks and Susan Kelly (edd.), *Charters of Christ Church, Canterbury* (2 vols.), Anglo-Saxon Charters 17 and 18 (Oxford: Oxford University Press for the British Academy, 2013), respectively nos. 24 (“unambiguously original”), 43, 62 and 39A (“apparently original”).

“Limen district”). On linguistic grounds, these forms were archaic and obsolete by the time of the charters in which they appear, and presumably represent pre-Christian and thus pre-seventh-century constructs.⁶⁶

In two detailed papers, Tania Dickinson has traced the development of Eastry as a district centre in Kent.⁶⁷ By a similar linguistic analysis, albeit as yet uncorroborated by detailed archaeological evidence, the place-name Wester in the parish of Linton, firmly within east Kent, has been deduced⁶⁸ as a corresponding “western district”. Since a kingdom whose “western *ge*” had its administrative centre at Wester can plainly not have included west Kent, scholarship has contended⁶⁹ that west Kent was either a small, separate kingdom for which (east) Kent and Essex had once competed, or else part of a formerly larger East Saxon kingdom, in either case annexed by (east) Kent in the mid-sixth century perhaps a generation or two prior to Æthelberht’s accession, consistent with the linguistic analysis. Indeed, Brooks shrewdly postulates⁷⁰ that the Kentish origin legend may have served a political purpose in emphasising the activity of Æthelberht’s asserted ancestors in west Kent and in the vicinity of London, thereby justifying the claims of Æthelberht, presumably derived from his father Eormenric, to the western half of the enlarged kingdom. Brooks also draws attention to the creation of a second Kentish bishopric, at Rochester in 604.⁷¹ Since, as Brooks tellingly notes,⁷² no other seventh-century English

⁶⁶ Percy Reaney, “Place-names and early settlement in Kent”, *Archaeologia Cantiana* 76 (1961), pp. 58-74.

⁶⁷ Tania Dickinson, “The formation of a folk district in the kingdom of Kent: Eastry and its early Anglo-Saxon archaeology”, in Richard Jones and Sarah Semple (edd.), *Sense of Place in Anglo-Saxon England* (Donington: Shaun Tyas, 2012) pp. 147-67, and Tania Dickinson, Chris Fern and Andrew Richardson, “Early Anglo-Saxon Eastry: Archaeological evidence for the beginnings of a district centre in the kingdom of Kent”, *Anglo-Saxon Studies in Archaeology and History* 17 (2011), pp. 1-86.

⁶⁸ Nicholas Brooks, “The creation and structure of early Kent”, p. 69.

⁶⁹ Nicholas Brooks, “The creation and structure of early Kent”, p. 68; Stuart Brookes and Sue Harrington, *Kingdom and People of Kent*, pp. 64-6.

⁷⁰ Nicholas Brooks, “The creation and structure of early Kent”, p. 69.

⁷¹ See section 2.2 below, noting *inter alia* its relatively ungenerous endowment and consequent persistent subordination to Canterbury.

kingdom had two sees until the division by Archbishop Theodore in the 670s of the vast East Anglian, Northumbrian, Mercian and West Saxon bishoprics, the foundation of the Rochester see is much more explicable in the context of a lingering sense of a separate identity for the people of west Kent.

1.3 Æthelberht and the beginnings of historical record

Although, as will appear shortly, some deftness is required in handling the source material, the reign of King Æthelberht moves from tradition into secure historical record. Indeed, modern scholarship⁷³ even enables a chronology for his life and reign to be put forward with a very high degree of confidence. Born 560x2; in or around 580 he married Bertha, the daughter of the Frankish king Charibert (*reg.* 561-7), succeeded to the Kentish kingdom c. 590x3 on the death of his father, Eormenric;⁷⁴ after a close and difficult struggle against his principal rival, Ceawlin, of the emerging kingdom of the West Saxons, emerged as *bretwalda* c. 593x7, received the evangelising mission of St. Augustine in 597, was baptized shortly thereafter and about this time promulgated the *Laws*, and died 616x8.

As the first Anglo-Saxon king to receive baptism,⁷⁵ Æthelberht's life and reign unsurprisingly receives considerable coverage in Bede's *Historia Ecclesiastica*, compiled c. 731 and based, as regards affairs in Kent, on information supplied by Abbot Albinus. Æthelberht is, moreover, the first Anglo-Saxon king to be identified by independent contemporary sources. His marriage to Bertha is attested by Gregory, Bishop of Tours, in Book IV of his *Histories* known to have

⁷² Nicholas Brooks, "The creation and structure of early Kent", p. 68.

⁷³ David Kirby, *The Earliest English Kings* (rev'd ed., London: Routledge, 2000), pp. 23-37; Nicholas Higham, *The Convert Kings*, pp. 53-132; J.M. Wallace-Hadrill, Ford Lectures 1970, repr. as *Early Germanic Kingship in England and on the Continent* (Oxford: Clarendon, 1971) pp. 21-46; Nicholas Brooks, "The creation and structure of early Kent", pp. 55-74.

⁷⁴ *H.E.* ii. 5, as part of a genealogy for Æthelberht showing descent from Hengist.

⁷⁵ *Contra* the incautious Rupert Matthews, *Ceawlin: The Man Who Created England* (Barnsley: Pen and Sword, 2012), who asserts at p. 143 that "Ceawlin was undoubtedly a Christian" and who at pp. 173-6 ascribes to Ceawlin a Christian motive and possible links to Pope John III for his military campaigns. On both counts this must be considered highly insecure.

been written in or before 581,⁷⁶ a fact of inestimable value in testing the accuracy of the chronology of Bede's account. Æthelberht and Bertha were in 601 also the recipients of letters from Pope Gregory.

The most convenient starting point is the statement of Bede:

Anno ab incarnatione dominica DCXVI, quia est annus incesimus prius ex quo Augustinus cum sociis ad praedicandum genti Anglorum missus est, Aedilberct rex Cantuariorum post regnum temporale, quod L et sex annis gloriosissime tenuerat, aeterna caelestis regni gaudia subiit.⁷⁷

As noted by Brooks, it is unlikely that Bede, in supplying the incarnation year, had access to a Kentish regnal list that would have enabled him, or his informants, to have calculated the incarnation dates of all sixth- and seventh-century Kentish kings. It is much more likely that Bede reckoned forward twenty years from Gregory's despatch of Augustine in 596, thereby arriving at the date of 616. Still following Brooks, it is clear from a later statement of Bede that Æthelberht's death and burial were indeed still remembered at Canterbury by reference to the chronology of Augustine's mission:

Defunctus uero est rex Aedilberct die XXIII mensis Februarii post XX et unum annos acceptae fidei, atque in portico sancti Martini intro ecclesiam beatorum apostolarum Petri at Pauli sepultus, ubi Berctae regina condita est.⁷⁸

⁷⁶ Gregory of Tours, *Historiae Francorum*, in Wilhelm Arndt and Bruno Krusch, *MGH, Scriptores rerum Merovingicarum*, Vol. I (Hanover, 1885), IV. 26.

⁷⁷ "In the year of our Lord 616, the twenty-first year after Augustine and his companions had been sent to preach to the English nation, King Æthelberht of Kent, after ruling his temporal kingdom gloriously for fifty-six years, entered upon the eternal joys of the heavenly kingdom." Colgrave and Mynors (edd.), *H.E.* ii. 5, pp. 148/9.

⁷⁸ "King Æthelberht died on 24 February, twenty-one years after he had accepted the faith, and was buried in the chapel of St. Martin, within the church of the Apostles St. Peter and St. Paul, where his queen, Bertha, also lies." Colgrave and Mynors (edd.), *H.E.* ii. 5, pp. 150/1.

When taken together, these two statements of Bede give cause for inquiry. It is not clear whether the twenty-one years to which Bede refers is an ordinal or a cardinal number, or whether, if Æthelberht did indeed receive baptism at the hands of Augustine, whether the years should run from the despatch or the arrival of Augustine's mission. Since Augustine probably arrived in Kent in the spring of 597, Bede's second statement might lead us to calculate Æthelberht's death to have taken place in 618, i.e. twenty-one years later. 618 is indeed the year preserved in later continental chronicles⁷⁹ from St. Germain des Pres, Fleury and elsewhere, themselves derived from fragmentary early Kentish and Northumbrian annals, and can also be implied from a statement in the "E" version of the *Anglo-Saxon Chronicle* that Æthelberht reigned for fifty-three years from an accession in 565:

Ann. D.LXV. Her feng Æthelbriht to Cantwara rice 7 heold LIII wintra.⁸⁰

Accordingly, both Brooks and Kirby are content to place Æthelberht's death at 616x8. On the evidence, it would indeed seem that there is little value in seeking to narrow the date more precisely.

Further difficulties arise from the length of fifty-six years ascribed by Bede to Æthelberht's reign, a very long one for a monarch in any period of history, and particularly so in the sixth and seventh centuries. More detailed examination reinforces our scepticism. Bede appears to have envisaged Æthelberht to have reigned on one view, from 560 to 616, or on another, from 565 to 618. Thus, the assertion of Gregory of Tours that Bertha married the son of the king of Kent would imply that she married Æthelberht before either 560 or 565, depending

⁷⁹ For Fleury, see Leopold Delisle, *Catalogue des mss des fonds Libri et Barrois*, Ann. Lind. et Cant. (MGH, SS., iv, 2), pp. 70-1.

⁸⁰ "565: Æthelberht came to the kingship of Kent and held it for fifty-three years." The "E" version of the *Anglo-Saxon Chronicle* is Oxford, Bodleian Lib., MS. Laud Misc. 636. For the text, see *inter alia* John Earle and Charles Plummer (edd.), *Two of the Saxon Chronicles in Parallel*, Vol. 1 (Oxford: Clarendon, 1892) s.a. 565, p. 19; Benjamin Thorpe (ed.), *The Anglo-Saxon Chronicle, According to the Several Original Authorities*, Vol. 1 (London: Longman, Green, Longman and Roberts, 1861) s.a. 565, p. 31.

upon whichever version of Bede's chronology is applied. Further, if Bede's statement in *H.E.* i. 25 is taken literally, that Æthelberht received Bertha from her parents:

...uxorem habebat Christianum de gento Francorum regia, uocabulo Bercta, quam ea condicione a parentibus acceperat...

the marriage would have had to have occurred prior to the death of Bertha's father, King Charibert, securely dated to 567. Yet, in an argument originally developed by Richardson and Sayles,⁸¹ and pressed forcefully by Kirby,⁸² it then becomes difficult to see how Bertha could have been the mother of Æthelberht's daughter, Æthelburh, who married Edwin, king of Northumbria, in the 620s and bore him four children, for this would imply that Æthelburh was born c.600, by which time Bertha would have been in her sixties. As explained by Kirby, Æthelberht is known to have married again at least once after the death of Bertha, itself to be dated later than her receiving a letter from Pope Gregory in 601, such that Æthelburh might conceivably have been the offspring of this subsequent union, but even so considerable difficulties remain.

Gregory of Tours is of assistance here. Writing Book IV of his *Histories* at some date in or before 581, Gregory describes how in 561 the Frankish king, Charibert, had succeeded to his share of the kingdom on the death of his father, Lothar, and – following the Merovingian practice that only the offspring of a reigning king could succeed to the throne – only then took as his wife Ingoberga, upon whom he fathered a daughter who later received a husband in Kent:

HF iv, 26: ...Charibertus rex Ingobergam accepit uxorem de qua filiam habuit, qui postea in Ganthia uiram accipiam est deducta.⁸³

⁸¹ H.G. Richardson and G.O. Sayles, *Law and Legislation from Aethelberht to Magna Carta* (Edinburgh, 1976), pp. 157-69.

⁸² David Kirby, *The Earliest English Kings*, p. 25.

⁸³ "King Charibert married a woman called Ingoberg. He had by her a daughter, who eventually married a man from Kent and went to live there." Gregory of Tours, *Historiae Francorum*, IV.

The husband is then subsequently described merely as “the son of a certain king in Kent”:

HF ix, 26: Anno quoque quarto decimo Childeberti regis, Ingoberga regina Chariberti quondam relicta migrauit a saeculo...reliquam filiam unicam, quam in Canthia regis cuiusdam filius matrimonia copulauit.⁸⁴

It is scarcely to be credited that Gregory of Tours would have so described Æthelberht if he had already at this time acceded to the kingship, let alone if he had been ruling since 560x2, as Bede’s fifty-six-year reign would imply.

These difficulties can, however, be overcome if Bede’s fifty-six years are supposed instead to apply not to the length of his reign, but to his age at death. Æthelberht would then have been born in 560x2, which would have made him of around the same age, or possibly very slightly older, than his wife Bertha, who would have been born after Charibert became king in 561, but at the latest within a few months of his death in 567. This alternative chronology is much more satisfactory.

In a passage immediately following that which noted his death, Bede describes Æthelberht as having exercised an apparent overlordship over the other southern Anglo-Saxon kingdoms:⁸⁵

26. Trans. Lewis Thorpe, *Gregory of Tours, The History of the Franks* (Harmondsworth: Penguin, 1974) p. 219.

⁸⁴ “In the fourteenth year of King Childebert’s reign there died Queen Ingoberg, the widow of Charibert...She left a daughter, who had married the son of a king of Kent.” Gregory of Tours, *Historiae Francorum*, in Wilhelm Arndt and Bruno Krusch (edd.) *MGH, Scriptores rerum Merovingicarum*, Vol. I (Hanover, 1885), IX. 26. Trans. Lewis Thorpe, *Gregory of Tours, The History of the Franks* p. 513.

⁸⁵ “He was the third English king to rule over all the southern kingdoms, which are divided from the north by the river Humber and the surrounding territory; but he was the first to enter the kingdom of heaven. The first king to hold the like sovereignty was Ælle, king of the South Saxons; the second was Cælin, king of the West Saxons, known in their own language as Ceawlin; the third, as we have said, was Æthelberht, king of Kent; the fourth was Rædwald, king

Qui tertius quidem in regibus gentis Anglorum cunctis australibus eorum prouinciis, quae Humbrae flumino et contiguis ei terminis sequestrantur a borealibus, imperauit; sed primus omnium caeli regna conscendit. Nam primus imperium huiusmodi Aelli rex Australium Saxonum; secundus Caelin rex Occidentalium Saxonum, qui lingua ipsorum Ceaulin uocabatur; tertius, ut diximus, Aedilberct rex Cantuariorum; quartus Reduald rex Orientalium Anglorum, qui etiam uiuente Aedilbercto eidem suae genti ducatum praebebat obtenuit....

Kirby⁸⁶ explains Bede as using *imperium* (“overlordship”) as opposed to *regnum* (“royal power”) to describe the “domination exercised by overkings or overlords who wielded authority in two or more *regna* (kingdoms).” Bede confers no special title upon Æthelberht and his fellow overlords, but the Anglo-Saxon Chronicle, compiled in the form in which we have it a century and a half after Bede in the time of King Alfred⁸⁷ repeats Bede’s list in the entry for 827 and gives these overlords a name: *bretwalda* (the “A” text) or *brytenwalda* (other manuscript versions). Although this is the earliest manuscript attestation, the term is unlikely to have been new-coined in Alfred’s time. *Bretwalda*, meaning “ruler of Britain”, is the form most commonly used by historians. The alternative, *brytenwalda*, though its spelling suggests a nuance of meaning, “wide ruler”, seems to have been understood in the same sense as *bretwalda*. Eric John considers⁸⁸ that *brytenwalda* is the more probable original spelling, if only because the form was preserved when the meaning changed. He explains the “A” text variant “by supposing that its author, aware that the word was understood to mean “ruler of Britain”, altered it to read just that.”

of the East Angles, who even during the lifetime of Æthelberht was gaining the leadership for his own race....” Colgrave and Mynors, *H.E.* ii. 5, pp. 148/9.

⁸⁶ *Earliest English Kings*, p. 17.

⁸⁷ Thus, for example, George Garmonsway, *The Anglo-Saxon Chronicle* (London: Everyman, J.M. Dent & Sons, 1953), Introduction, p. xxviii.

⁸⁸ Eric John, *Orbis Britanniae* (Leicester University Press, 1966) p. 7.

John proceeds to deduce from this “that Britannia had become a political expression in “English” usage by the seventh century at the latest.” Other authorities have put the matter more cautiously. Yorke⁸⁹ and Kirby⁹⁰ speak for the majority in placing emphasis on the ability to receive tribute and an acceptance by their royal contemporaries that supreme military leadership (the *ducatus* of Bede’s passage, above) be invested in themselves as commanders-in-chief. As Yorke shrewdly observes, the term by no means indicated an ability to interfere in the day-to-day governance of a nominally subject kingdom, as becomes clear from the difficulties experienced by Æthelberht in attempting to facilitate the expansion of the Christian church from its original Canterbury base. Further, Bede’s observation of Rædwald, *qui etiam uiuente Aedilbercto eidem suae genti ducatum praebebat*, understood to mean⁹¹ that even during Æthelberht’s lifetime Rædwald preserved independence of action as regards the military leadership of his own people, shows that some subject-kings were not as subject as others.

It is instructive that Æthelberht is listed by Bede as succeeding Ceawlin as *bretwalda*. Since the two were contemporaries, and moreover that Æthelberht’s authority grew as that of Ceawlin declined and was ultimately extinguished altogether, some exposition of Ceawlin and his activities is worthwhile.

Bede’s description of Ceawlin as *rex Occidentalium Saxonum* can be objected to as an anachronism. The term “West Saxon” seems only to have come into regular use during the late seventh century following a period of rapid and substantial territorial expansion into, principally, modern-day Wiltshire and Hampshire. In Ceawlin’s own time, the people whom he claimed to rule were more usually known as the *Gewisse*, a name apparently derived from an OE adjective meaning “reliable”. In *H. E.* iii. 7, Bede records that Cynegils, the first king of this people to be converted to Christianity, founded a bishopric at Dorchester-on-Thames in 635, and by analogy with other Anglo-Saxon kingdoms, one would surmise that

⁸⁹ *Kings and Kingdoms*, p. 158.

⁹⁰ *Earliest English Kings*, p. 17.

⁹¹ Following Thomas Charles-Edwards: see the more detailed discussion in Section 8, below.

this was the heartland of the dynasty at this time. This likely base in the upper Thames chimes well enough with entries in the Anglo-Saxon Chronicle for 571 and 577 recounting how Ceawlin and other Gewissan contemporaries captured Gloucester, Cirencester, Bath, Limbury, Aylesbury, Benson and Eynsham, albeit that the accuracy of these accounts is problematic.

As with Æthelberht, the dating of Ceawlin's reign needs close analysis. It has long been recognised⁹² that the entries in the Anglo-Saxon Chronicle for the late fifth- and sixth centuries contain a duplication of events nineteen years apart. Moreover, David Dumville has shown⁹³ that the lengths of the reigns of the sixth-century rulers cited in the Chronicle conflict with those given in the West Saxon Regnal Table, like the Chronicle originally dating from the late ninth century and now surviving in nine manuscript witnesses characterised by inaccuracies of copying and other inconsistencies. Dumville shows that whilst after the sixth century the two sources are in broad agreement, the reign-lengths given for West Saxon kings in the Chronicle entries for the sixth century have been artificially lengthened, presumably for propaganda purposes to emphasise the antiquity of the dynasty.

Thus, whilst the Chronicle records Ceawlin as active between 560 and 593, Dumville has shown by reference to the Regnal List that his reign was originally calculated as having lasted for either seven or seventeen years, depending upon which of the variant manuscripts one inclines to follow. Accordingly, Dumville calculates Ceawlin as reigning either between 581-8, or alternatively 571-88, making him in either case a slightly older contemporary of Æthelberht. Moreover, when the Chronicle was compiled during the reign of King Alfred, it would have seemed implausible to West Saxons of the late ninth century that

⁹² F. M. Stenton, *Anglo-Saxon England* 3rd ed., (Oxford: Clarendon, 1971) pp. 22-3; K. Harrison, "Early Wessex annals in the Anglo-Saxon Chronicle", *English Historical Review* 86 (1971), pp. 527-33.

⁹³ David Dumville, "The West Saxon Genealogical Regnal List and the chronology of early Wessex", *Peritia* 4 (1985) pp. 21-66, repr. in David Dumville, *Britains and Anglo-Saxons in the Early Middle Ages* (Aldershot: Variorum, 1993), section VIII.

Ceawlin should have begun to reign in Wessex at a later date than Æthelberht in Kent, when Bede is clear that Ceawlin preceded Æthelberht as *bretwalda*. Thus, the pushing forward of Æthelberht's regnal dates would have encouraged a similar dislocation of those for Ceawlin.

The Chronicle entries for Ceawlin are:⁹⁴

568: Her Ceaulin 7 Cupa gefuhton wiþ Æþelbryht 7 hine in Cent gefliemdon, 7 tuegon aldorman on Wibbandune ofslogon, Oslaf 7 Cnebban.

571: Her Cupwulf feaht wiþ Bretwalas æt Bedcanforda 7 iii tunas genom, Lygeanburg 7 Ægelsburg Bænesington 7 Eagonesham 7 þy ilccan geara he geforþferde.

577: Her Cupwine 7 Ceawlin fuhton wiþ Brettas, 7 hie iii kyningas ofslogon, Coinmail 7 Condidan 7 Farinmail, in þære stowe þe is gecwedon Deorham 7 genaman iii ceastro Gleawanceaster 7 Cirenceaster 7 Baþanceaster.

584: Her Ceawlin 7 Cupa fuhton wiþ Brettas, in þam stede þe mon nemnaþ Feþanleag 7 Cupan mon ofslog 7 Ceaulin monige tunas genom 7 un arimedlice here reaf, 7 ierre he hwearf þonan to his agnum.

⁹⁴ "568: In this year Ceawlin and Cutha fought against Æthelberht and drove him into Kent; and they slew two princes, Oslaf and Cnebba, at *Wibbandun*. 571: In this year Cuthwulf fought against the Britons at Bedcanford and captured four villages, Limbury, Aylesbury, Benson and Eynesham; and in the same year he passed away. 577: In this year Cuthwine and Ceawlin fought against the Britons and slew three kings, Coinmail, Condidan, and Farinmail, at the place which is called Dyrham; and they captured three cities, Gloucester, Cirencester, and Bath. 584: In this year Ceawlin and Cutha fought against the Britons at the place which is called *Feþanleag*, and Cutha was slain; and Ceawlin captured many villages and countless booty, and departed in anger to his own [territories]. 592: In this year there was great slaughter at Adam's Grave, and Ceawlin was expelled. 593: In this year Ceawlin and Cwichelm and Crida perished." Garmonsway, *Anglo-Saxon Chronicle*.

592: Her micel wæl fill wæs æt Woddesbeorge 7 Ceawlin wæs utadrifen.

593: Her Ceawlin 7 Cwichelm 7 Crida forwurdon....

Aside from the fact that these entries need to be compressed into a much shorter timescale, other difficulties also present themselves. The text quoted above is that of the “A” text. For the 568 and 577 entries, all manuscripts read Ceawlin and Cutha, and Cuthwine and Ceawlin, respectively. Yet for 571, the “A”, “B” and “C” texts have Cuthwulf, the “E” text has Cutha, explained as the brother of Ceawlin, notwithstanding his earlier entry at 571. According to the genealogical preface to the “A” text, Cuthwulf was the son of Cuthwine, who was the son of Ceawlin. In other sources, Cutha appears to be either identical with Cuthwulf, or else an amalgam of Cuthwine and Cuthwulf. Etymologically, Cutha may be a shortened form of either name.

Despite these difficulties, an impression is gained of Ceawlin as an energetic military commander actively pursuing a forward policy of extending the influence of his people beyond their upper Thames valley heartlands. The defeat inflicted upon the young Æthelberht at *Wibbandun* is instructive. Earlier commentators had located this at Wimbledon, but although this sits plausibly enough in geographic and political terms, given that as noted in section 1.2 the exercise of political control by Æthelberht over this region is unlikely to have been derived from a period significantly earlier than his father’s reign, the identification is not secure and has been eschewed by later authorities. At his zenith, Ceawlin appears to have campaigned as far west as the Bristol Channel, thus effectively splitting the areas then remaining under British control at least temporarily in two. The reference in the entry for 584 to Ceawlin returning to his own territories in anger, included in the “A”, “B” and “C” texts but omitted from the “E” text, appears to suggest that despite all the plunder apparently won by Ceawlin, the campaign was a failure for reasons other than the death of Cutha. The entry for 592 evidently records another significant reverse: the present-day “Adam’s Grave”, more evocatively “Woden’s Barrow” in the original OE, is a strategically significant tumulus at Alton Prior, Wilts., in the Vale of Pewsey,

close to a gap in the defensive fortification of Wansdyke due south of an approach along the prehistoric Ridgeway. The deaths of Ceawlin and his apparent adherents Cwichelm and Crida in 593 need by no means to have been at the hands of external enemies. Cutha's son, and Ceawlin's nephew, Ceol, is recorded as having succeeded to the kingship in 591, and it may well be that it was by Ceol that Ceawlin was defeated at Adam's Grave in the following year.

A picture accordingly emerges of a young Æthelberht succeeding in overcoming an apparent defeat by Ceawlin early in his reign, and consolidating his power whilst Ceawlin's attention was seemingly diverted by campaigns against British kingdoms in the west. Thereafter, although the compiler of the Chronicle appears to have sought to place Ceawlin's reverse attributed to 584 in as favourable a light as possible, nonetheless its principal consequence appears to have been a severe dent in Ceawlin's authority and prestige, leading to the subsequent accession of a rival faction under the leadership of his nephew. This internal dissension amongst his nearest rivals would appear to have left Æthelberht unchallenged militarily, and in a position of dominance. No surviving source, however, attests to a military victory by Æthelberht. His rise to *bretwalda* would therefore seem to have been attributable to economic, cultural and diplomatic dominance, rather than military supremacy, a matter the significance of which is discussed further in section 7.

1.4 Augustine, Æthelberht's conversion, and the Continental background

Since Æthelberht was the first Anglo-Saxon king to convert to Christianity, it is natural that Bede should deal with the episode in considerable detail. Bede recounts⁹⁵ how Augustine, a Roman monk who was prior of the monastery of St. Andrew, on the Coelian Hill, was selected by Pope Gregory the Great (c. 540-604) to lead a mission to convert the pagan English to Christianity. Bede explains that Augustine and some forty companions, Roman clerics like Augustine,

⁹⁵ *H. E.* 1. 23-33, ii. 2-3.

together with Frankish interpreters⁹⁶ arrived in England in (probably) the spring of 597 and were received by Æthelberht on the Isle of Thanet. Their reception was hospitable but clouded by some initial reserve on the part of Æthelberht. Notwithstanding that Æthelberht was married to a Christian Frankish princess, who included amongst her retinue a Frankish bishop, Liudhard, and so might have been supposed to have been aware of the tenets of Christian belief, Æthelberht originally insisted on meeting the party in the open air so as to nullify any magic spells that they might cast. Æthelberht was nevertheless persuaded by their preaching and invited them to come to Canterbury to be maintained at his expense, granting them freedom to preach. Soon afterwards, Æthelberht and a number of notables of his court accepted baptism. With Æthelberht's support, the Roman mission enjoyed some initial success, so that by 604 Augustine was able to consecrate two more Roman missionaries to English sees: Justus, to the bishopric of Rochester in West Kent, and Mellitus to London in the neighbouring kingdom of the East Saxons, then ruled by Æthelberht's nephew, Sæberht, and subject to his influence. Rædwald, king of the East Angles, was also induced by Æthelberht to accept baptism, albeit that he was later reported⁹⁷ to have placed both Christian and pagan altars in a single temple, thereby showing himself to be far from committed to his new faith and thus incurring the obliquy of Bede and his sources, who considered him apostate.

Bede describes Æthelberht as having been persuaded to accept the Christian faith by a combination of the purity of the life led by Augustine and his companions, by their preaching, and by the miracles that they performed.⁹⁸

⁹⁶ Such interpreters would presumably have spoken a Frankish dialect that may well have been similar to the Kentish dialect of Old English, even if distinct to the ear. Bede records in *H. E.* iii. 7 how a later king of Wessex, Cenwealh (reg. 642-72) disliked the Frankish dialect spoken by his bishop Agilbert.

⁹⁷ *H. E.* ii. 15.

⁹⁸ "...the king, as well as others, believed and was baptized, being attracted by the pure life of the saints and by their most precious promises, whose truth they confirmed by performing many miracles..." Colgrave and Mynors, *H.E.* ii. 26, pp. 76/7.

...ipse etiam inter alios delectatus uita mundissimasanctorumet promissis eorum suauiissimus, quae uera esse miraculorum quoque multorum ostensione firmauerunt, credens baptizatus est...

Yet this should not by any means be taken at face value. Nicholas Higham, upon whose analysis the following paragraphs very substantially lean,⁹⁹ paints an altogether different picture of a king motivated by calculation of political advantage, against the shifting *realpolitik* of dynastic strife amongst his more powerful Frankish neighbours.

It will be recalled from the previous section that Æthelberht's wife, Bertha, is deduced as having been born between 561 and 567. On the death of their father, Clothar I, in 561, Merovingian Gaul was divided up between his four sons.¹⁰⁰ Charibert I, Bertha's father, took the western part of the kingdom, including the entirety of the Atlantic and Channel seaboard. Guntram took the central and south-eastern portion of the kingdom, making his capital at Orleans, whilst Sigibert I took non-contiguous holdings in the south and north-east of the kingdom, making his capital at Rheims. Their half-brother, Chilperic, ruled a much smaller share based on Soissons.

Æthelberht's own name, that of his father, Eormenric, and that of his nephew, Sæberht, later king of the East Saxons, are Frankish in character. It is perfectly possible that political and military, or the promise or threat of military, support from Merovingian Gaul played a part in Eormenric securing the kingdom of Kent for himself and his son.

Bertha's father, Charibert I, died in 567, and on his death his lands were divided between Chilperic I, Guntram, and Sigibert I. The, from a Kentish standpoint strategically vital, Channel coast passed under the control of Chilperic I. Chilperic was, however, dissatisfied by his originally very unequal share of the lands inherited from his father, and when the kingdom of his half-brother,

⁹⁹ N. J. Higham, *The Convert Kings* (Manchester University Press, 1997) pp. 53-132.

¹⁰⁰ *Historiae Francorum*, IV. 22.

Sigibert, was invaded by Huns in 562, Chilperic attempted to take advantage of the situation by launching an attack on Rheims.¹⁰¹ Sigibert rallied, however, and was apparently on the point of defeating Chilperic when he was himself murdered, allegedly at the instigation of his wife, Queen Fredegund, in 575.¹⁰² Chilperic's death, also by assassination,¹⁰³ in 584 left Guntram as the only surviving son of Charibert I. Claims to the kingdoms of Sigibert and Chilperic were reposed in their infant sons, respectively Childebert II and Clothar II.

At the time of Bertha's marriage to Æthelberht, which might be dated to 575x581, Chilperic was in the relative ascendant following the murder of Sigibert. It is known from Gregory of Tours that Bertha's mother left property to churches at Tours and Le Mans and was visited by Gregory shortly before she died.¹⁰⁴ Considering that this was a region where Chilperic was dominant, Higham draws the inference that Bertha was his to dispose of in marriage. Accordingly, Higham¹⁰⁵ sees her marriage to Æthelberht as "...the establishment, or perhaps the reinforcement of, a political accord between Soissons and a satellite, the friendly, but notionally independent, regime in Canterbury." On our revised chronology for his life, Æthelberht would then not yet have succeeded his father as king of Kent. The role of Liudhard is undoubtedly significant in this context. As plausibly contended for by Higham, "...the appointment of a bishop rather than a simple confessor to accompany Bertha should be viewed in part as a political act and Liudhard interpreted as a figure of diplomatic as well as of sacerdotal significance..."

Still following Higham, these political realities changed very substantially with the death of Chilperic in 584. Although Chilperic's infant heir, Clothar II, came under the guardianship of his uncle Guntram, the likelihood is that for a decade or so from 584 onwards Kent was free of any real dependence upon the contested

¹⁰¹ *Historiae Francorum*, IV. 23.

¹⁰² *Historiae Francorum*, IV. 51.

¹⁰³ *Historiae Francorum*, VI. 46.

¹⁰⁴ *Historiae Francorum* IX. 26.

¹⁰⁵ *Convert Kings*, p. 71.

Frankish kingdoms. It is during this period that Æthelberht is likely to have come to the throne, and a few years thereafter, on the revised chronology discussed in the previous section, assumed the position of *bretwalda* following the abrupt termination of Ceawlin's kingship of the Gewisse. Higham raises the possibility¹⁰⁶ that during this period Liudhard may have assisted the development of two aspects of Frankish governance: a circulating coinage, and the use of charters to record land grants. Arguments for, and the more persuasive evidence against, a circulating coinage at so early a date, are considered in section 1.6 below, whilst on the basis of the surviving evidence (which may admittedly not preclude earlier instances) the earliest reliable Kentish charters date only from the 670s.¹⁰⁷ Arguments for the development of charters from as early as the first quarter of the seventh century do, therefore, seem somewhat strained. Even so, a continuing political role for Liudhard over and above his sacerdotal duties by way of an intermediary between Æthelberht and his Frankish neighbours, for which Higham also contends, seems entirely possible.

These, for Æthelberht benign, circumstances changed abruptly to his seeming disadvantage in the years 593-5. In 593, Guntram died,¹⁰⁸ and although the land adjacent to the Channel coast remained in the hands of the relatively sympathetically disposed Clothar II, virtually all the remainder of Merovingian Gaul passed under the control of Childebert II, whose success in what seemed an inevitable subsequent return to dynastic strife appeared assured. Continuing Higham's analysis, Æthelberht might well have supposed that once he had dealt

¹⁰⁶ *Convert Kings*, p. 87.

¹⁰⁷ For a list of the very earliest surviving Kentish charters, see P. H. Sawyer, *Anglo-Saxon Charters, an annotated list and bibliography* (Royal Historical Society, London, 1968), pp. 69-71. For detailed commentary, see A. Campbell (ed.), *Charters of Rochester* (London: Oxford University Press for The British Academy, 1973); S. E. Kelly (ed.), *Charters of St. Augustine's Abbey, Canterbury, and Minster-in-Thamet* (London: Oxford University Press for The British Academy, 1995); and N. P. Brooks and S. E. Kelly (edd.), *Charters of Christ Church Canterbury* (2 vols.) (London: Oxford University Press for The British Academy, 2013).

¹⁰⁸ Chronicle of Fredegar IV. 14, Bruno Krusch (ed.), *MGH, Scriptores rerum Merowingicarum* (Hanover/Leipzig, 1885-1951).

with Clothar II, Kent might well have been next to feel Childebert's desire for a reckoning.

Higham further deduces that around 595 Liudhard died, very plausibly of old age. On Higham's analysis, this opened up an intriguing range of possibilities. With the greater part of Merovingian Gaul under the control of Childebert II, majority sentiment within the Gaulish church would have been more likely to talk down, rather than talk up, the role of Liudhard at Æthelberht's court. Higham contends for a degree of manoeuvring between Pope Gregory and the court of Childebert II, in the course of which engineering the appointment of a more suitable successor to Liudhard may well have emerged as an objective to strive for. Instructively, it was from lands controlled by Chilperic II that Augustine gathered resources, and interpreters, for his mission.

These developments also opened up interesting possibilities for Æthelberht. It has already been noted that Ceawlin had been removed as a rival not in consequence of any military action by Æthelberht, but in consequence of dissension among Ceawlin's own people. Æthelberht would accordingly have been planning to nullify, rather than resist, any action to be taken against him by Childebert II. One possible strategy to this end might have been to accept the Christian faith, yet to have done so at the hands of Liudhard, with his historic links to the court of Clothar II, might well have had the very opposite effect to that sought by Æthelberht. In contrast, to do so in response to a mission led by Augustine but in receipt of substantial support from pro-Childebert II elements of the Gaulish church would have offered an altogether more attractive prospect.

Yet the political dynamics changed once again with the death of Charibert II, probably in the spring of 596, whereupon his inheritance was divided between his two young children. In these revised circumstances, the political and diplomatic pressures upon Æthelberht would suddenly have become very much reduced. The attraction to Æthelberht of conversion would then have depended

upon Augustine's ability to offer, as Higham terms it,¹⁰⁹ "...access to novel kinds of magical power, which had a particular validity if Æthelberht had little confidence in his own powers as warrior."¹¹⁰ Certainly, on Bede's account, the working of apparent miracles appears to have played a significant role in Augustine's mission. In addition to the passage cited above, Bede also reports in *H. E.* i. 31 a letter from Pope Gregory to Augustine counselling of the dangers inherent in relying excessively upon the working of miracles as part of his mission. Yet, as Æthelberht pondered upon whether Augustine was likely to be able to assist him in maintaining his supremacy amongst the southern English, the miracles displayed by Augustine may have struck just the right note.

In case this be thought to ascribe too calculating a motive to Æthelberht, J. M. Wallace-Hadrill cites¹¹¹ a letter written at about the time of Æthelberht's death by the Visigothic king Sisebut to his Lombard counterpart Adaloald, urging him to convert from Arianism to Catholicism.¹¹² Prior to embracing Catholicism, Sisebut asserts, his people suffered from constant wars, harvest failures and plagues, whereas within the Catholic church they have gained an empire.

Pope Gregory pitched to Æthelberht in very similar terms. Bede transmits¹¹³ a letter from Gregory to Æthelberht citing the example of the Roman emperor Constantine, who in consequence of embracing the Christian faith came to surpass his predecessors in fame and good works. As Wallace-Hadrill drily notes, in other writings at other times¹¹⁴ Gregory thought it important to

¹⁰⁹ *Convert Kings*, p. 91.

¹¹⁰ Consider in this context the golden cross inscribed with a text from the Vulgate Bible found amongst the Staffordshire Hoard: Chris Fern, Tania Dickinson and Leslie Webster, *The Staffordshire Hoard: An Anglo-Saxon Treasure* (London: Society of Antiquaries, 2019). If it was considered that such artefacts had the ability to influence the outcome of a battle, then the inclusion of the cross amongst so many sword hilts, hemet fittings and the like, supposed to be the contents of a royal armoury, is not so incongruous.

¹¹¹ *Early Germanic Kingship*, p. 30.

¹¹² *MGH, Epist. Mero. i.*, pp. 671-5

¹¹³ *H. E.* i. 32.

¹¹⁴ For example, in his *Moralia in Job*, Migne, *Pat. Lat.* lxxvi at 203c and 377a-b.

emphasise that the true basis of all earthly rule was humility, derived from his firmly-held belief in all men. In the case of Æthelberht, however, such notions could prudently be suppressed.

The following section discusses in detail the pre-existing pagan beliefs and, on a maximal view, the priesthood administering them, to which Augustine had to show the Christian faith to be superior. Augustine had, however, one further weapon in his arsenal to deploy with the objective of showing his worth to Æthelberht, namely literacy in the Latin alphabet. One of Childebert II's last acts as king was the publication at Cologne in March 596 of a codification of the *Lex Salica*.¹¹⁵ It is as easy to attribute knowledge of this to Æthelberht as to Augustine, but it seems not unlikely that it was this, rather than a desire, in the words of Bede, to be seen to be acting *iuxta exempla Romanorum*, after the manner of the Romans, that suggested the possibility that Æthelberht might engage in a similarly spectacular undertaking.

1.5 Anglo-Saxon paganism in Æthelberht's Kent

It has been argued in the foregoing sections that for Æthelberht, no less than for other Anglo-Saxon kings in succeeding generations, conversion to the Christian faith is likely to have been made attractive by considerations essentially secular rather than doctrinal in character. Nevertheless, however attractive or useful in terms of statecraft that the new religion may have appeared to Æthelberht, it seems doubtful whether at the time of the promulgation of his *Laws* its tenets had become either particularly widely or particularly deeply established. It will be seen subsequently, for example, that an attractive case can be made for the argument that the compensation payable to the various grades of clergy for thefts from them have their origin in a similar tariff referable to the different grades of the pagan priesthood.¹¹⁶ It will also be seen that the provisions in the *Laws* referable to marriage and its breakdown are such as to show little, if indeed any,

¹¹⁵ E. Eckhardt (ed.), *MGH, Leges*, IV, I, pp. 269-73.

¹¹⁶ *Post*, section 4.1

discernible Christian influence at all.¹¹⁷ A brief survey, therefore, of the nature and extent of Old English paganism in Æthelberht's Kent is no superfluous historical retrospective, but rather an essential contextualising of the *Laws* by reference to the society for which they were devised and over which Æthelberht sought to entrench his authority.

Since the pre-Conversion Anglo-Saxon kingdoms were largely illiterate,¹¹⁸ it follows that there is no contemporary Old English textual evidence for pagan practices, such that we are dependent upon a combination of often incidental observations made by later Christian writers, inevitably clerics who would have found it extraordinarily difficult to approach the subject with anything approaching intellectual detachment even had they been disposed to do so, leavened with archaeological evidence. There is, however, a body of evidence attesting to the existence of pre-Christian priests active in early Anglo-Saxon society with a sufficient degree of internal organisation to suggest an internal hierarchy. It is not proposed to consider evidence from elsewhere in Britain for the activities of pagan priests.¹¹⁹ It would be still more dangerous to draw indiscriminate parallels between Scandinavian and Anglo-Saxon religious beliefs and practices. Whilst a detailed comparative study of Germanic religion would, if done well, no doubt have the potential to be of very great value, the (for example) indiscriminate conflation of Woden/Odin in a number of works by scholars not of the first rank has tended somewhat to muddy the waters. The

¹¹⁷ *Post*, section 4.6.

¹¹⁸ Or perhaps more accurately proto-literate: the odd instances in the archaeological record of runic inscriptions aside, certainly Bishop Liudhardt and his entourage may be supposed to have been able to read and write, but there is no evidence of literacy permeating more widely into Anglo-Saxon society, even in the relatively sophisticated Kent.

¹¹⁹ Such as, for example, Adomnan's *Vita Sancti Columbae*, which contains a number of references to pagan priests, the *magi*, usually operating in a mocking or interfering manner, a theme developed recently by Thomas Charles Edwards, "Narratives of Conversion and Encounters of Pagans and Christians in Scotland and Ireland," an unpublished paper presented to the conference *Conversion to Christianity in the Insular World*, University of Cambridge, September 2011.

sober precepts of A.L. Meaney¹²⁰ in this regard have, regrettably, been followed more in the breach than the observance.

As is well-known, burials in the pre-conversion Anglo-Saxon kingdoms were of two types.¹²¹ In cremation burials, the seemingly fully-clothed body was burned on a pyre, and some or all of the bones and ashes placed in an urn, usually decorated either with geometric motifs such as the swastika, or stylised depictions of animals. At Spong Hill and Sancton, sites noted for the high quality both of the initial excavation and the post-excavation analysis, almost half of the cremation burials also contained animal remains, from which it can plausibly be deduced that animal sacrifice formed a widespread and presumably important part of the funerary rite. Since, moreover, it is inherently possible from the nature of the cremation rite that the remains of small animals may not have survived burning, and given further the possibility that animal bones may have been overlooked when the human bones were retrieved from the pyre, or alternatively not identified by archaeologists during their analysis, the proportion of cremations involving animal sacrifice may in fact have been even higher.

Horse, sheep and goats are the animals most commonly identified in the archaeological record, with pigs, cattle and dogs also appearing relatively frequently. The bones of birds, deer, fish, beaver and hare also appear in the archaeological record, but significantly less frequently.

It is conceivable that the pagan Anglo-Saxons may have supposed that the spirits of the dead were borne away in the smoke to some afterlife, a supposition probably strengthened by the widespread inclusion of animals in the funerary rite. The animals may have provided a means of transport for the departing soul, or alternatively the departing soul may have been imbued with certain qualities

¹²⁰ A.L. Meaney, "Woden in England: A Reconsideration of the Evidence", *Folklore* 77 (1966) pp. 105-15, intended largely as a rebuttal of the incautious J.S. Ryan, "Othin in England: Evidence from the Poetry for a Cult of Woden in Anglo-Saxon England", *Folklore* 74 (1963) pp. 460-80.

¹²¹ Summarised in Hamerow, "The earliest English kingdoms", pp. 267-9.

of the sacrificed animal.¹²² Inhumation burials also show instances¹²³ of animals being buried alongside humans, but these have not yet been extensively studied.

In inhumation burials, bodies were buried, again fully-clothed and often with grave-goods, albeit that the number and quality of these has been found to vary greatly from burial to burial. Household knives, pots, and belts (which survive in the archaeological record as buckles) are found in the graves of both sexes. Weapons, in the shape of spears (relatively common), shields (less common, revealed in the archaeological record by the metal boss) and (exceptionally) swords, are found in male burials, whereas beads, brooches, bunches of keys and the like are associated with female burials. It is not clear whether the presence of grave goods may be taken to indicate a belief in life after death. The occasional presence in graves of food and drink might be consistent with such a belief, but a desire to show respect for the dead and to reflect their social status within the community may be no less plausible an explanation. The very rare rite of boat burial shown in its most opulent form at Sutton Hoo but also more prosaically in graves from the seventh-century cemetery at Caistor-on-Sea in Norfolk containing planking, two to four strakes wide, cut from the sides of ships, may indicate a belief in a journey of the soul after death.¹²⁴

¹²² On all the points in the foregoing paragraphs, see Howard Williams, “An ideology of transformation: Cremation rites and animal sacrifice in early Anglo-Saxon England”, in Neil Price (ed.), *The Archaeology of Shamanism* (London: Routledge, 2001), pp. 193-212. For the incorporation of animals into the funerary process, see Aleks Pluskowski, “Animal Magic”, in Martin Carver, Alex Sanmark and Sarah Semple (edd.), *Signals of Belief in Early England: Anglo-Saxon Paganism Revisited* (Oxford and Oakville: Oxbow Books, 2010) pp. 103-27. For horse rituals, see Chris Fern, “Horses in Mind”, *ibid.*, pp 128-57. For a discussion of a pre-Christian concept of the soul and an ancestor cult, see Alex Sanmark, “Living On: Ancestors and the Soul”, *ibid.* pp. 158-80.

¹²³ As, for example, the four burials from three execution cemeteries described by Andrew Reynolds, *Anglo-Saxon Deviant Burial Customs* (Oxford, 2009) p. 172, probably in any event referable to the Christian period.

¹²⁴ It is perhaps worth noting here the description of the funeral arrangements of the mythical King Scyld Scefing in *Beowulf*, ll. 26-52. The body of the dead king, and funerary treasures of immeasurable wealth, are placed on a ship that is then set out to sea without a crew. The poet then (ll. 50-52) hints at the ambiguity of the departed king’s final destination:

Infants are poorly-represented in earlier Anglo-Saxon period cemeteries.¹²⁵ No more significance need perhaps be attached to this than that infant burials, being smaller and typically shallower than adult graves, are more easily lost from the archaeological record, whilst infant bones would more readily be destroyed in cremations than those of adults. During the Christian period, however, some evidence has emerged for infant burials being grouped together, sometimes under the eaves-drip of the church as at Whithorn (Galloway) and Raunds (Northants). The possibility does therefore need formally to be put that infants may also have been given differential burial treatment during the pre-Christian period, even perhaps to the extent of not being buried in pagan cemeteries at all.

Despite high mortality rates and the relative material poverty of the circumstances in which they lived, those child skeletons that have survived in the archaeological record reveal surprisingly little evidence of disease, trauma or malnutrition, albeit that a slightly higher incidence of *cribra orbitalia* (pepperpot lesions in the bone of the eye socket) in juveniles in some cemetery populations has been regarded as possible evidence of dietary deficiency. Occasionally, instances are even found evidencing special care being afforded to children, such as a feeding bottle found with an infant from Castle Dyke, Beverley.

...Men ne cunnon
secgan to soðe, sele-ræden[d]e,
hæleð under heofonum, hwa þæm hlæste onfeng.

“No man, whether wise counsellor in the king’s hall, or valiant warrior under the heavens, could say by whom this cargo was received.” (Author’s translation).

¹²⁵ For this and the following two paragraphs, see Sally Crawford, “Children”, in Michael Lapidge, John Blair, Simon Keynes and Donald Scragg (Edd.), *The Blackwell Encyclopedia of Anglo-Saxon England* (Oxford: Blackwell, 1999) pp. 103-4, summarising *inter alia* her articles “When do Anglo-Saxon Children Count?”, *Journal of Theoretical Archaeology* 2 (1991) pp. 17-24 and “Children, Death and the Afterlife”, *Anglo-Saxon Studies in Archaeology and History* 6 (1993) pp. 83-92.

Analysis of furnished inhumation and cremation cemeteries alike shows that certain grave-goods were age-related, such that the inclusion of these particular grave-goods indicates customary ages of transition from childhood to adulthood. Some boys are buried with small spears from the age of about six, but do not generally appear with shields until the age of about twelve. It is also at the age of about twelve that girls begin to be buried with items appropriate to adult women.

The examination in the following chapter 4 of the detailed provisions of *Æthelberht's Laws* will reveal an intensely hierarchical society, in which some lives valued very much more than others. An important recent paper of Duncan Sayer¹²⁶ explains the perpetuation of such social stratification into burial archaeology, citing detailed evidence for the organisation of two Anglo-Saxon cemeteries from Kent, Mill Hill and Finglesham, by grave location, burial wealth and grave structures. Sayer's analysis is closely-reasoned, but contends that during the seventh century the emphasis of the funeral changed from expressing the unity of an extended household around a high-status individual, to emphasising familial relationships. This theme will be returned to in the discussion of the nature of royal authority in chapter 7.

Bede's writings contain a variety of material that can, with care, be used to develop conjecture as to the nature and practice of pagan Anglo-Saxon belief. Earlier scholarship has tended on the whole perhaps to take too readily Bede's statements at face value, and a relatively recent article of Raymond Page now puts matters more cautiously.¹²⁷ Bede's descriptions in the *Historia Ecclesiastica* of the conversions of *Æthelberht* and, particularly, Edwin of Northumbria, contain considerable background colour regarding pagan Anglo-Saxon beliefs.

¹²⁶ Duncan Sayer, "Laws, funerals and cemetery organisation", in Duncan Sayer and Howard Williams (edd.), *Mortuary practices and social identities in the Middle Ages* (Exeter: Exeter University Press, 2009; repr. in paperback Liverpool: Liverpool University Press, 2013) pp. 141-69.

¹²⁷ Raymond I. Page, "Anglo-Saxon Paganism: The Evidence of Bede", in T. Hofstra, L. A. J. R. Houwen and A. A. MacDonald (edd.), *Pagans and Christians, Germania Latina 2* (Groningen, 1995) pp. 99-129, especially pp. 124-7.

Whilst recent scholarship has been cautious about accepting Bede's accounts too uncritically,¹²⁸ Page himself sets out a number of inferences that can properly be drawn.

Firstly, it would seem that individual Anglo-Saxons worshipped more than one god, usually referred to by Bede as *idola*. Four members of the Anglo-Saxon pantheon survive in the names of the days of the week: Tiw (or Tig), Woden, Thunor, and the goddess Frig (or Freo), and in the south, the south-east, and the Midlands, associated with the early, pre-Christian phases of the Anglo-Saxon conquest of England, also appear in place-names. Page shrewdly sounds a note of caution, however, against taking as too firm a rule the notion of polytheistic worship, "...for a man may, instead of putting trust in the whole range of gods available, have chosen for his devotion one who suited his particular need or way of life", a practice of which abundant examples can be found in the Norse sagas.¹²⁹

Secondly, from the speech of Coifi given to Edwin's council recounted by Bede,¹³⁰ it appears that pagan gods were worshipped not for any benefits that they might confer in an afterlife (in contrast with the claims made for the Christian religion exemplified in the "sparrow's flight" speech by the unnamed nobleman), but for the material benefits afforded in the present life.¹³¹ Page makes another useful point¹³² in deducing from Bede's description of the return of paganism to Essex in time of famine during the reign of King Sigehere:

¹²⁸ Page, *ibid.*, especially pp. 102-116, and Dominic Gibbs, "The Baptism of Edwin: An Analysis of the Contrary Traditions", *Quaestio Insularis* 10 (2009), pp. 75-95. The latter is a somewhat uneven work, but identifies a number of points at which Bede's account is at variance with British traditions that scholarship has perhaps been too ready to discount.

¹²⁹ Such as Hrafnkel, devoted to Frey, in the eponymous saga.

¹³⁰ *H.E.* ii. 13.

¹³¹ Noted, however, that many of the urgings to Edwin of the "mysterious stranger" (hinted in the alternative version of the story recounted in Anon., *Vita Sancti Gregorii Magni*, B. Colgrave (ed.), *The Earliest Life of Gregory the Great* (Lawrence KS. 1968) to be none other than Bishop Paulinus himself) are no less "material" in nature.

¹³² Page, "Anglo-Saxon Paganism", p. 114.

diligentes hanc uitam et futuram non quaerentes, sine etiam non esse credentes.¹³³

Bede's doubts (albeit doubts which Page is disinclined to follow) as to whether pagan beliefs admitted of the existence of an afterlife at all.

Thirdly, at three points Bede gives fairly full accounts of the locations at which pagan worship was carried out. The first instance is contained in Pope Gregory's advice to Bishop Mellitus, given in a letter quoted by Bede:

uidelicet quia fana idolorum destrui in eadem gente minime debeant, sed ipsa quae in eis sunt idola destruantur, aqua benedicta fiat, in eiusdem fanis aspergatur, altaria construantur, reliquiae ponantur. Quia, si fana eadem bene constructa sunt, necesse est ut a cultu daemonum in obsequio ueri Dei debeant commutari, ut dum gens ipsa eadem fana sua non uidet destrui, de corde errorem deponat, et Deum uerum cognoscens ac adorans, ad loca quae consueuit familiarius concurrat.¹³⁴

The second is in the climax of the account of the conversion of King Edwin, when the high-priest Coifi himself offers to undertake the destruction of the *templa et alteria* that he has previously maintained. These are described as:

¹³³ "They loved this life, seeking no other and not even believing in any future existence", Colgrave and Mynors (edd.), *H.E.* iii.30, pp. 322/323.

¹³⁴ "...namely that the idol temples of that race should by no means be destroyed, but only the idols in them. Take holy water and sprinkle it in these shrines, build altars and place relics in them. For if the shrines are well-built, it is essential that they should be changed from the worship of devils to the service of the true God. When this people see that their shrines are not destroyed, they will be able to banish error from their hearts and be more ready to come to the places they are familiar with, but now recognising and worshipping the true God." Colgrave and Mynors (edd.), *H.E.* i. 30, pp. 106/107.

...aras et fana idolorum cum septis quibus erant circumdata¹³⁵

In an important article, John Blair clarifies *septa* as fenced or hedged enclosures, noting that if the *locus illum quondam idolorum*¹³⁶ was still being pointed out in Bede's own day, a century later, the structure must have been substantial enough for something to have survived in the ground.¹³⁷

The substantial nature of the structures can also be implied from Bede's third reference, where he describes in *H.E.* ii.15 how the syncretist King Raedwald maintained in the same *fanum* both an *altare* for the Christian mass and an *arula ad uictimas daemoniorum*, a small altar on which to offer victims to devils. Bede further the East Saxon king Eadwulf (c. 664-713) as asserting that he remembered seeing this altar in his boyhood, such that, as Blair observes, "it must have been solid enough to withstand twenty or thirty years of abandonment".

More recent scholarship, however, has down-played the importance of such structures in pre-Christian worship. In an important paper, Sarah Semple¹³⁸ argues that pre-Christian belief placed more emphasis on the veneration of natural features of the landscape, such as wells, trees and stones, and that hill-tops, hollows and pre-historic sites such as barrows, henges and stone circles, rather than temples of the type described by Bede, were more typical sacred locations. Semple contends very plausibly that a good number of such sites exploit natural features of the topography to increase the visual dramatic effect of the approach to such a site, such as folds in the ground that conceal a hill-top from view until the very last stages of an approach. Julie Lund¹³⁹ makes a

¹³⁵ "...the altars and shrines of their idols, together with their precincts", Colgrave and Mynors (edd.), *H.E.* ii. 13, pp. 184/185.

¹³⁶ *Ibid.*

¹³⁷ John Blair, "Anglo-Saxon Pagan Shrines and their Prototypes", *Anglo-Saxon Studies in Archaeology and History* 8 (1995) pp. 1-28.

¹³⁸ Sarah Semple, "In the Open Air", in Carver, Sanmark and Semple (edd.), *Signals of Belief in Early England* pp. 21-48.

¹³⁹ Julie Lund, "At the Water's Edge", *ibid.*, pp. 49-68.

complimentary and similarly attractive case for the use of waterways and wetlands.

Some limited written evidence exists from which the existence of a pagan priesthood may be inferred. In his *De temporum ratione*¹⁴⁰ Bede provides a detailed exposition of the pre-Christian Anglo-Saxon calendar and a description of a number of festivals at various times of the year about which he had presumably heard through oral tradition. As explained more fully by Kenneth Harrison,¹⁴¹ reconciling a solar year of 365.24 years and a lunar month of 29.53 days meant that any calendar was, perforce, complex. Ordinarily the year consisted of twelve lunar months, yet in order to keep in line with the solar year, additional months were inserted in years three, five and eight of an eight-year cycle. As pointed out by James Campbell, so complex a calendar could sensibly have been maintained and operated only by an organised and recognised priesthood, presumably based in temples of the type referred to by Gregory in his letter to Mellitus considered above. Indeed, Campbell has been minded to speculate¹⁴² that “Bede may have known so much about the intricacies of the pagan calendar because he could have come from a priestly family”, whose allegiance was subsequently transferred to the Christian faith.

The readiest example of a member of this postulated priesthood is of course Coifi, from Bede’s account of the conversion of King Edwin considered above. Bede’s descriptions of Coifi as *primus pontificum* and *pontifex sacrorum suorum*, *ealdorbisceop* in the Old English translation, carry hierarchical connotations, and Campbell cites with approval¹⁴³ the importance attached by Liebermann¹⁴⁴ to the precedence in debate afforded to Coifi.

¹⁴⁰ Charles W. Jones (ed.), *Beda opera de temporibus*, Medieval Academy of America Publications 41 (Cambridge, Mass., 1943), pp. 211-3.

¹⁴¹ Kenneth Harrison, *The Framework of Anglo-Saxon History* (Cambridge, 1973) pp. 3-5.

¹⁴² James Campbell, “Some Considerations on Religion in Early Anglo-Saxon England”, in Martin Henig and Theodore J. Smith (edd.), *Collectanea Antiqua, Essays in Memory of Sonia Chadwick Hawkes*, BAR International Series 1673 (2007), pp. 67-73.

¹⁴³ *Ibid.*, p. 68.

Another pagan priest appears in the *Vita Sancti Wilfridi*, chapter 13, again in a position of authority, albeit that here the protagonist meets an altogether stickier end:

Navigantibus quoque eis de Gallia Britannicum mare cum beatae memoriae Wilfritho episcopo...in medio mari validissima tempestas exorta est, et venti contrarii...Flante namque vento euroaustro dure, albescentia undarum culmina in regionem Australium Saxonum, quam non noverant, proiecerunt eos...Gentiles autem cum ingenti exercitu venientes, navem arripere, praedam sibi pecuniae dividere, captivos subiugatos deducere resistentesque gladio occidere incunctanter proposuerunt. Stans quoque princeps sacerdotum idolatriae coram paganis in tumulo excelso, sicut Balaam, maledicere populum Dei et suis magicis artibus manus eorum alligare nitebatur. Tuncc vero unus ex sodalibus pontificis nostril lapidem ab omni populo Dei benedictum more Davidico de funda emittens, fronte perforate usque ad cerebrum magi exporbantis illisit; quem, retrorsum exanimato cadavere cadente, sicut Goliad in harenosis locis mors incerta praevenit.¹⁴⁵

¹⁴⁴ Felix Liebermann, *The National Assembly in the Anglo-Saxon Period* (Halle, 1913, repr. Burt Franklin Research and Source Works Series #21, New York), p. 3.

¹⁴⁵ “While they were crossing the British sea on their return from Gaul with Bishop Wilfrid of blessed memory...a violent storm arose in mid-ocean and the winds were contrary...the wind blew hard from the south-east and the foam-crested waves hurled them on to the land of the South Saxons which they did not know...Forthwith a huge army of pagans arrived intending to seize the ship, to divide the money as booty for themselves, carry off the captives whom they vanquished and incontinently put to the sword all who resisted them....The chief priest of their idolatrous worship also took up his stand in front of the pagans, on a high mound, and like Balaam, attempted to curse the people of God, and to bind their hands by means of his magical arts. Thereupon one of the companions of our bishop took a stone which had been blessed by all the people of God and hurled it from his sling after the manner of David. It pierced the wizard’s forehead and penetrated to his brain as he stood cursing; death took him unawares as it did Goliath.” B. Colgrave (ed. and trans.), *The Life of Bishop Wilfrid by Eddius Stephanus* (Cambridge, 1927), pp. 26 and 28/27 and 29.

These passages need, of course, to be treated with caution and by no means taken at face value. The days are long gone when even so skilled a textual critic as Bertram Colgrave could write:¹⁴⁶

...perhaps it is the natural reaction of the twentieth century to ask whether after all it may not be possible that there is something more in these strange stories than the earlier editors of Bede believed, and that these holy men, living lives of incredible hardships and asceticism, actually reached a state of being in which they possessed powers – hypnotism, clairvoyance, telepathy – call them what you choose – which are not perhaps miraculous in the strict sense of the term but would certainly be considered so in the early middle ages.

It is now better understood that Bede and the *Vita Sancti Wilfridi* need to be used with circumspection, being second- or third-hand accounts of some of the events that they describe, and moreover written in literary styles heavily influenced by classical and Biblical texts and also, to some extent, by the political and doctrinal expectations of their respective audiences. Even the intrinsic evidence of the passage from the *Vita Sancti Wilfridi* puts the reader on inquiry. A few lines further on, drawing a comparison between the paucity in number of Wilfrid's followers and the massed ranks of the pagan South Saxons, the author advises us of the bishop's companions:

...erant enim cxx viri in numero Mosaicae aetatis.¹⁴⁷

As James Campbell, who as we have seen has emerged in some of his other writings as sympathetically disposed towards arguments for the existence of pre-Christian priests, has pithily observed,¹⁴⁸

¹⁴⁶ Bertram Colgrave, "Bede's Miracle Stories", in Hamilton Thompson (ed.), *Bede: His Life, Times and Writings* (Oxford, 1935), pp. 200-29.

¹⁴⁷ "There were 120 of them, equal in number to the age of Moses..." Colgrave, *The Life of Bishop Wilfrid*, pp. 28 and 29.

...if the ship in which Wilfrid was wrecked on the coast of Sussex really did, as his biographer says, have 120 men in it, then it was of at least twice the size of the capacity of the Sutton Hoo ship, which is, at over ninety feet long, the largest of the period known.

Nevertheless, we should be disinclined too readily to dismiss as fantastic this account of a pagan priest accompanying a war-band, and attempting to influence the outcome of a battle through his magic arts. From Bede's account of Æthelfrith's reaction to the presence of Christian monks attached to the opposing forces at the Battle of Chester,¹⁴⁹ we should be in no doubt that pagan war-leaders considered that such things were possible, whilst the inclusion in the Staffordshire Hoard of a gold cross engraved with a battle-cry taken from the Vulgate Bible has, of course, already been noted.

Further, in a laconic reference to the pagan Mercian King Penda in describing the battle of Maserfelth in 642 apparently derived from traditions independent of Bede, it is said of Penda:

...ipse victor fuit per diabolicam artem.¹⁵⁰

What these *diabolicam artem* may have been the author does not say. No more may of course be implied than ruthlessness and lack of compassion or scruple. One is, however, put in mind of the chief priest in the Wilfrid episode, and also of a reference in Tacitus¹⁵¹ to the custom of the German tribes to bring with them into battle images and symbols taken from the sacred groves. William Chaney

¹⁴⁸ James Campbell, "Elements in the Background to the Life of St. Cuthbert and his Early Cult", in Gerald Bonner, David Rollason and Clare Stancliffe (edd.), *St. Cuthbert: His Cult and Community to AD 1200* (Woodbridge: Boydell and Brewer), pp. 3-19, repr. in James Campbell, *The Anglo-Saxon State* (London: Hambledon, 2000), pp. 85-106 at p. 104.

¹⁴⁹ *H.E.* ii. 5.

¹⁵⁰ "He was victorious through the arts of the Devil." Winterbottom, *Nennius*, pp. 39 and 80.

¹⁵¹ "...effigiesque et signa quaedam detracta huis in proelium ferunt...", Henry Furneaux (ed.), Cornelius Tacitus, *Opera Minora*, (Oxford, 1899) *Germania*, ch. 7.

has drawn attention¹⁵² to the account given by Bede¹⁵³ of the despoliation by Penda of the body of the defeated King Oswald after the battle, whereby Penda had Oswald's head and hands severed from his body and hung on stakes. Chaney postulated that this may have been a sacrificial offering by Penda to Woden to give thanks for victory in battle. As Chaney fairly conceded, there are difficulties with this suggestion: other instances of human sacrifices to Woden are of living men, and no other sacrifice of one already dead is known. Nevertheless, the suggestion is plausible.

Consideration now falls to be given to the ample evidence for the practice of pagan worship afforded by place-name studies. In the context of Æthelberht's Kent, the starting point is a seminal address delivered by F.M. Stenton to the Royal Historical Society in 1940,¹⁵⁴ in which he identified "...five undoubted places of heathen worship... within a radius of twelve miles from Augustine's church of Canterbury."

Two of Stenton's five locations contain the Old English *alh* or *ealh*, meaning "temple", or "sacred enclosure", cognate with the Old Saxon and Old High German *alah*, and the Gothic *alhs*. One of these occurs in the name *Ealhfleot*, which has no surviving present-day equivalent, but which appears in a ninth-century source¹⁵⁵ seemingly describing either part, or possibly the whole, of a channel linking Faversham to the North Kent coast. The other is contained in

¹⁵² William A. Chaney, *The Cult of Kingship in Anglo-Saxon England* (Manchester University Press, 1970) pp. 117-9.

¹⁵³ *H. E.* iii. 12.

¹⁵⁴ Frank M. Stenton, "The Historical Bearing of Place-Name Studies: Anglo-Saxon Heathenism", *The Transactions of the Royal Historical Society*, 4th series, xxiii (1941), pp.1ff., repr. Doris M. Stenton (ed.), *Preparatory to Anglo-Saxon England* (Oxford, 1970), pp. 281-97. Margaret Gelling subsequently reduced somewhat the number of acceptable pagan names in "Further thoughts on pagan place-names", in F. Sandgren (ed.), *Otium et Negotium: Studies presented to Olof von Feilitzen* (Stockholm, 1973) pp. 109-28.

¹⁵⁵ See the discussion of Dr. Gordon Ward in *Archaeologia Cantiana* xlvi (1934), pp. 123-32.

Ealhham, which appears¹⁵⁶ as the earliest form of present-day Alkham, four miles north-east of Dover.

The cult of Woden is attested by Woodnesborough, near Sandwich, four miles from the sea and astride the strategically important Roman road linking Dover to the Wantsum Channel, where a mound covered a possibly cremated burial of a high-status male,¹⁵⁷ whilst a mound sacred to Thunor once stood near Manston in Thanet and gave rise to the name *Thunores hlaew*.¹⁵⁸

Finally of Stenton's quintet of names, the Old English *weoh* or *wih*, meaning "idol", cognate with OS *wih*, "temple", Icel. *ve*, Goth. *weihs*, OHG *wih*, "holy", provides the name of Wye, three miles north-west of Ashford, on the opposite side of the Great Stour valley to the old Roman road, and suggests the presence of a pagan shrine in pre-Christian times. The importance of Wye in Anglo-Saxon England is attested by the fact that it was the administrative centre of one of the four East Kentish lathes, and even in the post-Conquest period remained the centre of a huge, originally royal, manor extending over much of SE Kent and into Sussex.

John Blair¹⁵⁹ subsequently drew attention to Bladbean, situated on a high point of downland some two miles due east of Stelling Minnis. The *Blad-* element is derived from "blood", whilst *beam*, with its primary meaning of "tree", had a subsidiary meaning of "post", "pillar", or "cross". The name could well,

¹⁵⁶ E.g. in the *Domesday Monachorum*, Canterbury D&C MS. E.28, fo.1r.

¹⁵⁷ See Hilda Ellis Davidson and Leslie Webster, "The Anglo-Saxon Burial at Coombe (Woodnesborough), Kent", *Medieval Archaeology* 11 (1967) pp. 1-41 at pp. 6-8. Issues of relative dating arise here, however: if the burial is properly dated to the seventh century rather than the sixth, this would plainly not be evidence of the situation in Æthelberht's time.

¹⁵⁸ Thomas Cockayne (ed.), *Leechdom, wortcunning and starcraft of Early England* (London: Longman, Green, Longman, Roberts and Green, 1864), iii, pp. 422-8, from British Library MS. Cotton Caligula A xiv. For a dispassionate account of local associated demonic legends, see David Rollason, *The Mildrith Legend, A Study in Early Medieval Hagiography in England* (Leicester University Press, Studies in the Early History of Britain, 1982), *passim*.

¹⁵⁹ J. Blair, "Anglo-Saxon Pagan Shrines".

therefore, refer to human sacrifice around a sacred tree. This author's own attention was briefly caught by the possibility that the present-day Grimsacre Farm, some two miles or so to the south of Bladbean, might contain the name Grim, supposed by Ekwall¹⁶⁰ to be an alternative name for Woden among the pagan English as among the Norsemen, but further inquiry shows the name to be of more modern origin. An "Old Series" Ordnance Survey Map dating from 1813-9 reveals the altogether more prosaic name Green Acre.

To summarise, therefore: it has been shown in this section that colourable evidence exists for the presence in Æthelberht's Kent of an influential pagan priesthood which, as elsewhere in early Anglo-Saxon England, would have operated a complex calendar of the type described by Bede and maintained shrines whose existence is attested through place-name evidence. If, as seems consistent with evidence advanced elsewhere in this paper, Æthelberht's *Laws* are broadly contemporary with the conversion to Christianity, it follows plainly enough that, firstly, this pagan priesthood would until only very recently prior to the *Laws* have occupied a position of considerable standing in society, and secondly that social practices such as marriage can be supposed to have been as yet only relatively lightly touched by Christian doctrine. These are themes that will emerge with more force in subsequent detailed examination of specific provisions of the *Laws*.

1.6 Numismatic evidence

With the exception of Richborough, where there have been extensive coin finds, East Kent is not renowned for late Roman coin finds. Canterbury is no exception, albeit that at Augustine House, coins have been found referable to the house of Constantine and datable to the 360s.

Roman coins feature in many Anglo-Saxon graves from the Migration Age, but the fact that the majority of such finds show the coins to have been re-used as

¹⁶⁰ In *Studia Germanica tilldaegnade Ernst Albin Kock* (Lund, 1934), pp. 41-4.

weights or pendants, together with the fact that their intrinsic bullion value would in any event have made them too valuable to be a practical means of exchange for everyday transactions, indicate that early Anglo-Saxon England remained a barter economy. Although precise dating is unclear, there is however evidence that continental gold coins, perhaps initially imported to be used as ornaments, began to be used in high-value trading with the Continent from perhaps the late sixth century. The combination of coins and grave goods suggest that the principal area of contact was with the Frankish kingdoms along the Channel, but trading links have also been identified down the west coast of France and Spain and into the Mediterranean,¹⁶¹ It is not, however, clear whether these continental coins, even if used in trade, were at such an early stage used as **money**. Much of the archaeological evidence for the circulation of continental coinage in sixth century England is accompanied, particularly in Kentish graves, by balances, consistent with the coins being traded according to their **bullion**, rather than their **monetary**, value.

Two important finds from other Anglo-Saxon kingdoms slightly postdate the reign of Æthelberht: the Crondall Hoard, from Hampshire, and the Sutton Hoo ship burial from Suffolk.

The Crondall Hoard is considered¹⁶² to date from c. 640. It contains a little over a hundred gold coins, drawn widely from Anglo-Saxon England and the Continent. Frankish, Frisian and Byzantine tremisses are represented, together with a variety of Anglo-Saxon coin types including coins of Eadbald, Æthelberht's son. Although no examples of Northumbrian coins are present, explicable presumably by geographical distance, the large number of Anglo-Saxon coin types that are present is consistent with their having been issued by more than one kingdom, and is instructive as to the apparent lack of control over the coinage in circulation.

¹⁶¹ Gareth Williams, *Early Anglo-Saxon Coins* (Botley, 2008), p. 13.

¹⁶² For example, Williams, *ibid.*, p. 20.

The Crondall Hoard was the subject of a detailed monograph by Carol Sutherland¹⁶³ published in 1948, which concluded that Kent and the Frankish kingdoms had an interchangeable gold currency as early as the late sixth century, and that at the very close of the sixth century coins, or at least coins with loops for wearing as jewellery, may have been produced in England. It will be seen subsequently in section 4.2 that Sutherland's views continued to have a considerable impact on scholarship until the mid-1960s and beyond. He is followed by Richard Hodges,¹⁶⁴ who asserts that money had a "real" circulation in Kent as early as the time of Æthelberht. More modern scholarship, however, whilst still citing Sutherland as an authority, tends to prefer the more cautious approach of, for example, Grierson and Blackburn¹⁶⁵ in doubting the existence of a circulating currency quite so early.

The grave goods found at Sutton Hoo included the remains of a purse containing a mixture of Frankish tremisses drawn very widely from mints throughout the Frankish kingdoms, together with two small ingots but no Anglo-Saxon coins. The general consensus of scholarship¹⁶⁶ is that the coins can be dated to c. 625 and that the burial should thus be associated with King Rædwald of East Anglia. The absence from the find of any Anglo-Saxon coins might be thought suggestive, albeit falling short of proof, that the East Anglian kingdom was not producing its own coins at this period.

The somewhat equivocal evidence from Crondall and Sutton Hoo needs, however, to be tempered with a discussion of a gold pendant approximately the size of a Frankish tremissis found along with several other coin-pendants in the Anglo-Saxon cemetery at St. Martin's, Canterbury. The obverse of the pendant

¹⁶³ Carol Sutherland, *Anglo-Saxon Gold Coinage in the light of the Crondall Hoard* (Oxford, 1948).

¹⁶⁴ Richard Hodges, *The Anglo-Saxon Achievement* (London: Duckworth, 1989), p. 92.

¹⁶⁵ Philip Grierson and Mark Blackburn, *Medieval European Coinage, with a Catalogue of the Coins in the Fitzwilliam Museum, Cambridge, I: The Early Middle Ages (5th-10th Centuries)* (Cambridge University Press, 1986).

¹⁶⁶ See on this, however, the more cautious assessment of Gareth Williams, *Early Anglo-Saxon Coins*, p. 19.

carries the bust of a figure wearing what appears to be a pearled diadem and a fine gown, and bears a backwards-running inscription in the Latin alphabet but showing some runic characteristics, reading LEVDARDVS EPS. The reverse carries a prominent double-barrelled cross on a rounded base. The upper arm, which is slightly shorter than the crossbeam, supports two pendants, whilst the crossbeam carries small vertical bars on its ends. The letters AA, chevron-barred, appear upside-down above the cross, to each side are the letters NINA, and below VAV. Both obverse and reverse are encircled by a dotted line.

As previously noted, Bishop Liudhard (“Leudardus Ep[iscopu]s”) is attested by Bede¹⁶⁷ to be the chaplain who accompanied the Frankish princess Bertha to England on her marriage to Æthelberht. The pendant has been the subject of a detailed examination by Martin Werner,¹⁶⁸ who considers it to have been struck between c. 578 and 589, and deposited c. 580-90.

The quality of the workmanship displayed in the making of the pendant would seem decisive of the view that Æthelberht’s metalworkers would have had the technical skills necessary to mint coins. Williams points out that Frankish coinage of the late sixth century included episcopal as well as royal mints, and considers the striking of coinage in the name of Bishop Liudhard to have been entirely possible.

It will be seen from the detailed examination of the specific provisions of the *Laws* undertaken in section 4 that the text refers to two monetary units, the shilling and the *sceatt*. As explained by Philip Grierson, nineteenth century numismatists gave the name *sceatt* to the earliest Anglo-Saxon silver coins that began to appear in the last quarter of the seventh century, some seventy-five years after the presumed date of Æthelberht’s *Laws*. At the time of Æthelberht, however, the *sceatt* referred to a small unit of gold whose weight equalled that of a grain of barleycorn, there being twenty *sceattas* to the shilling. Lisi Oliver¹⁶⁹

¹⁶⁷ *H.E.* i. 25.

¹⁶⁸ Martin Werner, “The Liudhard medalet”, *Anglo-Saxon England* 20 (1991), pp. 27-55.

¹⁶⁹ Lisi Oliver, *The Beginnings of English Law* (Toronto University Press, 2002) p. 82.

brings to mind in this connection two lines of verse from the OE poem *Widsið*, showing that the two units represented weights of gold, one a multiple of the other, from the description given by the eponymous poet of a ring with which he has been rewarded:

...on þam siex hund wæs smætes gold
gescyred sceatta, scillingrime (ll.91-2)¹⁷⁰

With such uncertainty surrounding the extent to which money was used in Æthelberht's Kent, it is very hard to make any strong assertions about its purchasing power. At the turn of the last century H.M. Chadwick suggested on the basis of a comparison with the Roman *solidus* that the shilling of Æthelberht's *Laws* equated to the value of an ox,¹⁷¹ and even if rather *faute de mieux* this has been accepted by subsequent scholarship. It will be seen subsequently that at this scale of value the level of many of the fines prescribed by the *Laws* seem considerably more than any but the wealthiest individual is likely to have been able to afford to pay without assistance from his kin group, albeit that it is however possible that it may have been open to the parties to a dispute to reach settlement on a lower figure.¹⁷²

In the face of such inconclusive and equivocal evidence from the archaeological record, it is perhaps not surprising that here is a considerable divergence of academic opinion as to whether the references in the *Laws* considered in detail in section 4 below to the various monetary tariffs are amounts intended to be paid in coin, or merely to units of account that would be settled by a transfer of property,

¹⁷⁰ Kemp Malone (ed.), *Widsið* (Methuen, 1935), translated by Oliver as "...in which by shilling count was reckoned 600 sceattas of pure gold".

¹⁷¹ H.M. Chadwick, *Studies on Anglo-Saxon Institutions* (Cambridge University Press, 1905), p. 61.

¹⁷² See the comments on this in the discussion of Patrizia Lendinara, "The Kentish Laws", in J. Hines (ed.), *The Anglo-Saxons from the Migration Period to the Eighth Century: An Ethnographic Perspective, Studies in Historical Archaeoethnology Vol.2* (Boydell Press, 1997) pp. 211-44 *passim*, but especially the comments of Grigorio Ausenda at p. 242.

such as livestock, at an agreed valuation. Lendinara thought¹⁷³ it “...hard to believe that the amount of coins which made up the different levels of wergild did not circulate and were only a unit of account.” As will be discussed in more detail in section 4.2.4 below, Richardson and Sayles¹⁷⁴ were sufficiently impressed by Sutherland’s monograph on the Crondall hoard to accept the case for a circulating currency in Æthelberht’s Kent, such that it seemed straightforward enough to them to assume that monetary tariffs were intended to be paid in coin. This now, however, seems altogether more problematic in the light of supervening scholarship.

J.M. Wallace-Hadrill in his Ford Lectures for 1970 to the University of Oxford¹⁷⁵ brought to mind the evidence of Tacitus¹⁷⁶ for the antiquity within Germanic society of composition and compensation as a means of mitigating the consequences of the feud. He asserted that “Compositions were not new to Kent when Æthelberht legislated, though money compensation may not have been so very old.” This is probably the limit to which an argument for monetary payments can sensibly be pushed on the basis of current archaeological and numismatic evidence for circulating currency in Æthelberht’s Kent.

In a more recent paper Nicholas Brooks¹⁷⁷ comes down firmly in favour of the monetary tariffs being intended in Æthelberht’s time – by implication, the position may well have been different even a generation or two later – merely as units of account, liability being discharged by a transfer of other property at a value arrived at by negotiation between the parties involved, or their representatives. This does indeed seem the better and more realistic view.

¹⁷³ *Ibid.*, p. 217.

¹⁷⁴ *Law and Legislation*, p. 5.

¹⁷⁵ *Early Germanic Kingship*, p. 42.

¹⁷⁶ *De Origine et Situ Germanorum*, ch. 12.

¹⁷⁷ “The Laws of King Æthelberht of Kent”, p. 130, approving Philip Grierson, “La fonction sociale de la monnaie en Angleterre aux viieme-viiieme siecles”, *Settimane di studio del Centro italiano sull’ alto Medioevo* 8 (Spoleto, 1961), pp. 341-62.

1.7 Summary

Taken together, the matters discussed in this chapter show Æthelberht, by the time of the arrival of Augustine, to be secure in his rule. To the north, east and south the borders of his kingdom were determined by the sea. In the south-west of his kingdom, the Weald provided a buffer zone between Kent and a South Saxon kingdom characterised, for reasons not yet properly understood, by an apparent insularity of outlook. Only to the north-west of his kingdom, west of the Medway, a region most likely annexed during the reign of his father, Eormenic, did Kent have an open land border. This was the likely location of Æthelberht's struggle with Ceawlin, but after the latter's demise even this border appears to have enjoyed a degree of stability and security.

Kent's highly fortunate geographic position, astride the principal sea-borne trading routes with the Continent, coupled with Æthelberht's close diplomatic links with the Frankish kingdom and, after Ceawlin's fall, internal political stability, presented an opportunity unique amongst contemporary Anglo-Saxon kingdoms to generate wealth through trade. The increasing levels of wealth evidenced in the archaeological record suggest that by the time of the arrival of Augustine's mission, this process was already well under way.

Though still at this stage probably lacking a circulating currency and the use of charters to effect land grants, Æthelberht's Kent nonetheless still showed a relatively high degree of internal political organisation, as evidenced for example by the *-ge* place-name evidence. Although section 1.5 presents what the weight of contemporary scholarship would probably be inclined to regard as a maximal view, good arguments exist that a pre-Christian priesthood, with responsibilities for such matters as the maintenance of a calendar, featured strongly in the political organisation of the kingdom.

2: The Manuscript Evidence

2.1: The *Textus Roffensis*: an overview

Æthelberht's Laws, together with those of his successors, the joint code of Hlophere and Eadric from two generations later, and, still later, the laws of Wihtred, survive in a unique manuscript witness, Medway Archive and Local Studies Centre MS DRc/R1, dating from the early twelfth century and, since the fourteenth century, conventionally and conveniently known as the *Textus Roffensis*. The manuscript consists of two parts, of which the first, fos. 1-118, contains a collection of English legal texts arranged in broadly chronological order (but on this see further below) comprising pre-Conquest legislation, laws of William I (1066-1087) and Henry I (1100-1135), ordeal rituals, excommunication formulae and extracts from canon law, followed by lists of popes, patriarchs, Roman emperors and Anglo-Saxon bishops and kings. *Æthelberht's Laws* occupy the first three folios. The second part, fos. 119-235, is in essence a cartulary of Rochester priory, arranged tidily in chronological sequence for the pre-Conquest period, and containing thereafter a somewhat less tidy collection of gifts and pleas, lists of donors, no doubt to be prayed for, an extract from the Domesday Book, and finally a catalogue of the priory library, again to be considered further below.

Given this unique manuscript history of *Æthelberht's Laws*, and that the history of the *Textus Roffensis* is so closely bound up with as to be almost inseparable from the history of the cathedral that created it, it follows that an examination of a vernacular law code dating from the turn of the sixth and seventh centuries must perforce begin with a brief history of Rochester cathedral and its clerics.

2.2 The Rochester foundation and the influence of the School of Bec

Rochester is one of the oldest cathedral foundations in England, dating from the arrival of Bishop Justinus in 604 only a few years after the mission of St. Augustine. It does not appear, however, that either its endowments or the size of

the community that they could support were sufficient to enable Rochester to become a centre of scholarship or book production in the pre-Conquest period. It seems likely that, as postulated by Smith, for the greater part of the pre-Conquest period the small groups of secular canons established there lived a regular life “centred upon the Mass, the Divine Office, and the common duties of the Episcopal household”,¹⁷⁸ but that the tenth-century monastic revival largely passed them by. Neil Ker has identified the canons as possessing a Bible, service-books, charters and other records, homilies written in Old English and a copy, now lost, of the Old English translation of Gregory’s *Regula Pastoralis* sent by King Alfred to Bishop Swithulf, but otherwise it must be doubtful whether the community had accumulated more than a few books prior to the arrival of the Norman bishops.¹⁷⁹ Just five pre-Conquest manuscripts surviving today have been assigned a Rochester provenance, and three of these may have originated elsewhere.¹⁸⁰

Following the death of the last Anglo-Saxon bishop of Rochester, Siward, in the autumn of 1075, the Norman monk Arnost was appointed bishop. He, however, held office for only one year prior to his death and was succeeded by Bishop Gundulf in 1077. It is from the time of Gundulf’s consecration that the fortunes of Rochester began to improve.¹⁸¹

Gundulf (Bishop of Rochester 1076-1108) was a colleague of Lanfranc (Archbishop of Canterbury 1070-89) and a close friend of his successor Anselm (Archbishop of Canterbury 1093-1109).¹⁸² All three were former monks of Bec,

¹⁷⁸ Reginald A. L. Smith, “The Early Community of St. Andrew at Rochester, 604-c. 1080”, *English Historical Review* 60 (1945), p. 299.

¹⁷⁹ Neil R. Ker, *Catalogue of Manuscripts Containing Anglo-Saxon* (Oxford, 1957), p. 385.

¹⁸⁰ Neil R. Ker, *Medieval Libraries of Great Britain 2nd ed.* (London: Royal Historical Society, 1964), pp. 160-164.

¹⁸¹ As more fully described by Mary P. Richards, “Texts and Their Traditions in the Medieval Library of Rochester Cathedral Priory”, *Transactions of the American Philosophical Society* 78 (1988) Part 3, on which the account in the following paragraphs very substantially leans.

¹⁸² For a biography of Archbishop Anselm, see Sally N. Vaughn, *Archbishop Anselm 1093-1109: Bec Missionary, Canterbury Primate, Patriarch of Another World* (Farnham and Burlington, VT:

and prior to his consecration as Archbishop, Lanfranc had already played a pivotal role in the revitalisation of the Church in Normandy. Caen had been founded as a daughter house of Bec to be closely associated with its traditions, and its development no doubt provided a template for what Lanfranc had in mind for Rochester. Under Lanfranc, the abbey of Caen had undertaken a programme of significant expansion, building canals, watermills and fisheries and purchasing orchards. Moreover, in what might be considered a precursor to the second part of the *Textus Roffensis*,¹⁸³ a detailed cartulary was compiled to identify and safeguard its land holdings. Indeed, it was during this period that Caen grew to become Normandy's second city, noted for its diverse population. Arriving at Canterbury at the age of sixty, speaking no English and faced with the task of bringing good governance to English monks who, on a Bec view, had failed to manage their institution with the requisite vigour or enterprise, it was logical for Lanfranc to turn to trainees of Bec and its daughter institutions.

Thus, as described in the contemporary *Vita Gundulfi*,¹⁸⁴ Bishop Gundulf replaced the secular canons with a body of twenty-two Benedictine monks, some from Bec, and used his close friendship and working relationship with Lanfranc to model the Rochester foundation upon that of Christ Church, Canterbury. He borrowed closely from Canterbury's methods of financial record-keeping, and began rebuilding the cathedral church, again seemingly in part on the model of Christ Church. With the aid of Lanfranc's influence, both Canterbury and Rochester were able in the celebrated trial of Penenden Heath to recover from Odo of Bayeux properties in Kent previously usurped from them. In the course of these activities, Gundulf established a scriptorium and organised the effort that would eventually result some half-century later in a library of over ninety books.

Ashgate Publishing, 2012). Particularly valuable is chapter 2 concerning the role of Bec in shaping his thinking and outlook.

¹⁸³ And, perhaps, of the postulated *Textus Cantuariensis* as well: see section 2.3 below.

¹⁸⁴ *Vita Gundulfi Roffensis Episcopi*, in *Patrologia Latina*, ed. Jaques Migne (221 vols., Paris, 1844-64), 159, col. 833

2.3 Bishop Ernulf

Gundulf was succeeded as Bishop of Rochester by Ralph d'Escures (1108-1114),¹⁸⁵ who after his accession to the Canterbury see in 1114 was in turn succeeded by Ernulf, both also monks of the Bec tradition and the latter a former prior of Christ Church. It was during Ernulf's episcopate that the Rochester library experienced its greatest period of growth, including the copying of numerous Canterbury books no doubt facilitated by Ernulf's connections with his former colleagues. Between 1114 and 1123 Ernulf consolidated the work of his predecessors and completed the monastic establishment of Rochester by means of the construction of a cloister, refectory and chapter house.

The career of Ernulf merits further amplification. Besides being a former prior of Christ Church, Canterbury, he was from 1107 to 1114 Abbot of Peterborough. Ernulf's Peterborough connection is almost certainly of significance in the context of the history of the "E" manuscript of the Anglo-Saxon Chronicle.¹⁸⁶ This was written at Peterborough by various scribes at various dates in the twelfth century between 1121 and 1154. In 1116 much of the monastery at Peterborough was destroyed in a catastrophic fire. As originally noted by Plummer, prior to 1023 the "E" manuscript shares much of its material with the "C" and "D" manuscripts, giving it a somewhat northern focus for this period. Thereafter, however, "E" departs very considerably from the others in including a considerable body of information relating to affairs in southern England. Since it is clear from inspection of the manuscript¹⁸⁷ that the first scribe of "E" copied as far as 1121, Plummer therefore deduced that "E" represented the copying at Peterborough of a Canterbury archetype, now lost, in an attempt to restore the

¹⁸⁵ For a biography of Ralph d'Escures, see Jean Truax, *Archbishops Ralph d'Escures, William of Corbeil and Theobald of Bec: Heirs of Anselm and Ancestors of Becket* (Farnham and Burlington, VT: Ashgate Publishing, 2012), in particular chapters 1 and 2.

¹⁸⁶ Oxford, Bodleian Library, MS. Laud 636.

¹⁸⁷ For an excellent collotype facsimile, see Dorothy Whitelock (ed.), *The Peterborough Chronicle*, Volume IV of the Early English Manuscripts in Facsimile series (Copenhagen: Rosenkilde and Bagger, 1954).

Peterborough Library after the fire, and that it was through the assistance of Ernulf that this Canterbury archetype was obtained.

At Rochester, Ernulf oversaw the beginning of a library catalogue that, as will appear below, is a valuable source of information as to the nature and purpose of the *Textus Roffensis*. Contemporary practice at Christ Church and its cell at Dover was to list books alphabetically by author or title, and by donor. The Rochester catalogue, in contrast, is organised similarly to the continental model used at Bec, and opens with additional lists for works of the Fathers: Augustine, Jerome, Ambrose, Gregory and Bede. Each list is rubricated by author, and within the catalogue volumes are assigned by author lists based on the first text in the codex.

The catalogue, moreover, goes well beyond the majority of its medieval counterparts in giving a sense of the entire contents of the books listed. Although, as noted by Richards,¹⁸⁸ the catalogue at Bec on which the *Textus Roffensis* catalogue appears to have been modelled is usually dated somewhat later, her contention that Bec can be supposed to have had an earlier model on which the *Textus Roffensis* catalogue was based may constitute a reasonable working assumption. It is perhaps instructive in this context that a similar catalogue survives at Peterborough, in an intermediate stage of evolution between the terse book-lists of Canterbury and the altogether fuller entries in the *Textus Roffensis*.

Ernulf was, moreover, very capable of crafting legal texts under his own steam: his *De Incestiis Coniungiis* shows him to have been entirely familiar with the latest works of such of his contemporaries as Ivo of Chartres. Thus, by turns prelate, consummate administrator, legal commentator and sympathetic custodian of the vernacular literary tradition, Ernulf emerges as a man of many parts and the embodiment of the level of scholarship displayed in the compilation of the *Textus Roffensis*.

¹⁸⁸ Mary P. Richards, "Texts and Their Traditions", p. 7.

A protégé of Lanfranc, as schoolmaster at Canterbury Ernulf oversaw the introduction of Norman script. He served as Prior at Canterbury from 1096-1107 in succession to Prior Henry, another Lanfranc ally.

The late Nicholas Brooks contended¹⁸⁹ that it is to Ernulf's priorate, and perhaps even to his personal initiative, that the *Textus Cantuariensis* should be assigned. This book, now lost but reconstructed by Robin Fleming,¹⁹⁰ consisted of a chronologically-arranged cartulary written entirely in Latin recording grants of lands and privileges to Christ Church, Canterbury, together with lists of revenues of Canterbury and Rochester from the time of Lanfranc and including a list of knights and of knights' fees and an extensive list of ecclesiastical renders. On Brooks' analysis, the eight surviving folios of "Domesday Monachorum"¹⁹¹ are a relict of the *Textus Cantuariensis*, and that a (now missing) cartulary section had once existed in a similar format.

Fleming argued that the cartulary had been composed c. 1070x1075, chiefly on the basis of the absence from the cartulary of donations from the reign of William I or from the pontificate of Lanfranc. Brooks, however, would see this as explicable in terms of the termini provided by the Conquest, and would on the basis of other features date the cartulary to 1089x1110, with a probable date during the priorate of Ernulf.

Yet unlike the cartulary in *Textus Roffensis*, the reconstructed *Textus Cantuariensis* makes no attempt to copy the full texts of documents and does not

¹⁸⁹ Nicholas Brooks, "Was there a *Textus Cantuariensis*, and what did it contain?", unpublished paper presented to the University of Cambridge, *The Long Twelfth-Century View of the Anglo-Saxon Past*, March 2011.

¹⁹⁰ "Christ Church Canterbury's Anglo-Norman Cartulary", in C. Warren Hollister (ed.), *Anglo-Norman Political Culture and the Twelfth-Century Renaissance* (Woodbridge: Boydell, 1997), pp. 83-156.

¹⁹¹ Canterbury D&C MS. E.28, fos.1-7r. For a collotype facsimile edition of commendably high quality considering its wartime publication, see *The Domesday Monachorum of Christ Church Canterbury*, ed. and intro. David C. Douglas (London, 1944).

admit in its summary versions any trace of the Old English vernacular. Instead, the great majority of the entries are presented as succinct Latin diplomas, starting with an *Anno Domini* date, followed by a disposition, an indemnity clause, the reservation of common burdens and (sometimes) by an anathema, normally omitting a witness list.

As pointed out by Brooks, although the *Textus Cantuarensis* can justifiably be seen as the precursor of the *Textus Roffensis* cartulary, considerable allowance must be made for the earlier date of the former's composition. At this time, so relatively soon after the Conquest, it would seem entirely plausible that judicial sentiment may well still have inclined towards the treatment of vernacular records with hostility, in a way that may well not have been nearly so prevalent when the *Textus Roffensis* was compiled perhaps a half-generation or so later. Alternatively, the desire of the Archbishop and his key colleagues to rewrite the history of the Canterbury foundation in a form which could be kept on the altar may indicate a community at Canterbury divided at that time between its Norman hierarchy on the one hand, and their English subordinates on the other, in a way that was again anachronistic at the time of the later composition of the *Textus Roffensis*.

2.4 The dating of the manuscript

The student is well-served by excellent facsimile reproductions of the *Textus Roffensis*. Fos.1-118 and 119-235 appeared, respectively, as Volumes VII (1957) and XI (1963) of the Early English Manuscripts in Facsimile series, using the then state of the art collotype reproductive process. Both volumes were edited by Peter Sawyer, who also provided useful introductions which, notwithstanding that they have, with the passage of time, been overtaken in some specifics by the subsequent work of Patrick Wormald and others, remain useful starting points for research. The limitations of the monochrome reproductions are not, in practice, as great as might be supposed, and for most ordinary purposes these editions remain entirely satisfactory. More recently, a colour facsimile has been made available on line, not the least benefit of which is that the illumination and

decoration of a number of initial capitals, in particular that of fo.119r commencing the cartulary (see Plate 10), are shown to better advantage.

Apart from some insertions and replacement leaves, which are relatively rare in the legal collection but rather more common in the cartulary, the *Textus Roffensis* is the work of a single scribe, described by Sawyer in his introduction to the facsimile edition as having been identified by Neil Ker as a senior member of the Rochester scriptorium operating in the first part of the twelfth century and to whom a number of other surviving manuscripts can be attributed. Given the remarks in the foregoing section, it is no surprise that Augustine's *De nuptiis et concupiscentia*, the patristic text most frequently quoted in Ernulf's *De Incestiis Coniungiis*, is among these: Bodleian Library, MS. Bodley 134. Other examples, all of patristic works, are Trinity College, Cambridge, MS. 0.4.7; Cambridge University Library, MS. Ff.4.32; Eton College, MS. 80; British Museum, MSS. Royal 5 B Xii; 5 C I; 6 A IV; 6 C IV; 8 D XVI; 12 C 1, the table of contents and prologue on the first two leaves; 15 A XXII, fos. 110-117 and Lambeth Palace MS. 76.

The palaeographical features of the manuscript and their evidence for the way in which the manuscript was compiled are considered in more detail in section 2.8 below. In the context of the dating of the manuscript, however, Ker's attribution to the first part of the twelfth century can not be faulted. The script is generally of a regular aspect and is highly legible. The scribe employs a mixture of insular and caroline minuscule letter forms with equal facility, with no indications to suggest that the scribe was any less familiar with Old English than with Latin.

Although the script does have a modest oval aspect, it lacks the more extreme lateral compression of English Protogothic minuscule. Similarly, whilst the scribe uses an upward thrust of his pen to afford a decorative sloping foot to his mimims, this falls short of the exaggerated style of other scribes associated with

South Eastern English centres of the period.¹⁹² Withal, therefore, the *Textus Roffensis* displays an interesting transitional script form containing a mixture of vernacular minuscule traditions whilst incorporating a number of features anticipating the emergence of English Protogothic script.

It had, following Sawyer, generally been taken that the *Textus Roffensis* could be securely dated on its own internal evidence to 1122-3, but whilst this is unlikely to be significantly in error this does now need to be put more cautiously. Fo.111r contains, as previously noted, a list of the bishops of Rochester, contained in the hand of the main scribe down to a second Goduinus, *semble* a Godwine of the 1050s. Later bishops are added in an assortment of different hands. Fo. 110v, in contrast, containing a list of Canterbury archbishops extending in the main hand to Rodulfus, namely Ralph d'Escures, whose death in 1122 is given in the same hand as *xiii kl' novembr'*, i.e. 20 October. The name of Ralph's successor, William de Corbeil, whose consecration is known from other sources to have taken place on 18 February 1123, is given in a different hand.

This, at first sight rather odd, situation in which a Rochester manuscript is apparently maintaining more up-to-date information concerning Canterbury's archbishops than the bishops of its own see, has been persuasively explained by Patrick Wormald¹⁹³ as an instance of the Rochester scriptorium copying from a Canterbury exemplar, very possibly BL Cotton MS. B.v., universally accepted as a product of the Canterbury scriptorium dated originally to c.1000.¹⁹⁴ The window of 20 October 1122-18 February 1123, when properly understood, therefore relates in strictness not to the compilation of the *Textus Roffensis*, as

¹⁹² Compare generally Plates 1-7 from the *Textus Roffensis* with Plate 8, London, British Library, Royal 6.B.VI., fo.2, St Ambrose's *De Misteriis*, where the addition of both feet and serifs contrive to give the script a distinctly spiky and angular appearance.

¹⁹³ "*Laga Eadwardi: The Textus Roffensis and its Context*", *Anglo-Norman Studies* 17 (1995) pp. 243-66, repr. in *Legal Culture in the Early Medieval West* (Hambledon, 1999)

¹⁹⁴ Thus, substantially bearing out Liebermann's own supposition that the *Textus Roffensis* was copied from a Canterbury exemplar dating from 1000-1020: *Gesetze der Angelsachsen* (Halle: M. Niemeyer, 1897-1916), Vol. I p. xxvii

supposed by Sawyer, but to the updating of the Canterbury exemplar from which it drew.

2.5 The binding of the manuscript

Notwithstanding that, as has been noted, fos.1-118 and 119-235 are substantially the work of the same scribe and are now bound together, it appears that originally the two parts were comprised in separate volumes. This is evidenced firstly by the fact that each part has a distinct sequence of quire signatures, which in the case of the legal collection are of considerable interest in the context of discussing how the arrangement of the manuscript was originally conceived, and which will accordingly be considered in some detail below. Secondly, fos. 224-230 contain, in the hand of the main scribe, the catalogue of books to which reference has already been made. On fo.238, towards the end of the list, one of the books is described as *Institutiones regum anglorum in I uolumine*, which must almost certainly be a reference to what is now the first part of the manuscript.

The foot of fo.1 bears the inscription in a fourteenth-century hand, *Textus de ecclesia Roffensi per Ernulfum episcopum* (expanding contractions). Although, as previously shown, it is not possible conclusively to date the production of the manuscript to Ernulf's episcopacy, this association of Ernulf with the manuscript sits entirely comfortably with our knowledge of other aspects of Ernulf's career and readily enough with the likely approximate date. Most Rochester books of this period have a similar description, albeit more normally in the form *liber de claustro roffensi*, followed by a personal name in the genitive case or introduced by *per*.¹⁹⁵ As noted by Richards, normally during the Middle Ages the word *textus* was reserved for Gospel books, but at Rochester it appears to have carried the wider meaning of a valuable book stored apart from the monastic library in

¹⁹⁵ Thus, see the inscription at the foot of Plate 8 in an English Gothic cursive script of the early fourteenth century, *liber de claustro Roffens(i) p(er) Andr(eam) mona(chu)m*.

the cathedral church.¹⁹⁶ The absence of an equivalent early fourteenth-century *ex libris* inscription from the foot of fo. 119 suggests that by this period the two parts had already been bound together. Nothing, however, is known of the early bindings of the manuscript.

2.6 The later history of the manuscript

The history of the *Textus Roffensis* between the finalisation of the text, broadly, in the period of Ernulf and the reorganisation of the Rochester see in the 1200s has been compellingly told by Martin Brett,¹⁹⁷ based on his detailed examination of the cartulary.

Brett draws a clear distinction between the first and second halves of the cartulary. In respect of the post-Conquest period, the cartulary is a process of continuing evolution. Five leaves have been completely replaced, and sixteen added, by an assortment of scribes. New texts have been added, and old texts reworked. The last few leaves in particular show a marked decline, degenerating into what Brett dismisses as largely inconsequential scribbles.

The changeover between the first and second halves of the cartulary is marked by a blank leaf immediately prior to the folios dealing with the Penenden Heath

¹⁹⁶ The list of donations to St. Andrew's recorded in BL MS. Cotton Vespasian A XXII fols. 88r-v (s. xiii in) uses *textus* to describe four books given to the library by Gundulf and others. Three of these are indicated by their descriptions to be extremely valuable, and these same three are excluded from inventories of the monastic library. Colin Flight has sensibly suggested that these books are likely to have had ornamental covers. *Goda's Gospels*, a copy of the Gospels considered by Sawyer probably to have been made for Edward the Confessor's sister and now BL MS. Royal 1 D III, is mentioned as one of these precious books (*textus aureum Goda comitisse*) because it had been redeemed from mortgage by Prior Helyas in about 1200. The others are a life and history of St. Andrew and a second Gospel book. *Goda's Gospels* is the only one of these books to have survived. Instructively, it too bears an inscription on its flyleaf, in terms almost identical to the *Textus Roffensis: Textus de ecclesia Roffensi per Godam comitissam*, and, again as with the *Textus Roffensis*, is excluded from a 1202 inventory of the contents of the library.

¹⁹⁷ Most recently, "Absence, presence and forgery in the *Textus Roffensis*", unpublished paper presented to The *Textus Roffensis* Conference, University of Kent, July 2010.

trial. These can hardly be dated other than to 1076, simultaneously with the arrival of Gundulf and the monks and the great new beginning of the Rochester see previously described. Rochester's record of its recent past is highly truncated. The cartulary contains only one pre-Conquest gift of land not attested elsewhere. The *Annals of Rochester* contained in MS. Cotton Vespasian A.22 contain no material prior to 1076 except the *Liber Temporalium*, a history not of the church but of the priory.

Thereafter, the cartulary contains a combination of narrative (such as the Penenden Heath folios), lists of grants (particularly tithes), charters, surveys and a few private charters such as that of Hugo Fulk on fo.163r, an exact copy of a surviving single-sheet charter. As, for example, at Peterborough, this may not have been intended to exist as a record of title but rather as a justification for the liturgical commemoration of benefactors.

When compared with surviving single-sheet charters, the main scribe of the *Textus Roffensis* emerges as extremely secure. Leaves added or supplied subsequently, however, give very considerable grounds for anxiety.¹⁹⁸ It is also instructive that the *Textus Roffensis* contains no grant made by Gundulf himself to the monks, yet by 1200 one did exist. A copy of a purported charter of Henry I deals with a number of properties to which Rochester had sought to establish ownership. Anselm, Henry I and Gundulf are depicted as sealing the charter. Yet the signatories are shown in another hand on a supplied leaf, and are not in the charter as it now survives.

These issues arise from twelfth-century disputes that could not have been envisaged at the time of Gundulf. It can readily be supposed that by the early thirteenth century the *Textus Roffensis* had become very awkward, omitting as it

¹⁹⁸ Such as the purported grant of the church at Northfleet: outside of the charters contained in the *Textus Roffensis* entries and demonstrable later forgeries, no evidence exists for Rochester ownership. Indeed, the church seems always to have been in the gift of the Canterbury diocese. A subsequent charter is apparently attested by one Geoffrey, yet no credible Prior Geoffrey exists other than in 1128.

did a large number of invented twelfth-century documents needed to support Rochester's land claims. The monks responded with what are now fos. 90-208 in BL MS. Cotton Domitian A X. Dating from the thirteenth century, this comprises an edited and improved collection of a century and a half of episcopal and royal charters, beginning with the work of Gundulf and Lanfranc. As demonstrated by Brett, the *Textus Roffensis* is an essential source document in enabling this process of embellishment to be traced, and may even do much to explain how this book acquired its name. If the book was indeed one that the monks of Rochester were pleased to venerate but anxious never to open, the church and not the library might well have been the best place to keep it.

After the Reformation, the *Textus Roffensis* was studied by a number of antiquaries and scholars, including William Lambarde. It would seem that Lambarde, the first editor of the Anglo-Saxon Laws, did not have recourse to the *Textus Roffensis* in compiling his *Archaionomia* (1568), but an initialled note on fo.1 suggests that he saw it in 1573. In 1589 Francis Tate made the earliest fairly full transcript to have survived to the present day: British Museum MS. Cotton Julius C ii. Around 1631 the manuscript was acquired by a Dr. Thomas Leonard, and it was only recovered by the then Dean, Walter Balcanqual, with some difficulty two years later. At some stage in the early eighteenth century the book, by then in wooden covers, was away from Rochester on loan, and whilst being returned to Rochester from London by water was dropped into the River Thames. The resulting water stain is clearly visible throughout the manuscript and in the colour on-line facsimile. Later in the eighteenth century the book was rebound in red leather, and the book remained in substantially the same condition until 1937, when it was rebound and restored by Charles Lamacraft.

2.7 The arrangement of the manuscript

The manuscript leaves are of vellum, and now measure some 225mm x 155 mm. However, many prickings, signatures and marginal additions have been cut, indicating that the leaves were originally somewhat larger. It is a matter for conjecture by how much larger the original leaves might have been. It is, plainly,

very plausible to suppose that this process of trimming may have taken place at the same time that the collection of legal material in fos. 1-118 was bound with the cartulary material in fos. 119-235, but this too is a matter for conjecture.

A few leaves, such as fo. 16, had holes that the scribe allowed for, and fo. 28 contains a long tear that was repaired prior to use by the scribe. The immersion of the manuscript has caused some damage, and in addition to the prominent water stain that is particularly readily apparent in the on-line colour facsimile, fos. 103-116 in the middle of the book also suffered some shrinkage, requiring repair by Lamacraft at the time of the re-binding in 1937. Nearly all of the text, however, remains perfectly legible in ordinary light.

The arrangement of the manuscript is complicated, and yet is fundamental to an understanding not merely as to how the ordering of the manuscript was originally conceived, but as to how it was compiled. As noted by Sawyer,¹⁹⁹ apart from two parchment fly-leaves of the same date as the binding and three post-medieval leaves which bear various notes and are bound before fo.1, the manuscript consists of 235 vellum leaves. The first part containing the legal material is currently arranged in fourteen quire gatherings, as follows:

- 1: fos. 1-8
- 2: fos. 9-18 plus two leaves after 3 (fos.12 and 13)
- 3: fos. 19-26
- 4: fos. 27-39 plus a leaf after 5 (fo.32)
- 5: fos. 40-47
- 6: fos. 48-57
- 7: fos. 58-65
- 8: fos. 66-73
- 9: fos. 74-86 plus a leaf after 11 (fo.85) and a leaf after 12 (fo.87)
- 10: fos. 88-95
- 11: fos. 96-100 wants 6-8 after fo.100

¹⁹⁹ In his *Introduction to Early English Manuscripts in Facsimile Volume VII: Textus Roffensis Part I*, (Copenhagen, 1957) p. 11.

12: fos.101-108 wants 6 after fo.105, this was replaced c.1200 (fo.106)

13: fos.109-116

14: fos.117-118, probably fly-leaves.

There was in all likelihood originally a quire signature at the foot of the last page of each gathering, but in the first part of the manuscript these have suffered severely from the process of trimming described above. Sawyer noted²⁰⁰ the surviving signatures as follows:

Gathering	Signature
5	IX (fo.47v)
7	I (fo.63v)
8	II (fo.73v)
9	III (fo.87v)
10	VIII (fo. 95v)

Whilst the first of these is easily legible, the others have been so severely trimmed that only slight traces remain. Indeed, even so careful a scholar as Liebermann misread the signature of gathering 10 as IIII. The tops of four minims remain, but to the left of these there can be detected a fainter stroke, showing that the first digit of this signature was V.

Fortunately, however, some texts continue from one gathering to the next, the significance of which will be discussed in more detail below, and from this it is possible to reconstruct the original arrangement as follows:

7: fos. 58-65, signature I

8: fos.66-73, signature II

9: fos. 74-87, signature III

1: fos. 1-8

²⁰⁰ *Ibid.*, p.12.

- 2: fos. 9-18
- 3: fos.19-26
- 4: fos. 27-39
- 10: fos. 88-95, signature VIII
- 5: fos. 40-47, signature IX
- 6: fos. 48-57
- 11: fos. 96-100
- 12: fos.101-108
- 13: fos.109-116
- 14: fos. 117-118

Thus, whereas as currently arranged the *Textus Roffensis* begins with the Laws of King Æthelberht, followed by the joint code of his successors Hlophere and Eadric, and that of Wihfred, as originally intended the book would have begun with the *Instituta Cnuti*, discussed below. These gatherings had certainly been rearranged into their current order, at the latest, by the time the *ex libris* inscription was added to fo. 1.

This *Instituta Cnuti* is in essence a Latin translation and amplification of a law code of King Cnut (1016-1042), to which the vernacular texts might originally have been conceived, in the words of Wormald, as being “by way of an illustrative supplement in a portfolio whose main theme was also the central message of its penultimate item, the Coronation Charter of Henry I: the ‘Law of King Edward’, meaning the law of the pre-Conquest kingdom, retains its relevance.”²⁰¹ This, as Wormald went on to point out, would have resulted in the *Textus Roffensis* closely resembling another legal encyclopaedia, *Quadripartitus*, where Cnut’s laws are followed by an even fuller set of earlier codes, albeit in *Quadripartitus* in a Latin translation, and by confirmatory legislation of Henry I.

Sawyer reinforced his analysis by noting that the rubric at the head of the *Instituta Cnuti* refers to *Instituta de legibus regum Anglorum*, a title more

²⁰¹ “*Laga Eadwardi*”, p. 117.

befitting the first item in a more general collection, whereas other manuscript witnesses speak of Cnut. We have, moreover, seen above that the book's entry in the Rochester library catalogue reads *Institutiones regum Anglorum*. Yet against this, it should be noted that fo. 58r, unadorned save for a decorated initial capital "H" of *Hic est*,²⁰² compares very modestly even with the initial run of capitals on fo. 1 or at the start of Alfred's preface on fo. 11, which last is not even the beginning of a text or a page. Still less does it compare with the magnificent decoration of fo. 119r²⁰³ at the start of the cartulary. This has led Wormald to conclude that "...even if it was decided to begin with the *Instituta* by the time the quires were signed, these quires were not originally intended to front the volume, nor were they written first."²⁰⁴

Indeed, as subsequently explained by Wormald, the scribe/editor seems ultimately to have adopted a different approach. Except where the sheer size of a text such as Alfred's Lawbook or the *Instituta Cnuti* required otherwise, every single quire was begun with a fresh text. Wormald cites instances where the scribe/editor has gone to some lengths to achieve this, even to the extent that some material is not obviously connected very readily to its immediate fellows by either content or chronology.

Thus, as Wormald explains,²⁰⁵ in quire 1, Æthelberht's *Laws* (fos. 1-3v) are followed, logically enough, by the joint code of his successors, Hlophere and Eadric (fos. 3v-5) and by the laws of Wihtried (fos. 5-6v). *Hadbot* (fo. 7rv) appears anachronistic at this stage and generally sits oddly, but concerned as it is with compensation for various grades of clergy it just about passes muster as a logical successor to Wihtried's code, part of which is concerned with similar issues. Perhaps more pertinently, however, it occupies some page and a half, such that by compressing the genealogical regnal list of the West Saxon and English kings (fos. 8rv) onto, respectively, pages of twenty-five and twenty-

²⁰² See Plate 9.

²⁰³ See Plate 10.

²⁰⁴ "*Laga Eadwardi*", p. 120.

²⁰⁵ "Palaeographical evidence", p. 58.

seven lines instead of the normal twenty-four, the succeeding quire 2 can neatly begin with Alfred's Lawbook. These quires are then arranged chronologically by principal text. It will be seen in the following section that these conclusions are broadly supported by palaeographical considerations as well.

2.8 The palaeographical evidence

It is, of course, a well-known feature of pre-Conquest manuscripts that texts written in the Old English vernacular can readily be distinguished from those written in Latin on the basis of a number of palaeographic features. The plainest instances of this are the use in vernacular texts of the runic letter *thorn*, "þ" and the "crossed-d" *eth*, "ð", both of which are used with varying degrees of discrimination to represent the Modern English "th" sound, the runic *wynn*, "ƿ" to represent the Modern English "w", and the Old English *ash*, "æ" diphthong to represent the short-a vowel sound.

In common with other scribes, that of the *Textus Roffensis* also differentiated his vernacular texts from Latin texts by the use of different letter-forms for "d", "f", "g", "h" and "r", and also by the use of an insular form of "s" in addition to the caroline and round forms employed by him when writing in Latin, and of curving and "f-shaped" forms of "y" in addition to the straight-limbed form of "y" used exclusively in the Latin texts.²⁰⁶ Very occasionally, the scribe also deploys in his vernacular texts an uncial form of "r"²⁰⁷ which, together with the curving and "f-shaped" forms of "y", had become obsolete comfortably before the range of dates to which the *Textus Roffensis* can be assigned.

As was noted in section 2.4, several other manuscripts by the same scribe have survived. These are all in Latin, such that a direct comparison with the vernacular texts of the *Textus Roffensis* is not possible. Nevertheless, examination of the scribe's other work does throw up a number of noteworthy points.

²⁰⁶ Thus, compare the curved "y" of *syndon*, Plate 1, first line, with the straight-limbed form of *hwylc*, Plate 2, line 8, and the "f-shaped" variant of *ge/kyndlice*, Plate 4, bottom line.

²⁰⁷ As in *medder*, the middle word of line 12 of Plate 7, fo. 4r.

Firstly, it is perhaps significant that the greater part of the scribe's surviving work comprises the patristic texts in which Ernulf himself showed such interest. This may, of course, be no more than a reflection of the way in which the output of the Rochester scriptorium was directed in Ernulf's time. There may perhaps, however, be more to it than this. It has already been noted that comparison of the cartulary entries with the surviving single-sheet originals reveals the scribe to be a very reliable copyist. A number of his surviving patristic texts contain extracts in the Greek alphabet, with which the scribe was therefore familiar, certainly at least as a copyist but more probably also as a scholar. Perhaps of more significance than both of these considerations, however, the examination in the previous section of the way in which the manuscript was compiled demonstrates considerable editorial skill and a capacity for independent scholarship in handling material from a variety of sources. If the scribe was not merely a highly experienced and accomplished penman, but also undertook this editorial function himself, he will have been a senior member of the Rochester community indeed. It will also speak to the importance attached by Ernulf to the *Textus Roffensis* project that so capable a member of the community will have been allocated to it.

Examination of his other surviving works show the scribe to have been possessed of a hand at once attractive and highly consistent in aspect, and yet at the same time showing considerable individuality and flair. The scribe adopts, for example, different methods apparently as mood takes him of forming majuscule "A", "N", "Q" and "D", using straight and curved forms of each. His minuscule letter forms are substantially those as appear in the Latin texts of the *Textus Roffensis*, save that occasionally a curving "y" appears as an alternative to the straight-limbed form prevalent in the twelfth-century. For emphasis, either in the terminal position in the last word of a section of text, or else mid-word in the rubric introducing a new section of text, the scribe will often utilise an "R" of majuscule form but minuscule size. This can, however, clearly be distinguished from the uncial form occasionally used in the earlier folios of the *Textus Roffensis*. Whereas the descenders of the uncial "r" extend comfortably below

the writing line,²⁰⁸ those of the emphatic form end upon it. Although these researches are not exhaustive, there are no grounds to suppose that the obsolete “f-shaped” “y” and uncial “r” letter forms appearing in the earlier folios are attributable to scribal variation. Instead, the view of Sawyer and others that these letter-forms must be presumed to be an attempt by the scribe to imitate those of his exemplar or exemplars is to be followed.

It was noted by Sawyer that these obsolete letter-forms only appear in the *Textus Roffensis* as far as fo. 37. Moreover, linguistic corrections, which are similarly common in the earlier stages of the manuscript, also become from this point onwards markedly less common, indeed to the extent of virtual disappearance. Sawyer therefore concluded from this that whereas the scribe had initially approached his task by making a fairly accurate reproduction of both the script and the language of his exemplar, from fo. 38 onwards he revised this approach and instead adopted the practice of updating both of them as he went along.

Before, but not after fo. 38 the scribe made many linguistic alterations. It is likely that before he altered them the texts were a fairly close copy of his immediate source and it is also probable that the unusual letter forms show the influence of that source. The changes at fo. 38 may mean that when the scribe reached that point he decided to modernise both his script and the language of his source.²⁰⁹

Whilst Sawyer was plainly correct in the broad thrust of these observations, in two specific regards his analysis has been more fully developed by subsequent scholars. Firstly, Sawyer’s own work on the quire signatures described in the preceding section should have alerted him to the possibility that whilst fos. 1-37 appear in that order in the manuscript as it exists today, there can be no presumption that these folios were the first to have been written by the scribe. Secondly, Sawyer had supposed, following Liebermann, on the basis of material

²⁰⁸ *Ante*, note 174.

²⁰⁹ Introduction, p. 14.

common to all three that *Textus Roffensis*, CCCC MS. 383²¹⁰ and *Quadripartitus* had all derived from a common source, postulated as a lost Canterbury manuscript designated “hbq” in Liebermann’s stemma. As described in the preceding section, however, it has been shown by Wormald that the legal collection was in fact collated from a range of sources by a scribe who also performed an editorial role, and moreover so ordered his manuscript that each quire was self-contained and began with a new text. It is therefore preferable to state the position more cautiously, and to observe that whilst there is certainly evidence after fo. 37 of the change in scribal practice contended for by Sawyer, the possibility remains that after this point the scribe was merely following more recent exemplars employing modernised script and language.

Similar thinking by Carole Hough now nearly some twenty years ago, at a time when she was working in close collaboration with Patrick Wormald, led to a significant development in scholarship. In her own words:

...the realisation that more than one source was actually used raises the possibility that the distribution of [the archaic forms of “y”] and of other variant letter-forms may repay closer examination. Archaic graphs are not uniformly distributed throughout fols. 1-37, nor indeed within individual quires. They are found in certain texts but not in others, while the incidence [of þ and ð] and of alternative forms of “s” also varies across different texts, not only within folios 1-37 but throughout the manuscript. It therefore seems possible that the choice of letter-forms may be related to the use of different exemplars, so that the distribution of alternative graphs may help to differentiate between these exemplars and to provide additional information on the composition and structure of the manuscript.²¹¹

²¹⁰ See in particular Thomas Cubitt, “The Other Book: Cambridge, Corpus Christi College, MS. 383 in Relation to the *Textus Roffensis*”, in Bruce O’Brien and Barbara Bombi, *Law, Language and Libraries in Early Medieval England* (Brepols, 2015), pp. 69-82.

²¹¹ Carole Hough, “Palaeographical evidence for the compilation of *Textus Roffensis*”, *Scriptorium* 54 (2001) pp. 57-79.

Having this stated her objective – couched, it must be observed, in language of a modesty which sits at variance with the compelling force of the arguments being deployed – Hough then proceeded to undertake a detailed statistical analysis of the variant letter-forms, beginning with the cartulary texts in the second part of the *Textus Roffensis*. Although these are mainly written in Latin, as is usual in charters of the pre-Conquest period these include passages, generally boundary clauses, written in Old English. Moreover, as single-sheet originals remain extant for five of the *Textus Roffensis* charters containing Old English, Hough was able in these cases to make a direct comparison between the scribe’s choice of letter-forms and those of his sources. The generally high degree of correspondence identified by Hough in her analysis enabled her justifiably to conclude that the choice of letter-forms by the *Textus Roffensis* scribe appears to have been strongly influenced by his sources.

Hough then proceeded to examine the legal collections, with no less striking results. Liebermann’s hypothesis, followed by Sawyer, that *Textus Roffensis*, CCC MS. 383 and *Quadripartitus* shared a common ancestor rested fundamentally on the observation that in all these manuscripts the code of Alfred/Ine is followed by *Be Blaserum* and *Forfang*. Hough discovered, however, that whereas in the *Textus Roffensis* versions Alfred/Ine prefers a round “s” (52.7% of instances) over an insular “s” (42.2%), *Be Blaserung* and *Forfang* use insular “s” almost exclusively. Likewise, whilst Alfred/Ine uses ð (63.2%) in preference to þ (36.8%), in *Be Blaserung* and *Forfang* þ is used six times as often as ð. On this, therefore, the palaeographic evidence is explicit: it is extremely difficult to conceive of these texts being drawn from the same exemplar.²¹²

²¹² The point is surely conclusively resolved against Liebermann’s hypothesis by Wormald’s observation that the *Textus Roffensis* scribe was himself responsible, apparently spontaneously, for adding *Be Blaserum* to Ine’s code, citing as evidence in this regard the use of darker ink and larger lettering from fo. 31 l.21 to fo. 32v l. 24, and by the fact that on fo. 11r the rubric to *Be Blaserum* is written over the opening initial of Alfred’s preface, and so must be supposed to be a later addition.

Hough also demonstrates persuasively that the substantial disappearance of variant letter-forms after fo. 37 is not marked by any consistency of scribal practice thereafter. Indeed, on the contrary, different texts reflect ongoing wide discrepancies in the usages of þ and ð and the different types of “s”. Hough is scrupulous not to suggest that the *Textus Roffensis* scribe consistently reproduced faithfully the letter-forms of his exemplars throughout the vernacular sections of the manuscript: the available evidence does not permit the matter to be put so strongly. She does, however, do more than enough to justify the twin conclusions firstly that the scribe was undoubtedly influenced at least to some degree by his sources, and secondly that where different patterns of use are discernible within different texts – and, as Hough herself shrewdly observes,²¹³ especially where new patterns coincide with the onset of new texts – it seems reasonable enough to conclude that they represent to some extent the usage of different exemplars.

The fact that Æthelberht’s *Laws*, the combined code of Hloþhere and Eadric and the laws of Wihtred all emanate from Kent, are separated chronologically by some three or four generations only and are all attested uniquely by the manuscript witness of the *Textus Roffensis* initially inclined scholars to proceed on the footing that the “Kentish Laws”, as they have collectively become known, share a common manuscript tradition. Thus, after initially acknowledging the weight of scholarly opinion in favour of a Christ Church, Canterbury collection as the major source of Part I of the *Textus Roffensis*, the Kentish Laws included,²¹⁴ Wormald leaned ultimately to the view that the Kentish Laws might derive from a single manuscript produced at Rochester.²¹⁵ Instructively, he does not appear, at least in his published writings, to have considered the possibility that the various Kentish codes may have been transmitted independently until a relatively late stage in their manuscript history. Neither does Nicholas Brooks, who in contrast to Wormald has more recently argued for a Canterbury origin for the Kentish Laws independently of Alfred/Ine, analogous to the role he envisages

²¹³ “Palaeographical evidence”, pp. 57-9.

²¹⁴ “Laga Eadwardi”, p. 117.

²¹⁵ *Ibid.*, p. 132.

as having been played by the *Textus Cantuarensis* cartulary in the development of its Rochester imitator.²¹⁶

Hough, however, has made some interesting points in this connection. She notes that the uncial form of “r” occurs six times in Wihtred’s laws and eight times in those of Hlophere and Eadric, but not at all in Æthelberht’s *Laws*. Contrastingly, there are twenty-five occurrences of curving “y” in Æthelberht’s *Laws*, but only one in Hlophere and Eadric, and none in Wihtred. The caroline “s” is used before a slightly wider range of letters in Æthelberht’s *Laws* than in those of his successors, and the preponderance of þ over ð is less marked. This might therefore be thought a strong indication that at least until a fairly advanced stage in its textual history, Æthelberht’s *Laws* may well have been transmitted separately from those of his successors.

Hough has also undertaken a systematic study of the representation of numbers in Old English legal texts.²¹⁷ As she observes, it is inherent in the nature of legal texts that they contain a high incidence of numbers: references to the number of pennies, shillings or *sceattas* payable as fines or compensation are particularly common, whilst other references are to the number of days or months afforded for the prescribed payments, the number of shillings representing the wergild of different social ranks, and so forth. These numbers can either be written out in full as words, or written as roman numerals. In a methodical examination of a number of manuscripts containing legal material, Hough identifies a number of patterns of usage that is highly instructive as to the processes whereby the various manuscripts were compiled and the texts transmitted.

Hough notes that whereas the proportion of numerals to words is 94.5% in Æthelberht’s *Laws* and 100% in those of Wihtred, in the combined code of Hlophere and Eadric the figure drops to 57.9%. Moreover, written forms of numbers occur primarily within the first few clauses of Hlophere and Eadric.

²¹⁶ Above, section 2.3.

²¹⁷ “Numbers in Manuscripts of Anglo-Saxon Law”, in Alexander Rumble (ed.), *Writing and Texts in Anglo-Saxon England* (Woodbridge: Brewer, 2006), pp. 114-36.

Specifically, chs.1-5, of which chs. 1-4 follow logically from the final section of Æthelberht's *Laws* in dealing with offences by the semi-free, contain five of the eight instances of numbers appearing in written form. Eleven numerals follow in chs. 6-15, whilst ch. 10 contains a further word and the concluding ch. 16 two further words. This may be an indication that the code, as preserved in its current form, may represent a later collation of laws originally issued separately by each king, rather than a composite code issued jointly at the same time.²¹⁸

2.9 Summary

It is not clear what specific purpose the gathering together in the first part of the *Textus Roffensis* of a collection of pre-Conquest legal texts was intended to serve. Bishop Ernulf's career, however, shows him to have been not merely a leading ecclesiastical figure and a consummate administrator, but also a diligent student of legal texts in his own right, and a man well-disposed to respect the vernacular OE literary tradition. It is entirely within his character, therefore, for him to have regarded the making of such a compilation as a project worthwhile for its own sake.

Examination of the *Textus Roffensis*, and comparison with his other surviving work, shows its scribe to be not merely an accomplished penman, but also a formidable scholar skilled in editing material from a variety of sources. The involvement of such a senior member of the Rochester community in collating the legal texts attests to the importance attached by Ernulf to the project. A comparison of the entries in the cartulary section of the *Textus Roffensis* with surviving single-sheet copies shows the scribe to have been highly attentive to his exemplars. Although the matter can not be put wholly beyond doubt, consideration of the scribe's apparently faithful reproduction of a variety of distinctive letter forms tends to support this. Paleographical analysis suggests that Æthelberht's *Laws* may, until a relatively late stage in their manuscript

²¹⁸ Discussed further in chapter 8, below.

history, have been transmitted separately from the laws of Æthelberht's successors.

Considerations such as these give rise to a high degree of optimism that Æthelberht's *Laws*, as we have them in the *Textus Roffensis*, are likely to be a particularly accurate copy of the Canterbury exemplar on which they drew. The extent to which the *Textus Roffensis* version reflects the *Laws* as they stood in Æthelberht's own time now falls to be tested by reference to the detailed linguistic analysis in the following chapter.

3. Linguistic evidence

3.1 Overview

In the preceding section, a wide variety of evidence has been addressed concerning the processes whereby the *Textus Roffensis*, as it survives in its current form, was arranged and compiled, apparently by an experienced and versatile scribe well versed in collating and editing a variety of different sources. Little consideration has yet been given, however, to the degree of confidence that can be placed in the reliability of the record of Æthelberht's *Laws* as they currently appear on fos. 1-3r as a guide to how the *Laws* may have stood in Æthelberht's own time, more than five centuries prior to the production of the manuscript. To address this, four further sources of evidence need to be considered:

- a) **orthographic evidence:** what deductions can be made from the spelling conventions adopted in the *Laws* concerning the date of their composition?
- b) **phonological issues:** as languages evolve, their sounds change over time, and by tracking these changes, deductions can be made about the pace of these changes and, from these, tentative conclusions may be drawn about the date of the language as it is attested in the manuscript record;
- c) **morphological issues:** as languages evolve, not only do their sounds change, but also their words, as forms change and different words come into and drop out of usage. Again, by tracking these changes, deductions can be drawn about the date of the language as attested in the manuscript record; and
- d) **dialectal issues:** Old English appeared in a number of dialects, characterised principally by variations in vowel sounds in different geographic regions and in different periods. In the context of the *Laws*, different scholars have sought to identify some features as Kentish, and some as pertaining to Mercia or Northumbria. To the extent that non-Kentish features can be identified, these may be linked with periods of political domination of Kent by Mercia and Wessex from the eighth century onwards, and can be taken as instances of subsequent interference.

Each of these issues will be considered in turn in the sections that follow. It falls to be acknowledged that much of the discussion would more usually appear in a paper concerned with linguistics or with philology than with law, but is, as has been stated, but is fundamental to the issue of establishing how the *Laws* may have stood in Æthelberht's own time.

Until comparatively recently, the authoritative critical edition of the *Laws* was Felix Liebermann's monumental *Die Gesetze der Angelsachsen* (Halle: M. Niemeyer, 1897-1916). For the convenience of English readers, F.L. Attenborough's *The Laws of the Earliest English Kings* (Cambridge University Press, 1922) provided a useful and competent modern English translation together with brief notes, based on Liebermann but in considerably truncated form and containing little independent scrutiny. Scholarship has, however, been immeasurably advanced by Lisi Oliver, initially in her doctoral thesis presented to Harvard University,²¹⁹ and subsequently in her 2002 publication *The Beginnings of English Law*.²²⁰ These remain the most substantial examinations to date of these issues, upon which much of the analysis in the immediately following sections perforce leans quite heavily.

3.2 Orthographic issues

Oliver's thorough examination of the orthographical practices of the *Textus Roffensis* scribe²²¹ identified five issues requiring consideration, as follows:

- the representation of long vowels;
- the representation of the dental fricative;
- the representation of *æ*;
- the representation of the high front vowel; and
- the variation between "a" and "o" before a nasal consonant.

²¹⁹ Lisi Oliver, *The Language of the Early English Laws* (Cambridge, Mass., 1995).

²²⁰ Lisi Oliver, *The Beginnings of English Law* (Toronto, 2002).

²²¹ Oliver, *Language*, pp. 52-82.

Each will be considered in turn.

3.2.1 The representation of long vowels

As explained by Oliver, long vowels in the *Laws* are marked in one of three ways: either without any overt differentiation from short vowels, or marked with an apex, or written as doubled. The first instance, whereby long vowels are written without any indication of length, persists throughout the entire canon of OE writings and can this not usefully be discussed further. Infrequently, an apex over the vowel is used in the *Laws* to denote long vowel: see *bote* (fo. 1r8, Plate 1), *tun* and *gedon* (fo. 1v6 and 10, respectively, Plate 2). This practice continues throughout the *Textus Roffensis*: thus, Oliver notes its use in *gemot* in III Æthelred (fo. 48v11). Exceptionally, the practice is also adopted in respect of short vowels to indicate stress: here, Oliver notes *of aslea* (fo. 23r3), where the marked vowel on *of* is short in OE, as it is in MnE (“should cut off”). However, no such practice is adopted in other OE texts of an equivalent early origin, such as the witness names of Early Kentish charters or the Epinal or Erfurt glossaries.²²² This consideration led Oliver to conclude, very probably correctly, that the apices represent modernisation introduced by the scribe of the *Textus Roffensis* or an intermediate copyist, and were not present in the original manuscript of the *Laws*. The doubling of vowels to indicate length, however, needs fuller examination.

In three words, *laadrinc* (fo. 1r15), *taan* (fo. 3r12) and *foot* (fo. 3v9), the vowel is written double. As noted by Oliver, in the first and third instance this doubling unambiguously indicates length. Thus, *laad* is derived from Common Germanic **laid* and PIE **loit*, where the vowel length represents the outcome by regular sound change of an original diphthong. *Foot* is derived from PIE **pod*, where the vowel length is inherited.

²²² Epinal, Bibliothèque Municipale MS 72(2) and Erfurt, *Codex Amplonianus* f.42: see generally J.H. Pheifer (ed.), *Old English Glosses in the Epinal-Erfurt Glossary* (Oxford: Clarendon, 1974).

The case of *taan*, derived from Common Germanic **tahan*, PIE **doik*, is more complicated. It is possible that in Æthelberht's time the word still contained two syllables. Certainly, following Oliver, the intervocalic “-h-” can have been lost only very recently. This is shown by the fact that Epinal glosses *argillus* as *thohae*, with the “h” still present, as opposed to Erfurt's *thoæ*.²²³ Further, the fact that *taan* appears in an oblique, or inflected, case, here the genitive case, may suggest that the word was pronounced with two syllables. Comparison can then be made with the equivalent *taum* in the dative case appearing in the preceding line, fo. 3r11), where the dative ending *-um* would have been appended without coalescence. Nevertheless, it does remain possible that the progress of sound change evidenced by the Epinal and Erfurt glossaries had advanced sufficiently far in Kent by Æthelberht's time for the two vowels to have coalesced after the loss of the intervening “-h-”, in which case the doubled vowel **would** indicate length, just as in *laad* and *foot*.

The practice of using a doubled vowel to indicate length is relatively well attested in early OE manuscripts, albeit that it does persist sporadically even into relatively late texts. Of the other reliable and relatively early instances of the practice identified by Oliver, the following may be noted here. Thus, the Epinal and Erfurt glossaries often use doubling to indicate length, e.g. *armos* (shoulder) is given as *boog*, and *anser* (goose) as *goos*.²²⁴ Yet the two manuscripts do not always match: compare *ingratus*, glossed as *lath* (Epinal) as against *laad* (Erfurt), or *inuissus* glossed as *laath* (Epinal) as against *lath* (Erfurt).²²⁵

Charters of this period are overwhelmingly written in Latin, albeit that OE forms do appear as personal and place-names. S. 89 is a land grant of 736 written in the reign of the Mercian king Æthelbald, and contains the postscript *ego Edilbalt rex suutanglorum*, whilst S. 96, again written in the reign of Æthelbald, is a charter dating from 755x7 containing the personal name *Cuutfferthi*. S. 1171 is an eighth-century copy of a charter dated 690x3 in favour of an abbess Æthelburh, and

²²³ Pheifer, *OE Glosses*, pp. lxxxii-iii.

²²⁴ *Ibid.*, pp. 6 and 8 respectively.

²²⁵ *Ibid.*, pp. 28 and 30 respectively.

contains four examples of the place name suffix *-haam*: *Ricingahaam*, *Budinhaam* (Barking), *Dæccanhaam* (Dagenham) and *Angenlaberhaam*. All three of these charters are considered authentic.

It does, however, fall to be conceded that the use of doubling to indicate vowel length does persist in later manuscripts. Examples can be found from the Alfredian period in the OE translations of Boethius, *The Consolation of Philosophy*, and of Bede's *Ecclesiastical History*. The practice appears still later in the letters of Wulfstan. Oliver is therefore correct to conclude that whilst the usage in the Laws is consistent with early manuscript practice, it does not of itself constitute proof that the text of the Laws as it survives is an authentic transmission of the text as it stood in the time of Æthelberht. Nevertheless, as Oliver also observes, the fact that the usage occurs only in the Laws and nowhere else in the *Textus Roffensis* is highly suggestive that the text is derived from at least a relatively early exemplar.

3.2.2 The representation of the dental fricative

As noted in section 2.8, OE vernacular texts represent the MnE “th” sound with either the runic letter *thorn*, “þ”, or the “crossed-d” *eth*, “ð”, and these are naturally the overwhelming practices in the *Textus Roffensis*. However, both Æthelberht's *Laws* and those of Hlophere and Eadric and of Wihtræd also make occasional use of “th” and “d”, as follows:

Fo. 1r6 (Æthelberht)	<i>mæthl</i> for <i>meðle</i> (as restored on the basis of Tate's reading of 1589, -æthl no longer being legible in the manuscript as it currently appears: see Plate 1)
Fo. 2v3-4 (Æthelberht)	<i>widobane</i> for <i>wiðobane</i>
Fo. 4r19 (H&E)	<i>medle</i> for <i>meðle</i>
Fo. 4v6 (H&E)	<i>hwæder</i> for <i>hwæðer</i>
Fo. 5v8 (Wihtræd)	<i>æltheodige</i> for <i>ældæodige</i>
Fo. 5v16 (Wihtræd)	<i>gehwæder</i> for <i>gehwæðer</i>

The use of “th” was remarked upon by Liebermann, who considered it a sign of antiquity.²²⁶

“Wohl als frueh und nicht aus [die] Normannenzeit erklart sich sporadisches *th* fuer *þ*”.

Campbell, in his *Old English Grammar*, explains the position more fully in a passage cited with approval by Oliver:²²⁷

“Early manuscripts (especially the Moore Bede)²²⁸ use *th* initially, and *d* medially and finally, for a dental spirant. The distinction seems to be one of position in the word, not of voiced and unvoiced sounds, for *d* often represents a voiceless spirant, as in the numerous names in the Moore Bede in *-frid*, *-thryd*, *-suid*, *-haed*, and in the first element of *Gudfrid*. *Th*, however, has already invaded the internal and final positions in Epinal.”

Oliver sought to narrow down the orthographic use of “th” to a more definite range of dates than that implied by Campbell’s “early manuscripts”. Noting that many Anglo-Saxon personal names contain the element “æthel-” (noble) or “-frith” (peace/protection), she examined a number of early charters, assigning them to a period pre- or post the death of Wihtræd in 725. Of the Kentish charters, Oliver found that prior to 725 “d” prevailed over “th” by a significant margin, whereas after 725 the situation reversed to an even sharper degree. Mercian practice shows more frequent use of “th” in the pre-725 period than in Kent, whilst use of “ð” and “þ” emerges in Mercia at an earlier period. Since the death of Wihtræd in 725 coincided more or less with the advent of the Mercian ascendancy under King Æthelbald, Oliver deduced the increasing prevalence of Mercian scribal practice from this time.

²²⁶ “The sporadic appearance of “*th*” for “*þ*” is probably early, rather than from Norman times”. Felix Liebermann, *Die Gesetze der Angelsachsen* (Halle: Niemeyer, 1903), Band I, p. XXVII

²²⁷ Alastair Campbell, *Old English Grammar* (Oxford: Clarendon, 1959), #57.5.

²²⁸ Cambridge, University Library, Kk.5.16.

Oliver also examined the usage in the Epinal and Erfurt glossaries. Epinal shows a dominant use of “th” (22 instances), whilst some use is made of “d” (three), “þ” (four) and “ð” (four). Erfurt shows a more even split, with 16 instances of “th” as against 19 for “d”, with single instances of each of “t”, “hd” and “dth”. This can perhaps be explained by the textual histories of the two glossaries. The original exemplar of the glossaries is considered²²⁹ to have been compiled at Canterbury in the late seventh century in the time of Theodore and Hadrian. Epinal is a copy of this original exemplar made perhaps a generation later in the early eighth century, by which time it is perhaps understandable that Mercian traits should be beginning to predominate. Erfurt, however, described by Pfeifer as “a mechanical copy” of an intervening exemplar, dates from the late eighth or early ninth century, but preserves more frequently the “d” spelling of the original Kentish exemplar.

A further example of archaic scribal practice is the *Sens authentique*. Until the time of the French Revolution, Sens cathedral had in its possession a number of relics, the majority of which were apparently the subject of an original bequest by Charlemagne. During the Revolution, these relics were removed by the new revolutionary authorities, and are now no longer to be found. Nevertheless, each relic had its own *authentique*, or identification tag, and these have survived and indeed even been catalogued.²³⁰ Of these, numbers 107, 114, 158 and 159 are written in an identifiably Anglo-Saxon hand, albeit that numbers 107 and 114 are written in Latin and number 159 bears only the name Torhtburg, written twice. Number 158, however, is written in a mixture of Latin and archaic OE, and is discussed in detail by Oliver.²³¹ She describes the *authentique* as “a match-book-size parchment leaf”, bearing a text which she identifies as

²²⁹ J.H. Pfeifer, “Early Anglo-Saxon glossaries and the school of Canterbury”, *Anglo-Saxon England* 16 (1987), pp. 17-44.

²³⁰ Maurice Prou and Eugene Chartraire (edd.), “Authentiques de Reliques conservees au Tresor de la Cathedral de Sens”, in *Memoires de la Societe des Antiquaires de France*, (1898), Series 6, Vol. 59, pp. 129-72.

²³¹ *Beginnings*, pp. 143-5.

uirgu misit hominibus ad sunnu husl and raecisl and oeli and d[.]et
[g]uirdisl in daem [bin]d[.(o)]dae

Oliver translates this as:

The virgin sent [for the sake of] men to her son this eucharist and incense
and oil and this belt in this binding.

She deduces the relic as having been a belt or sash reputed to have been worn by Christ. The association of the original bequest with Charlemagne is entirely plausible: chapter 31 of Einhart's *Vita Caroli* describes²³² how Charlemagne's will left treasures to a number of cathedrals throughout his realm. Charlemagne died in 814, but the relic and its *authentique* are of course likely to be older than this, perhaps significantly older. Amongst a number of archaic features, relevant to this section is the use of "d" to represent the dental fricative in *d[.]et* and *daem*.

Finally, and tellingly, Oliver contrasted the scribal practice adopted by the Moore and Cotton Tiberius manuscripts of Bede's Ecclesiastical History. The former is universally accepted as of Northumbrian origin and dating within a few years of Bede's death, whilst the Cotton Tiberius manuscript has been assigned a Southumbrian origin in the latter half of the eighth century. Whereas the Moore manuscript almost always uses "d" for the dental fricative (with the sole exception of *saethryd* in iii.8), the Cotton Tiberius manuscript uses "ð" almost exclusively (with the exception of *aedilred* in iv.21). This is consistent with the "d" usage falling into disuse in southern England from the second quarter of the eighth century onwards.

It is hard to draw too firm a set of conclusions from the very narrow set of data represented by a single appearance of each of "th" and "d" in Æthelberht's Laws, and three further appearances of "d" and one more of "th" in the rest of the

²³² For an accessible English translation, see Lewis Thorpe (ed. and trans.), *Two Lives of Charlemagne*, (Harmondsworth: Penguin, 1969), p. 88

Kentish Laws as a whole. It would, however, seem reasonably well-founded to conclude that these usages are consistent with a text originally derived from exemplars dated not later than the first quarter of the eighth century, and possibly from the seventh century.

3.2.3 The representation of æ

As noted by Oliver, minuscule “æ” is written throughout the *Textus Roffensis* in ligature form. However, three different representations of the equivalent majuscule form appear within the text of Æthelberht’s *Laws*, all in the word *Æt* as it appears at the start of a sentence.

The most common usage is to append a minuscule “e” to the right slope of the majuscule “A”, as appears in fo. 2v13, and fo. 3r10 and 13. Alternatively, in fo. 2r23 and 2v12 a form is employed equivalent to that adopted in modern print. The two variations can most conveniently be compared in Plate 4 depicting fo. 2v: see lines 12 and 13. Moreover, in the earlier sections of the *Textus Roffensis*, up to and including the laws of Alfred and Ine (fos.9-31), the two forms are more or less equally represented.

Still more noteworthy, however, is the representation at fo. 1v 4 and 5 (see Plate 2), where two separate characters are used. In the *Textus Roffensis*, this practice appears only in Æthelberht’s *Laws*.

Oliver’s comparison of the Epinal and Erfurt glossaries and of the Moore and Cotton Tiberius manuscripts of Bede is again instructive. Although both glossaries each use the ligature form on occasion, the overwhelming practice of both is to use separate characters. Similarly, both Moore and Cotton Tiberius again use the ligature only rarely: Moore twice, in *ædilbercto* in the list of chapter headings in Book One (fo. 3r9-10, interestingly at a line break) and in the genitive singular *streaanæs halch* (ii.24, fo. 94r19); and Cotton Tiberius once only, in *ædilred* (iv.21). Yet during the eighth century the ligature form came to

be used with increasing prevalence, and after 800 its usage became practically universal.

The Sens *authentique* described in the previous section can be recalled here. This too uses separate characters, in *raecisl* and *daem* and, putatively, *daet*.

Oliver's explanation is again judicious. The use of separate characters on two occasions in Æthelberht's *Laws* is consistent with a derivation from an exemplar dating not later than the eighth century, and again possibly somewhat earlier. The fact that the two other alternative representations predominate, however, attests to a lively script history in which the *Laws* were copied on a number of occasions, during which copyings the more modern scribal usages crept in.

3.2.4 The representation of the high front vowel

As noted by Oliver, throughout the Kentish Laws the scribe represents the high front vowel sound corresponding broadly to the vowel in MnF "tu" in one of four ways: an un-dotted "i", and the three variants of "y" previously discussed in section 2.8. This usage ceases in the predominantly Latin texts after fo. 37, in which the "straight-limbed" form of "y" is adopted as standard.

It was first showed by Liebermann that whereas the instinct of the scribe is to write "i", he is scrupulous apparently to remain faithful to his exemplar by amending it to "y". Thus, in fo. 2v11 the "y" of *lytlan*, and in fo. 3r9-10 the "y" of *mycle* (see Plates 4 and 5 respectively) have both fairly obviously been converted from the scribe's initial "i". Further, Liebermann, who had considerable access to the original manuscript, identified a change of "si" to "sy" in fos. 1v10, 3r16, 20 and 21 and 3v6, all on erasures which cannot be discerned in the facsimiles. Campbell²³³ identifies this preference for "y" over "i", in the neighbourhood of labials and before "r", as a common trait of the late West Saxon dialect, albeit that he concedes that instances of it do also occur in earlier

²³³ A. Campbell, *Old English Grammar*, (Oxford: Clarendon, 1959), #368.

examples. Yet this represents something of a paradox. In the later texts which might be supposed to have a West Saxon origin, such as the laws of Alfred and Ine, this usage does not appear, as shown by Oliver's detailed analysis.²³⁴ It is as though a text of Kentish origin is written using West Saxon orthographic practices, and yet a West Saxon text is written adopting Kentish orthography.

Nor can the scribe's practice be explained by a desire to distinguish between either short and long versions of the vowels, or between rounded and unrounded versions. Thus, Oliver compares fo. 1v2 *geligeþ* (short "i") with fo. 1v6 *geirueþ* (long "i") (both Plate 2), and fo. 3v6 *bewyddod* (short "y") with fo. 3v8 *cwynan* (long "y") (both Plate 6). Similarly, whilst "i" is generally used for unrounded vowels, as in such examples as *finger*, *scilling*, *mid* and so on, there is no real scribal consistency, as shown by the variations *ðyrel* (fo. 2r17 and 19) as against *ðirel* (fo. 2r14 and 21) (all Plate 3) and *gehwylc* (fos. 1v8, 2r20 and 24, 2v2, 13 and 19) versus *gehwilc* (fos. 2r2, 3r 11).

3.2.5 The variation between "a" and "o" before a nasal consonant

Another instance of busy scribal emendation is the frequent alteration of "o" to "a": thus, on fo. 2r12, *nowiht* is changed to *nawiht*, on fo. 2v2 and 15 the majuscule "o" of *Ond* is changed to *And*, and in fos. 3r20 and 3v4, *-mon* is changed to *-man*. A similar usage is adopted in the laws both of Hloþhere and Eadric and of Wihtræd, where (with one exception in each) *man* is preferred over *mon*. Yet in the laws of Alfred, *mon* prevails.

Again, this scribal practice is not easy to explain. Of the early texts, the Epinal glossary uses exclusively "a", whereas Erfurt uses both "a" and "o". Oliver notes the phrase *moncynnæs uard* from Bede's *Death Song* in the Moore manuscript²³⁵ as consistent with a growing preference for "o", particularly in Anglian manuscripts from the middle of the eighth century onwards. Yet under the

²³⁴ Oliver, *Language*, p.77

²³⁵ Cambridge, University Library, Kk.5.16 fo. 128v3.

influence of Ælfric, “a” is revived in West Saxon manuscripts of the tenth century.

3.2.6 Orthographical issues: tentative conclusions

If one were to consider only the methods employed by the scribe to represent long vowels, the dental fricative and “æ”, one could contend with a high degree of confidence that the scribe was working from one or more exemplars dated not later than the first quarter of the eighth century, and possibly a little earlier. This does not, however, sit comfortably with the foregoing analysis of the scribe’s apparent initial preference for “i” and “o”, later amended in Æthelberht’s *Laws* to “y” and “a”. In these latter cases the scribe’s initial preference is for the forms prevalent in, broadly, the period of Ine and Alfred.

Although some degree of speculation is involved, it may perhaps nevertheless be possible to reconcile these apparent inconsistencies in a way that does accord with our knowledge of the scribe and his method of working. It has previously been noted in section 2.8 that whilst ample evidence exists from the cartulary section of the *Textus Roffensis* to show the scribe to be a skilled and very careful copyist, it is by no means certain that the legal texts in the first half of the *Textus Roffensis* were written in the order in which they now appear in the manuscript. It might, then, be plausible to suppose that the scribe copied the quires containing the laws of Alfred and Ine before copying that concerning the Kentish Laws. Developing this possibility, this careful scribe accurately preserved the archaic features present in his exemplar or exemplars for the Kentish Laws: the doubling of vowels to show length, the archaic representations of the dental fricative, and the representation of “æ” on occasion as separate characters. However, under the influence of the quires containing the laws of Alfred and Ine, one might speculate that the scribe might originally have been tempted to amend the spellings in the Kentish Laws to conform with those of Alfred and Ine for the sake of consistency and uniformity, but that on subsequent reflection he preferred to remain faithful to the text of the exemplar or exemplars before him, and to restore the original manuscript reading.

3.3 Phonological issues

The number of OE manuscripts that has survived from Anglo-Saxon times to the present day is only a very small fraction of the original corpus, with the depredations of the Viking raids and the turmoil of the dissolution of the monasteries in the reign of Henry VIII probably accounting in more or less equal measure for many of the losses. Nevertheless, specimens of OE have survived from almost the very earliest period of literacy in the Latin alphabet, through to the texts and documents of the mature kingdoms of Alfred the Great and his successors, up to and even after the Norman Conquest. These surviving texts show that the OE language evolved continuously throughout this period. This process of evolution is particularly evident in changes to vowel sounds, and the process of tracking and explaining these changes, and similar or equivalent changes in other Germanic languages, is the province of comparative grammarians. The relevance of these issues to a study of the *Laws* is that, in a number of instances, the *Laws* employ a number of forms that are of archaic appearance, apparently consistent with the *Laws* having been first written down at a period when certain of these changes were still ongoing. These instances have been examined by Oliver with commendable rigour and exactness, and although in the hope of making these matters more intelligible to the more general reader I have amended and altered the relative weighting of elements of her analysis, the overall thrust of her analysis and her specific conclusions can safely be followed.

The specific issues of phonology requiring detailed comment are as follows:

- the archaic genitive singular ending in -æs;
- the archaic instrumental singular ending in -i;
- the use of the diphthong -eu-;
- the preservation of a final vowel -e; and
- other instances from the laws of Hlophere and Eadric, and of Wihtræd.

These will be considered in turn.

3.3.1 The archaic genitive singular ending in -æs

Four instances of an archaic genitive singular ending in -æs appear in Æthelberht's *Laws*: *ceorlæs* (fo. 1v18, plate 2), *lyswæs* (fo. 1r9, plate 1), *leswæs* (fo. 3r15, plate 5) and *þeowæs* (fo. 3v11-12, plate 6). This compares with a total of twenty-six occurrences in Æthelberht's *Laws* of the more modern -es form exemplified by *ceorles* (fo. 1v1-2, plate 2). The laws of Hloþhere and Eadric use the archaic form only once: *cyngæs* (fo. 5r6), and those of Wihtræd three times: *ciriclicæs* (fo. 5v10), *cyngæs* (fo. 5v13) and *sylfæs* (fo. 6r18), as against eighteen instances of the more modern form. These variations exemplify the relatively well attested process whereby the PIE *-o-so transformed into the Proto-Germanic *-asa, thence into the archaic OE -æs in a process known to philologists as Anglo-Frisian brightening, and finally into the classical OE -es.

As explained by Oliver, the archaic -æs form is attested by a number of other manuscript witnesses securely dated to the eighth century, albeit that as noted in section 3.2.3 above different orthographical practices sometimes represent the form as -aes. Thus, for example, in Cædmon's Hymn, the Moore Bede attests the forms *hefanricæs* (fo. 128v1), *moncynnæs* (fo. 128v1) and *metudæs* (fo. 128v3), whilst the Epinal and Erfurt glossaries show both the archaic -æs and the more modern -es forms inconsistently. Oliver also cites from runic sources *heafunæs* from the Ruthwell Cross and *hronæsban* from the Franks Casket.²³⁶ To these might be added, accepting at face value the unverifiable transcription of Hickes, the problematic *celæs bord* of line 29 of the Finnsburg Fragment.²³⁷ The tantalising instance of the Fragment aside, where no definitive dating is possible, the other instances of the archaic -æs form can conclusively be shown not to date from later than the second half of the eighth century.

²³⁶ See most conveniently R.I. Page, *An Introduction to English Runes* (2nd ed.) (Woodbridge: Boydell, 1999), pp. 147 and 174 respectively.

²³⁷ Alan Bliss (ed.), *Finn and Hengest*, p. 88.

3.3.2 The archaic instrumental singular ending in -i

Another example of an archaic form becoming obsolescent at the time of the compilation of the manuscript exemplar is the instrumental singular form *ceapi* (fo. 3r21, plate 5). Over time, the archaic instrumental singular ending in -i, itself derived from the PIE *-ei and the Proto-Germanic *-i, collapsed to the classical OE form -e, as indeed is exemplified by the equivalent form *ceape* in the laws of Hlophere and Eadric (fo. 5v11). By a similar process the archaic dative form -æ also collapsed to -e, giving rise to a morphological fusion of the dative and instrumental cases.

Although this form is attested in the Erfurt glossary, where the Latin *quocumquomodo* (anyway) is glossed as *gihuelci uuegi*, and a possible reading of *mip blod*²³⁸ (with blood), no comparable forms can reliably be attested much later than the very early eighth century. The retention of -i in the *oeli* of the *Sens authentique*, albeit there in the accusative case, should also be noted.

3.3.3 The use of the diphthong -eu-

Similarly, Æthelberht's *Laws* show instances where the classical OE diphthong -eo- is written as -eu-: thus *freum* ("from a freeman", fo. 1r17, plate 1) and *leudgeldum* ("with person-prices", fo. 2v24, plate 4). There are no instances of this in the laws of Hlophere and Eadric, but in the laws of Wihtræd we similarly find *þeuw(ne)* ("slave", fo. 6v4 and 17) and *leud* ("person", fo. 6v11). This is another very early usage.

Oliver identifies comparable forms *steupfædaer* ("stepfather") and *treulesnis* ("faithlessness") from the Epinal glossary, and the place-name *Hreudford* in the

²³⁸ David R. Howlett, "Three Forms in the Ruthwell Cross of The Dream of the Rood", *English Studies* 55 (1974) pp. 1-5, but departing from the alternative readings of -æ preferred by Henry Sweet, *The Oldest English Texts* (London, The Early English Text Society, 1865) p. 126, Charles Bazell, "Caseforms in -i in the Oldest English Texts", *Modern Language Notes* LV/2 (1940), pp. 136-9, and Raymond Page, *Introduction to English Runes*, p. 147.

Moore Bede. Instructively, the only slightly later Cotton Tiberius manuscript shows the form *Hreodford*, which would be consistent with the -eo- form having become obsolete in southern England by the latter half of the eighth century.

Examples of more modern forms include *preom* (“with three”, fo. 3v20) from the laws of Hloþhere and Eadric, and in Æthelberht’s *Laws*, juxtaposed with the archaic form cited above, *þrym leudgeldum* (“with three person-prices”, fo. 2v24, plate 4).

3.3.4 The preservation of a final vowel –e

Æthelberht’s *Laws* contain at fo. 3r6 (plate 5) the problematic form *Gyfe*, which elsewhere is uniformly spelled *gif*. Moreover, as is clear from plate 5, the *Gy-* appears to follow the scribe’s normal practice, with the *-fe* added later²³⁹ with the “f” in the space preceding the following word *ofer*, and the “e” above the initial “o” of *ofer*.

Oliver deduces from the Gothic cognate *jabai* that a final vowel was present in the Proto-Germanic form, such that an archaic *gife* could be expected in early OE. It is undoubtedly curious that this archaic form should have survived uniquely in this clause, moreover in a clause that also in *ynch* utilises the archaic “f-shaped” form of “y” discussed in section 2.8 above.

3.4 Morphological issues

Two further instances of archaic word-forms can be identified in the *Laws*: *fedesl* (fo. 1r21, Plate 1) and *lærest* (fo. 2v13, Plate 4).

²³⁹ Liebermann, who had extensive access to the *Textus Roffensis* manuscript, identifies the *-fe* as being added in an ink of a different colour. One hesitates to draw too firm a conclusion solely from a photographic reproduction at several removes from the original manuscript, but something of this is apparent from a close inspection of plate 5.

Fedestl (probably “fatted pig”, although the meaning is not clear and will be discussed in more detail in a later section) is an example of an archaic word-form that appears in later forms after the operation of a process known to philologists as metathesis, whereby the order of a pair of letters within the word becomes reversed. Thus, the metathesised form *fedels* appears in a glossary of Ælfric of Eynsham (d. c.1010),²⁴⁰ and in the compound *fedelsswin* in a charter of Æthelwold, Bishop of Winchester, gifting land to Peterborough Abbey, dated 963x984.²⁴¹

This is a regular process in OE. Other attested examples are *guirdisl/gyrdels* (“girdle”) and *raecisl/recels* (“incense”), and some Germanic personal names ending in *-isl*. No doubt a similar etymology also applied to the later forms *byrgels* (“tomb”) and *brigdels* (“bridle”), albeit that the earlier *-isl* form of these last two is unattested in the surviving corpus of OE. A further example is the OE *rædels* (“riddle”), which may be compared with the unmetathesised OS form *radislo*.

Other instances of the archaic form, without metathesis, are extremely rare, such that Oliver was able to identify only three.

The archaic, unmetathesised, forms *guirdisl* and *raecisl* will be recalled from the discussion of the *Sens authentique* in section 3.2.2, above.

The Epinal glossary²⁴² glosses *legula* as *gyrdislrhingae* without metathesis, whereas Erfurt glosses this as *gyrdilsrhingae*, with metathesis. Moreover, both Epinal and Erfurt gloss *bagula* respectively as *bridils* and *brigdils* (“bridle”), and

²⁴⁰ According to Thomas Wright (ed.), *A Volume of Vocabularies from the Tenth Century to the Fifteenth* (Lancashire and Cheshire: Joseph Mayer, 1857), p. 23, although the entry is omitted from Julius Zupitza (ed.), *Ælfric's Grammatik und Glossar* (Berlin: Wiedmannsche Buchhandlung, 1880).

²⁴¹ S. 1448.

²⁴² Pheiffer, *Old English Glosses*, pp. 9 and 31.

lumbare respectively as *gyrdils uel broec* and *gyrdils broec*, in both cases with metathesis.

It is instructive that the second element of Epinal's *gyrdislrhingae* is itself anomalous: the otherwise common *-hringae* ("rings") would be expected. This led Oliver²⁴³ to postulate that the Epinal scribe was so disconcerted by the unfamiliar, unmetathesised, *gyrdisl* that he mangled the otherwise unexceptionable *rhingae*. As previously explained, Epinal is considered to be an early eighth century copy of an original exemplar made at Canterbury in the late seventh century in the time of Theodore and Hadrian. Oliver therefore deduced that for the scribe to have been so disconcerted by the unmetathesised form, the process of metathesis could be assumed to have taken place at least two generations prior to the scribe's own lifetime, such that he would not have heard the unmetathesised form in the speech of his parents' generation.

3.5 Dialectal issues

Dialectal issues pertaining to the *Laws* were the subject of a detailed paper presented by Carole Hough to a conference convened in 2010 under the aegis of the University of Kent devoted to the *Textus Roffensis*.²⁴⁴ Hough had, now some twenty years ago, worked closely with the late Patrick Wormald on various aspects of the *Laws*. She has been quoted extensively already in section 2.8 above on a number of paleographical issues, and she has also written a number of articles on specific clauses contained in the *Laws* to which close reference will be made in the following section 4. Although her scholarly efforts have more recently been targeted for the most part in other directions of Old English studies, after the recent and unfortunate deaths of the late Nicholas Brooks and Lisi Oliver, she has very probably written more extensively on the *Laws* than any other scholar now alive. Her analysis is therefore of high authority, and the greater part of this section leans heavily upon her paper.

²⁴³ Oliver, *Language*, pp. 138-9.

²⁴⁴ Carole Hough, "The Earliest English Texts?", in O'Brien and Bombi (edd.), *Law, Language and Libraries*, pp. 137-56.

As Hough explains,²⁴⁵ throughout the Anglo-Saxon period from the fifth-century settlements to the Norman Conquest, Old English was not a single language, but a range of dialects with grammatical and phonological variations, and differences of vocabulary. These dialects have traditionally been grouped under the principal headings of Anglian, West Saxon and Kentish. These are, however, political rather than linguistic divisions, and there would assuredly have been overlap, just as today it is perfectly possible to find natives of (for example) Scotland or Wales speaking with an accent reflecting their origins, yet living (for example) in the West Country.

It is generally supposed that differences in vocabulary as between the different dialects originated in the Continental homelands prior to the migration period. As Peter Kitson explains:²⁴⁶

....the least that can be concluded from modern data is that there is no *a priori* expectation that patterns of word distributions in a language should be identical with phonetic ones. This disjunction is reinforced by the apparent fact that phonetic differences between Old English dialects mostly result from sound-changes that began in this island, but most of the vocabulary was already in the language before the migration.

This accords with the traditional view that grammatical and phonological variations developed later.²⁴⁷

....while there is no objection to the designation of the two main Old English dialect types as Anglian and West Saxon, the distinctions between them mostly developed in England, owing to the considerable isolation of the various parts of the country from one another in early

²⁴⁵ *Ibid.*, p. 138.

²⁴⁶ Peter Kitson, "The Nature of Old English Dialect Distributions, Mainly as Exhibited in Charter Boundaries", in Jacek Fisiuk (ed.), *Medieval Dialectology* (Berlin: de Gruyter, 1995) pp. 43-135 at p. 44.

²⁴⁷ Alistair Campbell, *Old English Grammar* (Clarendon, 1959) pp. 3-4.

times. Similarly, the differentiation of Kentish from the other dialects is due to the isolation of the area rather than to the descent of the inhabitants from the Jutes.

The majority of the evidence is for West Saxon, sub-divided chronologically into Early West Saxon and late West Saxon, and for Anglian, sub-divided geographically into Mercian and Northumbrian. There are few sources for Kentish, reflecting the political subservience of Kent firstly to Mercia, and subsequently to Wessex. Moreover, those texts that do survive tend to present an amalgam of forms:²⁴⁸

Many “West Saxon” texts have some “Anglian” features, and vice versa, and many of the texts with “Kentish” features combine these with one or both of the other two...dialects are not homogenous any more than whole languages are, and the contrast between dialects is often expressed in the proportions of forms in use in different places.

As regards the *Laws*, the majority of commentators have proceeded on the, not at all unreasonable, assumption that the original text of the *Laws* would have been written in the Kentish dialect, and that any West Saxon or Anglian influences that can be detected in the *Textus Roffensis* text as we now have it are the result of later accretions. This is, in essence, this author’s own view. However, this view was challenged in a significant and detailed paper of Patrizia Lendinara, originally delivered in 1997 at a seminar held under the auspices of the Centre for Interdisciplinary Research on Social Stress in San Marino, addressing the Historical Archaeoethnicity of the Anglo-Saxons.²⁴⁹ Lendinara argued that the *Laws* were originally written down in Latin, following contemporary Continental models, then translated into an Anglian dialect, and then further re-written in

²⁴⁸ Kitson, “Nature of Old English Dialect Distributions”, pp. 43-4.

²⁴⁹ Patrizia Lendinara, “The Kentish Laws”, in J. Hines (ed.), *The Anglo-Saxons from the Migration Period to the Eighth Century: An Ethnographic Perspective* (Studies in Historical Archaeoethnology 2, Woodbridge: Boydell, 1997) pp. 211-68.

West Saxon. Bede's explicit statement²⁵⁰ that the *Laws* were written in English is on this view evidence only for the version available to him and his Canterbury informant in the eighth century, not for the early seventh-century original. This argument is discussed in more detail at section 4.2.4 below, and rejected for the reasons given there.

As Hough very fairly notes,²⁵¹ one difficult issue with analysis of this sort is whether orthographic variations represent genuine linguistic change, or merely different spelling conventions. Specifically, in the context of increasing Mercian political domination of Kent from the eighth century onwards, the question arises whether Mercian forms were favoured, as Kentish scribes brought their practice into line with what may have been expected of them by their new political masters, or alternatively whether conservative features of Kentish scribal practice were deliberately retained by scribes as a symbol of defiance.

Hough is scrupulously even-handed in her analysis, and many of the examples she considers are ambiguous, reflecting a lack of consensus amongst scholars as to whether Kentish was closer to the Anglian or West Saxon dialects, and as to the specific features whereby this might be indicated. Even so, Hough interprets the weight of the evidence as pointing in the direction of a Kentish manuscript tradition.

An example of this is the Primitive Germanic *-æ*. Except before nasal consonants, where it becomes *o*, it is raised to *e* in Anglian dialects but preserved as *æ* in West Saxon.²⁵² Recent scholarship²⁵³ has argued that although late Kentish did follow Anglian practice, this sound change occurred in the ninth century, such that prior to this early Kentish was an *-æ* dialect, like West Saxon.

²⁵⁰ *H. E.* ii. 5

²⁵¹ "The Earliest English Texts?", p. 146.

²⁵² Campbell, *Old English Grammar*, pp. 50-1.

²⁵³ Richard M. Hogg, "On the Impossibility of Old English Dialectology", in Dieter Kastovsky and Geto Bauer (edd.), *Luick Revisited: Papers Read at the Luick Symposium* (Tübingen: Gunter Narr Verlag, 1988), pp. 196-7.

Following this, Hough contends²⁵⁴ that forms such as *þær* and *ðær* (respectively, for example, clauses 8 and 9, considered in section 4.3 below) are indicative of an early exemplar written in the Kentish dialect.

Similarly, the “y” in *bewyddod* (“betrothed”) of clause 77.1 (section 4.7 below) is considered by Hough²⁵⁵ to be a specifically Kentish form. All other instances—some seventy—quoted in the *Dictionary of Old English* have the form *beweddian*, reflecting another sound change generally reckoned to have taken place by the tenth century.

It was explained in section 3.2.2 above that *widubane* (“collarbone”) of clause 50 (section 4.6 below) is, following Oliver, generally taken to be an archaism. There is, however, some evidence²⁵⁶ that this may reflect actual pronunciation in Kent.

Hough also considers lexical²⁵⁷ and grammatical²⁵⁸ features, but without reaching any particularly firm conclusions. Lexical analysis is made very difficult by the possibility that specialised legal vocabulary may have existed spanning the normal dialectal boundaries, whilst there is insufficient data to press any grammatical analysis particularly strongly. Thus, whilst acknowledging that her analysis is highly complex, she concludes that “the language of the *Laws* is consistent with an early Kentish original and with subsequent copying by mainly Kentish scribes.”

²⁵⁴ “Earliest English Texts?”, p. 145.

²⁵⁵ *Ibid.*

²⁵⁶ Michael Samuels, “Kent and the Low Countries: Some Linguistic Evidence”, in Adam Aitken, Angus McIntosh and Herman Palsson (edd.). *Edinburgh Studies in English and Scots* (Longman, London, 1971) pp. 3-19.

²⁵⁷ “Earliest English Texts?”, pp. 148-51.

²⁵⁸ *Ibid.*, pp. 151-3.

4. Commentary

4.1 Overview

The following sections contain a detailed commentary on the specific provisions of the Laws, including where appropriate a comparative study of equivalent provisions in the Continental codes. Save where indicated, I have adopted throughout what is now accepted, and is likely to remain, the critical edition of the *Laws*, set out by Lisi Oliver in *The Beginnings of English Law*, together with a translation from which Nicholas Brooks has differed only on relatively minor points of interpretation in his own more recent paper.²⁵⁹ The standing of Oliver's edition is attested to by its adoption by the Early English Laws Project, which has as its ambitious aim to print authoritative new editions and translations of all English legal codes, edicts and treatises up to the time of Magna Carta.

Oliver proposed, and this chapter adopts, the following overall structure of the *Laws*. This incorporates some refinement by Oliver of Liebermann's original, editorial, clause-numbering, the justification for which is discussed further in section 4.2 below:

- Clauses 1-7: Offences against the church and public assembly (see 4.2 below)
- Clauses 8-17: Offences against the king and his household (see 4.3 below)
- Clauses 18-19: Offences against *eorlas*, "noblemen" (see 4.4 below)
- Clauses 20-32: Offences against *ceorlas*, "freemen" (see 4.5 below)
- Clauses 33-71: Personal injury laws (see 4.6 below)
- Clauses 72-77: Offences against, and the rights of, women (see 4.7 below)
- Clauses 78-81: Offences against *esnas*, an intermediate rank with a status between freeman and slave (see 4.8 below)
- Clauses 81-83: Offences against *þeowas*, "slaves" (see 4.9 below)

²⁵⁹ Nicholas Brooks, "The Laws of King Æthelberht of Kent," in O'Brien and Bombi (edd.), *Law, Language and Libraries*, pp. 105-36.

4.2 Offences against the Church and public assembly

Clause 1: *Godes feoh 7 ciricean XII gylde.*

“God’s property and the church’s [is to be compensated] with 12[-fold] compensation.”

Clause 2: *Biscopeſ feoh XI gylde.*

“A bishop’s property [is to be compensated] with 11[-fold] compensation.”

Clause 3: *Preoſteſ feoh IX gylde.*

“A priest’s property [is to be compensated] with 9[-fold] compensation.”

Clause 4: *Diaconeſ feoh VI gylde.*

“A deacon’s property [is to be compensated] with 6[-fold] compensation.”

Clause 5: *Cleroceſ feoh III gylde.*

“A cleric’s property [is to be compensated with] 3[-fold] compensation.”

Clause 6: *Ciricfriþ II gylde.*

“[Violation of] church peace [is to be compensated] with 2[-fold] compensation.”

Clause 7: *M[æþl]friþ II gylde.*

“[Violation of] assembly peace [is to be compensated] with 2[-fold] compensation.”

It is no exaggeration to say that these first seven clauses dealing with theft from the Church and churchmen give rise to some of the most problematic issues in the *Laws*. Four distinct areas of difficulty have been identified, which have led some scholars²⁶⁰ to consider these clauses to be a later interpolation:

- i) the straightforward syntax of the clauses, which in comparison to the rest of the *Laws* gives an impression of extreme terseness of language;
- ii) the absence of a prologue to the *Laws*, in apparent contrast to the account given by Bede;
- iii) various internal inconsistencies between these clauses, and other provisions appearing elsewhere in the *Laws*; and
- iv) the inconsistency of these clauses with the *Responsiones* of Pope Gregory quoted by Bede in his *Ecclesiastical History*.

The points are cumulative, and will be considered in turn.

4.2.1 Terseness of language

As described by Oliver,²⁶¹ each of clauses 1-7 follows a very simple template: [Property/ peace] [number] *gylde*, presupposing in grammatical terms either a deleted verb of restitution without an immediately preceding model on which to restore the deleted verb, or, as preferred by Oliver in her critical edition, copula deletion with a finite sum of restitution. Since this usage does not appear elsewhere in the *Laws*, these clauses can accordingly be differentiated on linguistic grounds from the rest of the text. This plainly raises the issue of whether these clauses were interpolated at the time of the original recording of

²⁶⁰ Most emphatically, Richardson and Sayles, *Law and Legislation* (Edinburgh University Press, 1966), p. 2, although Oliver too considered these clauses to be of a later date than the rest of the *Laws*.

²⁶¹ Lisi Oliver, *Beginnings*, p. 45.

the *Laws*, or in a later revision, perhaps at a time when the original version of the *Laws* was being recopied.

Although the possibility of an interpolation does need formally to be put, these arguments do, however, sit somewhat oddly with the observation that the grammar of these clauses is considerably more straightforward than the rest of the *Laws*. The usual observation is that the language of legal drafting becomes more sophisticated over time, not less, such that the terseness of language of these clauses should ordinarily be an argument for their antiquity.²⁶²

4.2.2 The absence of a prologue

The *Laws of Hlophere and Eadric* begin with the following prologue:

Hlophære 7 Eadric, Cantwara cyningas, ecton þa æ þa ðe heora aldoras
ær geworhton ðyssum domum, þe hyr efter sægeþ²⁶³

More elaborately, the *Laws of Wihtréd*:

Dam mildestan cyninge Cantwara Wihtrede, rixgendum þe fiftan wintra
his rices, þy niguðan gebanne, sextan dæge Rugernes, in þære stowe þy
hatte Berghamstyde, ðær wæs gesamnad eadrige ge[p]eahtendlic

²⁶² Such was, for example, the view of the late Patrick Wormald: see his *The Making of English Law: King Alfred to the Twelfth Century, Vol. 1: Legislation and its Limits* (Oxford, 1999), p. 95. In making a similar point in his “Piercing the *rihtamscyld* – A New Reading of Æthelberht 32”, *Quaestio Insularis* 9 (2008), p. 34 at p. 35, the erudite Mattias Ammon cites with approval two further references that would surely have escaped the attention of all but the most diligent researcher: see J.R. Schwyter, “Syntax and Style in the Anglo-Saxon Law Codes”, in C. Ehler and U. Schaefer (edd.), *Verschriftung-Verschriftlich: Aspekte der Medienwechsels in der verschiedenen Kulturen*, Scriptoria (Tubingen, 1998), pp.186-228; and R. Hiltunen, *Chapters on Legal English: Aspects Past and Present of the Language of the Law*, Suomalaisen Tiedeakatemia toimituksia. Sarja B, 251 (Helsinki, 1990) pp. 19-48.

²⁶³ “Hlophere and Eadric, kings of the people of Kent, added to the laws that their ancestors made before with these decrees, which are stated hereafter”: Oliver, *Beginnings*, pp. 126/127.

ymcyme: Ðær wæs Brihtwald Bretone heahbisceop, 7 se ærnæmde cyning; eac þan Hrofesceastre bisceop, se ilca Gymbund wæs haten, andward wæs; 7 cwæð ælc had ciricean ðære mægðe anmodlice mid þy hersuman folcy. Ðær ða eadigan fundon mid ealra gemedum ðas domas 7 Cantwara rihtum þeawum æcton, swa hit hyr efter segeþ 7 cwyrþ.²⁶⁴

Yet in Æthelberht's *Laws*, at least as they have survived in the *Textus Roffensis*, the text begins abruptly with clauses 1-7, drafted moreover in a terseness of language that can, as previously noted, be distinguished from the rest of the *Laws*. The position is not enlightened by a passage from Bede, summarising the achievements of Æthelberht:

Qui inter cetera bona quae genti suae consulendo conferebat, etiam decreta illi iudiciorum iuxta exempla Romanorum cum consilio sapientium constituit; quae conscripta Anglorum sermone hactenus habentur et obseruantur ab ea.²⁶⁵

The difficulty is thus readily apparent. In the absence of a prologue that is found in the laws both of Hlophhere and Eadric and those of Wihtrud, what authority did Bede have for the assertion that the Laws were established *cum consilio sapientium*? It seems doubtful whether too firm a conclusion can be drawn as to whether Bede's Kentish informant, Abbot Albinus, provided Bede with a whole

²⁶⁴ "To the most gracious king of the Kentish people, Wihtrud, ruling in the fifth winter of his reign, in the ninth indiction, sixth day of Rugern, in that place which is called Berghamstead, there was gathered a consiliary assembly of great men. There was Brihtwald, archbishop of Britain, and the aforementioned king; likewise the bishop of Rochester, which same was called Gebmund, was present; and each order of the church of that people spoke with a single mind with the loyal populace. There the great men devised, with the consent of all, these decrees, and added to the just customs of the Kentish people, as it hereafter says and decrees": Oliver, *Beginnings*, pp. 152/153. *Rugern* means "rye-harvest", and was probably in September.

²⁶⁵ "Among other benefits which he conferred upon the race under his care, he established with the advice of his councillors a code of laws after the Roman manner. These are written in English and are still kept and observed by the people." Bede, *H.E.* ii.5, Colgrave and Mynors pp. 150/151.

text of Æthelberht's *Laws* or alternatively with merely the opening clauses and some hint of their overall content and background. We can, however, note that if either Bede, or his Kentish informant, Albinus, did have before them a text of the *Laws* that did contain a prologue to this effect, this would indicate a stage in the transmission of the manuscript of which we are unaware, and moreover one which puts the reader further on inquiry in the context of a section of the manuscript that, on linguistic grounds, sits oddly with the rest of the text.

4.2.3 Internal consistency with other provisions of the *Laws*

As will be seen in section 4.3 below, clause 10 of the *Laws* provides that theft from the king by a freeman shall be compensated for with nine-fold compensation. If this is taken at face value, and compared with clauses 2 and 3, the king is afforded a lower level of restitution than a bishop, equivalent to that afforded to a mere priest²⁶⁶. This seems an inherently unlikely arrangement at any time in Anglo-Saxon history, whether in an excess of religious fervour in the immediate aftermath of conversion, or subsequently, and this was, indeed, one of the considerations that prompted Richardson and Sayles to consider clauses 1-7 to be a later interpolation.

4.2.4 The inconsistency of the clauses with Pope Gregory's *Responsiones*

Bede makes very clear that by his time, c. 731, clauses 1-7 formed an integral part of the *Laws*. The passage of the *Ecclesiastical History* cited in the preceding subsection continues as follows:

“In quibus primitus posuit, qualiter id emendare deberet, qui aliquid rerum uel ecclesiae uel episcopi uel reliquorum ordinum furto auferret,

²⁶⁶ Moreover, a priest whom, as pointed out by Richardson and Sayles, *Law and Legislation*, p. 3, clause 6 of the *Laws of Wihtried* contemplates as being too drunk to baptise a dying man.

uolens scilicet tuitionem eis, quos et quorum doctrinam susceperat, praestare.”²⁶⁷

Yet elsewhere Bede makes clear that the scales of compensation provided for by clauses 1-7, “startlingly heavy”, according to J.M. Wallace-Hadrill,²⁶⁸ did not sit at all comfortably with Christian teaching. Bede describes how, at a relatively early stage in his mission, Augustine sought guidance from Pope Gregory by letter on a number of matters of Christian doctrine. Gregory’s replies, the *Responsiones*, are quoted by Bede at length. One such concerned the matter of theft from a church:

“III: Interrogatio Augustini: Obsecro, quid pati debeat, si quis aliquid de ecclesia furtu abstulit. Respondit Gregorius: Hoc tua fraternitas ex persona furis pensare potest, qualiter ualeat corrigi. Sunt enim quidam, qui habenter subsidia furtum perpetrant, et sunt alii, qui hac in re inopia delinquent; unde necesse est, ut quidam damnis, quidam uero uerberibus, et quidam districtius, quidam autem lenius corrigantur....Addes etiam quomodo ea, quae furtu de ecclesiis abstulerint, reddere debeant. Sed absit ut ecclesia cum augmento recipiat quod de terrenis rebus uideatur amittere, et lucre de uanis quaerere.”²⁶⁹

²⁶⁷ “Among these [laws] he set down first of all what restitution must be made by anyone who steals anything belonging to the church or the bishop or any other clergy; these laws were designed to give protection to those whose coming and whose teaching he had welcomed.” Bede, *H.E.* ii.5, Colgrave and Mynors pp. 150/151.

²⁶⁸ J.M. Wallace-Hadrill, *Early Germanic Kingship*, p. 40.

²⁶⁹ “Augustine’s third question: I beg you to tell me how one who robs a church should be punished. Gregory answered: 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, whilst others transgress in this matter through poverty. So some must be punished by fines, some by a flogging, some severely and others more leniently...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.” Bede, *H.E.* i. 27, Colgrave and Mynors pp. 82/83.

Various scholars have sought to explain this contradiction in different ways, yet none has done so entirely satisfactorily. As previously noted, Richardson and Sayles followed both Liebermann and the uncritical Attenborough too closely in treating clauses 1-7 as a single article, in defiance of the clear manuscript evidence of the *Textus Roffensis*. They also expressed scepticism that the skills not merely of writing, but also of reading, could have developed even at a court so relatively sophisticated as that of Æthelberht within a timetable as short as that of the first few years of the Augustinian mission for, they asserted, if a written law code was to serve any practical purpose, it must have been intended for circulation among recipients capable of reading it. Further, Richardson and Sayles, writing for publication in 1966, were also greatly influenced by the then relatively recent study by C.H.V. Sutherland²⁷⁰ on the circulation of gold coins in early Anglo-Saxon England, which showed that Kent and the Frankish kingdoms had an interchangeable gold currency as early as the late sixth century and that at the very close of the sixth century coins, or coins with loops for wearing as jewellery, may have been produced in England. Since these coins carried recognisable inscriptions, Richardson and Sayles contended for an emergence of literacy in Kent at an earlier stage than the Augustinian mission. Developing this line of reasoning, they argued that the bulk of the *Laws* "...may well belong to the last quarter of the sixth century or even to some earlier year..."²⁷¹ and to this pre-existing vernacular text at some unspecified later date at "...a later generation when the English Church had come to terms with the world..."²⁷² clauses 1-7 were added as an interpolation.

This analysis has not stood up well to subsequent scholarship, and in particular the notion that the *Laws* existed as a text prior to the Augustinian mission has been treated with "contempt".²⁷³ Certainly, it seems doubtful to attach quite so

²⁷⁰ C.H.V. Sutherland, *Anglo-Saxon Gold Coinage in the light of the Crondall hoard* (Oxford, 1948)

²⁷¹ Richardson and Sayles, *Law and Legislation*, p. 9.

²⁷² *Ibid.*, p. 3.

²⁷³ As trenchantly described by David Dumville, discussing Patrizia Lendinara, "The Kentish Laws", in J. Hines (ed.), *The Anglo-Saxons from the Migration Period to the Eighth Century: An*

much emphasis to the importance of literate recipients of a written law-code: the act of committing the law code to writing may have served a symbolic function that was no less valuable. It could also be doubted whether the *Laws* could have been promulgated *cum consilio sapientum* if they did not date to the mature years of Æthelberht's reign, by which time his right to rule had been reinforced by the eclipse of Ceawlin discussed previously in section 1.3 that caused Bede to name Æthelberht as one of the *bretwaldas*. Finally, although the numismatic evidence is not so clear as to enable the interpretation placed upon it by Richardson and Sayles to be rejected out of hand, as described in section 1.6 above modern scholarship is inclined to be more cautious about the existence of a circulating currency,²⁷⁴ this weakening the arguments for an earlier spread of literacy. Carole Hough noted²⁷⁵ other instances of excessive restitution to the church in early legislation. Thus, chapter 6 of the second series of Alamannic laws,²⁷⁶ issued during the early eighth century, demands restitution of twenty-seven times the amount stolen from a church, whilst chapter I.3 of the mid eighth century Bavarian laws²⁷⁷ demands restitution of between nine and twenty-seven times. Finally, in England, Hough cites the early eighth century Theodore Penitential book 1, section 3.2,²⁷⁸ which requires that money stolen from a church is to be repaid four-fold, but merely two-fold if from a layman, again plainly contradicting Gregory's instructions.

Ethnographic Perspective (Studies in Historical Archaeoethnology 2, Boydell, 1997), pp. 211-68 at 231.

²⁷⁴ See *ante*, section 1.6, comparing Richard Hodges, *The Anglo-Saxon Achievement* (London, Duckworth, 1989), p. 92, with the more guarded P. Grierson and M. Blackburn, *Medieval European Coinage I: The Early Middle Ages (5th-10th Centuries)* (Cambridge University Press, 1986), *passim*.

²⁷⁵ Carole Hough, in Philip Pulsiano and Elaine Traherne (edd.), *A Companion to Anglo-Saxon Literature* (Oxford: Blackwell, 2008) pp. 170-87, repr. in Hough, *An Ald Recht: Essays on Anglo-Saxon Law* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2014) pp. 2-24 at p. 4.

²⁷⁶ Karl August Eckhardt, *Leges Alamannorum*, MGH, Legum sectio I: Leges nationum Germanicarum 5.1 (Hanover, 1966) p. 74.

²⁷⁷ E. von Schwind (ed.), *Lex Baiwariorum*, MGH, Legum sectio I: Leges nationum Germanicorum 5.2 (Hanover, 1926) pp. 270-2

²⁷⁸ A. W. Haddan and W. Stubbs (edd.), *Councils and Ecclesiastical Documents Relating to Great Britain and Ireland*, 3 vols. (Oxford, 1869-73) III, p. 179.

In a thought-provoking paper originally delivered in 1997 to a seminar held under the auspices of the Center for Interdisciplinary Research on Social Stress in San Marino addressing the Historical Archaeoethnology of the Anglo-Saxons, Patrizia Lendinara suggested instead that the *Laws* were derived from, and possibly even a direct translation of, a Latin original. If this were the case, one would probably expect to see frequent borrowings of Latin terms in the text, as postulated by Oliver. As such borrowings are infrequent, and indeed confined to clauses 1-5 dealing with the various grades of clergy, Lendinara's original hypothesis has failed to gain any real currency. However, David Dumville, a member of the symposium panel receiving the paper, developed in discussion the possibility that the *Laws* existed in oral form in Æthelberht's time, but only came into writing significantly later. Taking up the linguistic evidence for Anglian influence upon the language of the *Laws*, Dumville tentatively suggested that the *Laws* may have come into written form at the behest of Anglian conquerors of Kent wishing to inform themselves more closely concerning Kentish law. Such an interesting suggestion from an experienced scholar of the highest authority in matters of textual history of course deserves close consideration, and indeed provides an excellent working hypothesis as to the eighth-century transmission of the archetype of the *Laws* from which the *Textus Roffensis* version is ultimately derived. It does not, however, wholly explain how Bede came to write as he did. For Bede to have written as he did, the *Laws* must have appeared in written form, even if after Æthelberht's time, at least sufficiently early for the precise details of their origin not to have been known to Bede or his Kentish informant. Since the extension of Anglian political influence into Kent, i.e. via Mercia, is generally supposed to date from the last years of the reign of King Wihtrud (d.721), this hypothesis presents some difficulties of internal chronology.

Oliver too thought deeply about these issues. She concluded on linguistic grounds that these clauses had a separate origin to the rest of the *Laws*. Since she regarded it as unlikely that the *Laws* would have ignored the direct exposition of Pope Gregory, she concluded that clauses 1-7 were added by a later redactor.

It seems, however, that to date scholarship has been heading in the wrong direction in treating these clauses as a later interpolation, or indeed as an interpolation at all. The attendant difficulties can much more readily be resolved if it is instead supposed that these clauses date contemporaneously with the rest of the *Laws* from the period of the conversion, but are derived from a pre-existing set of tariffs providing levels of restitution for thefts from a pagan priesthood. This suggestion was originally made by Wallace-Hadrill,²⁷⁹ who supposed that the eleven-fold restitution payable to a bishop was a similar tariff payable to a pagan high-priest, and has recently been revived by Nicholas Brooks²⁸⁰ and argued more fully by this author.²⁸¹

On this hypothesis, the terseness of the syntax can be seen to be entirely consistent with an early origin prior – perhaps well prior – to the conversion period. A lower level of restitution to a king than to a bishop is indeed difficult to accept, but is more plausible in the context of a pagan high-priest with responsibility for the maintenance of a complex calendar on which the agricultural cycle depended, to say nothing of the ability to influence the outcome of a battle through magic arts. More sense too can now be made of the internal chronology of Augustine’s request for guidance from Pope Gregory. Augustine can be supposed to have been already more than familiar with Church thinking on the subject, and thus to have viewed with disquiet the output of Æthelberht’s drafting committee (*cum consilio sapientorum*), on which he sought papal authority to buttress his own reservations. This surely seems more plausible than alternative explanations which seek to invert the two stages and to place decades between them.

²⁷⁹ *Early Germanic Kingship*, p. 41, also noting at p. 34 that the nine-fold royal compensation was a feature of Visigothic law.

²⁸⁰ Nicholas Brooks, “The Laws of King Æthelberht of Kent”, in Bruce O’Brien and Barbara Bombi (edd.), *Law, Language and Libraries* (Brepols, 2015) pp. 105-136 at p. 115, also noting at p. 116 that evidently pre-Christian regulations also survive in clauses II. 16-17 of the *Pactus legis Salicae*, concerning the theft of sacrificial pigs.

²⁸¹ “Pre-Christian traces in the Laws of King Æthelberht?”, *Archaeologia Cantiana* cxxxvi (2015), pp. 177-92.

Neither the pre-existing vernacular text postulated by Richardson and Sayles, nor the pre-existing Latin text postulated by Lendinara, are required if it is accepted that clauses 1-7 reflect existing custom transmitted orally down to the time of Æthelberht and reinforced by practical usage. The fact that the version of the *Laws* used by Bede and his Kentish informant contained a prologue absent from the *Textus Roffensis* now becomes a detail of manuscript transmission history, and it is not so hard to imagine how a copy of the *Laws* without the prologue might have been made. One could return, for example, in this context to the Anglian conquerors of Kent postulated by David Dumville. These could plausibly be presumed to be more concerned with a memorandum stating what the laws of Kent were, rather than a prologue detailing the process whereby they were compiled, and would have had no reason to seek to embellish the reputation of Æthelberht. Finally, the explanation would also deal with a difficulty put forward by Richard Gameson,²⁸² namely that it might be doubtful whether in Æthelberht's own time such a detailed hierarchy of clergy as is contemplated by clauses 1-7 could sensibly have existed. Instead, this hierarchy could be explained as an attempt to find approximate Christian equivalents²⁸³ for the grades of pagan priesthood.

4.3 Offences against the king and his household

In comparison to the foregoing section, which gave rise to a number of issues of very great complexity, the provisions dealing with offences against the king and his household are relatively straightforward to analyse. Such difficulties as do arise relate principally to matters of terminology.

Clause 8: *Gif cyning his leode to him gehateþ 7 heom mon þær yfel gedo,
If bote, 7 cyninge L scillinga.*

²⁸² Richard Gameson, "Context and Achievement", in Richard Gameson (ed.), *St. Augustine and the Conversion of England* (Sutton, 1999), p. 26.

²⁸³ Lisi Oliver, *Beginnings*, p.84 finds possible exemplars in both the Laws of Justinian and the writings of Isidore of Seville which might have been drawn upon.

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

Analysis of the word *leode* is interesting. As noted by Oliver,²⁸⁴ the word is derived from IE **leudh-*, “offspring, people”, with comparable equivalents such as O. Sax. *liud-*, O. Frs. *liod*, OHG *liut* and a Frankish equivalent *leudes* found in Frankish texts of the period. Oliver did not consider that sufficient weight of evidence existed to deduce what she termed a “common retention” in Kentish and Frankish texts, but J. M. Wallace-Hadrill was inclined to make rather more of matters:²⁸⁵

[*leod/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.

Nicholas Brooks suggested²⁸⁶ that Wallace-Hadrill summarised, but did not cite, analysis of Annethe Loham,²⁸⁷ and so did not pursue the relationship contended for by Loham between the compound *leodgeld* in clauses 13, 24 and 64 (below) to the Salic Law’s numerous Malberg glosses formed from the root *leud-*. This is undeserved: the Ford Lectures, on which *Early Germanic Kingship* was based, were delivered by Wallace-Hadrill in 1970 and published in 1971, three years before Loham’s monograph was to hand.

It will be recalled from clause 7 that breach of the *mæthlfrip*, “assembly-peace”, was also punishable by two-fold compensation for any injury inflicted. Since any assembly summoned by the king is perforce a royal assembly, it is easy enough to see why a similar tariff should be thought appropriate in the situation

²⁸⁴ Lisi Oliver, *Beginnings*, p. 63.

²⁸⁵ J. M. Wallace-Hadrill, *Early Germanic Kingship*, p. 38.

²⁸⁶ Brooks, “The Laws of King Æthelberht of Kent”, p. 117, n. 30.

²⁸⁷ Annethe Loham, *Die Merowinger und England*, Muenchener Beitrage zur Mediavistik und Renaissance-Forschung, 19 (Muenchen: Arceo-Gesellschaft, 1974).

envisaged here. The fifty-shilling penalty was apparently payable to the king irrespective of whether any other compensation was also payable, as is paralleled in clauses 11, 12, 14 and 15.

This payment is described by Liebermann as *zum Herrschergeld*, ostensibly a compensation payment to the king for the infraction of his sovereignty. It is probable that the tariff was indeed conceived of in these restitutionary terms by Æthelberht and his contemporaries. Nevertheless, it is possible to discern here the first traces of a penal sanction, savouring more of the criminal law than the law of tort.

Clause 9: *Gif cyning mannes ham drincæþ 7 ðær man lyswæs hwæt gedo, twibote gebete.*

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

Lyswæs, translated by Oliver as “seriously dishonest”, appears also in slightly different form as *leswæs* in clause 72. It will be argued there that Oliver may be mistaken in contending for so specific a meaning, and that the phrase *lys wæs hwæt* is better taken to mean “any wrongdoing of this sort”. On this reading, the *hwæt* would look back to the immediately preceding clause 8, and import the sense of *yfel*, “harm”. If this is right, then superficially, the clause follows neatly after its predecessor. Both deal with offences committed whilst the king is in the company of his subjects, and both provide for the usual level of restitution to be doubled, consistent with the penalty for the disturbance of the *mæþlfriþ* in clause 7. It might therefore be thought logical to suppose that the clauses share a similar heritage. On further inspection, however, this may not be so.

Firstly, *twibote* is expressed in words, not numerals. Further, the repetitious formula *twibote gebete*, “let him compensate with two[-fold] compensation”, is paralleled only in clauses 10, *IX gylde forgylde*, and 13, *leodgylde forgelde*. Since alliteration can serve as a mnemonic aid, it might reasonably be postulated

that these clauses 9, 10 and 13 are all of relative antiquity, survivors of a time when laws were transmitted orally. On this analysis, therefore, then notwithstanding that clause 8 is the first to appear, it may be that clause 9 is of greater antiquity. The import, however, of the two clauses taken together is clear: offences committed whilst the king is in the company of his subjects attract a double retribution.

Renato Gendre²⁸⁸ contends on the basis of ON parallels that the gathering to which this clause refers is of a quasi-judicial character, rather than merely festive. As conceded by Oliver,²⁸⁹ the two-fold restitution comparable to that imposed for a violation of the *mæþlfriþ* peace by clause 7 might perhaps add some support to Gendre's hypothesis. It is, however, doubtful whether too much weight can really be placed upon such parallels at some considerable temporal and geographical remove, such that on the whole one probably does better not to depart from the unadorned wording of the text.

Clause 10: *Gif frigman cyninge stele, IX gylde forgyldde.*

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

It will be recalled that the nine-fold compensation corresponds to that prescribed by clause 3 for theft from a priest, discussed in more detail in the foregoing section.

Clause 11: *Gif in cyninges tune man mannan of slea, L scill gebete.*

“If a person should kill someone in the king's dwelling, let him pay 50 shillings.”

²⁸⁸ Renato Gendre, “Le leggi di Æthelberht: “iuxta exempla Romanorum” e “iuxta consuetudines Germanorum”” in Loredona Lazzari, ed., *Testi giuridici germanici* (Potenza: Il salice, 1992) pp. 7-21.

²⁸⁹ Lisi Oliver, *Beginnings*, p. 86.

Tun, cognate with O. Frs. *tun*, Du. *tuin*, “fence”, and Icel. *tun*, “enclosure”, is usually taken to refer to the enclosed land surrounding a dwelling, but is also frequently interpreted as either “residence” or “settlement”. It is also frequently used in OE to translate the Lat. *villa*, in the sense of a residence or estate of a single individual. Thus, for example, Dorothy Whitelock²⁹⁰ consistently translated *tun* as “estate”. It will be seen, however, from a comparison of clauses 22 and the very similar clause 28 concerned with breaking and entering, that if any sense is to be made of the distinction between the *tun* of clause 72 and the *edorbrece* of clause 28, *tun* is likely to refer to a man’s house and *edorbrece* to the homestead. Although the distinction is a fine one, *tun* is accordingly probably better understood here in the sense of “dwelling”.

A comparison between this clause and clause 8 reveals a subtle shift of emphasis. Whereas any harm occasioned to any person attending a king’s summons attracts a fifty-shilling penalty, the same tariff is prescribed in respect of the king’s dwelling only for a killing. It is doubtful whether too much falls to be made of this distinction, but it may perhaps speak to a sense that the obeying of a royal summons savoured of an element of public service, that accordingly justified the imposition of an equivalent tariff for any infraction whatsoever.

Clause 12: *Gif man frige mannan of sleahþ, cyinge L scill to drihtinbeage.*

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

As explained by Oliver,²⁹¹ *drihtenbeag*, literally “lord-ring”, but more sensibly translated by her as “lord-payment”, refers to the practice in a pre-monetary economy of giving metal rings as a form of reward or payment, common amongst early Germanic peoples. In *Beowulf*, the epithet *beaga bryttan*, “distributor of rings, is applied in l. 35 to Scyld Scefing, the mythological ancestor of the Danish people, and in l. 352 to King Hroþgar.

²⁹⁰ Dorothy Whitelock, *English Historical Documents Vol. 1: c. 500-1042* (London, Eyre & Spottiswood, 1979), *passim*.

²⁹¹ Lisi Oliver, *Beginnings*, p. 86.

Oliver,²⁹² citing Brooks,²⁹³ considered that these were arm-rings, no doubt having in mind the evidence of wills showing that arm-rings remained in use as high-status artefacts into the tenth- and eleventh centuries. Thus, the will²⁹⁴ of Ælfgar, himself referred to by the “D” version of the Anglo-Saxon Chronicle when recording the marriage of his daughter Æthelflæd to King Edmund such that his will has been dated to 946x951,²⁹⁵ contains a bequest of *tueye bege ayther of fifti mancusas goldes*, “two armlets, each of fifty *mancuses* of gold”. Ælfifu, a woman of royal descent, left in her will²⁹⁶ *twege bægas æigþer ys on hundtwelftifgum mancussum*, “two armlets each of one hundred and twenty *mancuses*”, and estimated by Whitelock to have been worth the equivalent of 120 oxen, 300 sheep or fifteen male slaves. Finally, the will²⁹⁷ of Prince Æthelstan, who died c. 1015, contains a bequest of *þæne beh þe Wulfric worhte*, “the amulet which Wulfric wrought”.

This does not seem securely founded, however. For his part, Brooks was writing about the late Anglo-Saxon period, during which arm-rings – an especial feature of Scandinavian culture – are indeed well-attested. In a Kentish context c. 600,

²⁹² *Beginnings*, p. 86.

²⁹³ Nicholas Brooks, “Arms, Status and Warfare in late-Saxon England”, in David Hill (ed.), *Ethelred the Unready: Papers from the Millenary Conference* (Oxford: British Archaeological Reports, 1978) p. 86, repr. in Nicholas Brooks (ed.), *Communities and Warfare 700-1400* (Hambleton, 2000) pp. 138-61.

²⁹⁴ Attested in two fourteenth century Bury St. Edmunds cartularies: Cambridge University Library MS. Ff. 2.33, fol. 48, and London, British Museum, Additional MS. 14847, fol. 16b. These share errors showing both to be derived from the same source, but the latter contains a number of omissions inconsistent with being a copy of the former.

²⁹⁵ Dorothy Whitelock (ed. and trans.), *Anglo-Saxon Wills* (Cambridge, 1930) p. 104.

²⁹⁶ Attested in the *Codex Wintoniensis*, the cartulary of St. Swithin’s, Winchester, compiled in the first half of the twelfth century: London, British Museum, Additional MS. 15350, fol. 61b.

²⁹⁷ Attested by London, British Museum, Stowe Charter, 37, a single sheet of vellum in an early eleventh century hand, with the upper halves of the letters forming the word *CYROGRAPHUM* at the bottom, showing that at least one other contemporary copy existed; Christchurch, Canterbury, MS. AA.H.68, again a single sheet of vellum in an early eleventh century; and two copyings into the *Codex Wintoniensis*, London, British Museum, Additional MS. 15350, fols. 43b and 50.

however, the reference is almost certainly instead to sword-rings, of the type evident in the Staffordshire Hoard.²⁹⁸

The interaction of this clause with the preceding clause 11 requires comment. Oliver²⁹⁹ reasoned that if clause 11 imposes a fine of 50 shillings in respect of the killing of **any person** (her emphasis) in the king's dwelling, logic demands that in the case of a **freeman** (again, her emphasis) in the king's dwelling, the fine accruing to the king falls to be assessed at 100 shillings (i.e. 50 for the killing, and 50 for the breach of the protection afforded to the king's dwelling). This would indeed seem sound.

Clause 13: *Gif cyninges ambiht smið oþþe laadrincmannan ofslehð, [med]uman leodgelde forgelde.*

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

This clause contains no less than three *hapax legomena*, words attested uniquely in the Kentish Laws as they survive in the *Textus Roffensis*, and nowhere else in the corpus of Old English. These three, and a number of other instances elsewhere in the text, have been noted by Patrizia Lendinara³⁰⁰ to be compound words, which she deduces as having been “...coined to express a complex technical meaning in a synthetic way.” Further, she adduces the possibility that these may have been translations of Latin terms. Both limbs of this might be thought doubtful. As will be seen below, the words may not in fact be quite so complex as she supposes, since two of them can be taken to refer to particular court officials discharging functions that can readily be imagined, and the third is entirely explicable as it stands. The hypothesised loan translations of Latin terms would seem particularly insecure, since the putative Latin terms are unattested in any surviving document, and in any event for the reasons advanced in the

²⁹⁸ I am grateful to Professor Andrew Reynolds for this observation.

²⁹⁹ *Beginnings*, p. 85.

³⁰⁰ *The Kentish Laws*, p. 220.

foregoing section the *Laws* seem generally to look to archaic Germanic traditions rather than to Latin borrowings.

Ambiht, cognate with OS *amhahteo*, OHG *ampaht*, Goth. *andbahts* and ON *ambatt*, has the meaning of “officer” or “servant”, and is evidently linked to the Lat. *ambactus*, albeit that this has acquired the narrower and more specific meaning of “vassal”. As can be seen from line 16 of Plate 1, the manuscript shows a clear break between this and the following word *smið*, “smith”. As noted by Oliver,³⁰¹ the possibility does need to be considered that this manuscript break could represent a word boundary, thus “official and/or smith”. It is, however, not unknown in this text and other medieval texts for a scribe to leave a space between the constituent elements of compound words. Moreover, Oliver notes from elsewhere in the Old English corpus similar compounds *ambiht-hera*, “obedient minister”; *ambiht-scealc*, “official servant”; *ambight-secg*, “official man, messenger”; and *ambiht-begen*, “attendant thegn”.

Little thought has however been given as to what in practice the responsibilities of this individual might have encompassed. It is possible that he may have been no more than blacksmith by Royal Appointment, as it were, albeit that it seems unlikely that such an individual would have been singled out for the special protection afforded here. This special protection might perhaps be thought more plausible for an individual with responsibility for the manufacture and maintenance of arms and armour, which needs little imagination to conceive of as a position of great trust, as well as of technical expertise.

Regard should also be had, however, to the spectacular finds of jewel-decorated metalwork at Sutton Hoo, at Prittlewell, and comprised in the Staffordshire Hoard. Sutton Hoo is generally associated³⁰² with the East Anglian King

³⁰¹ *Beginnings*, p. 65.

³⁰² See, inter alia, R. L. S. Bruce-Mitford, *The Sutton Hoo Ship Burial*, 3 vols., (London, 1975-83) and A. C. Evans, *The Sutton Hoo Ship Burial* (London, 1986).

Rædwald (d. 616x627), and Prittlewell has provisionally been attributed³⁰³ to the East Saxon King Sæberht (d. 616x7), both contemporaries of Æthelberht, and the latter, indeed, his nephew. Secure dating for the Staffordshire Hoard is more problematic, not least since the wide range of objects comprised in it may well have been manufactured over a period of decades.³⁰⁴ It is, however, manifest that many of the items comprised in it are of very similar workmanship to finds at Sutton Hoo and Prittlewell. The artistic techniques used in the production of certain of these items are likely to have been Anglo-Saxon adaptations of techniques originally devised elsewhere: the millefiori glass inlays found at Sutton Hoo speak to a Celtic tradition, whilst the garnet-and-gold cloisonné work is ascribed to a Frankish heritage, very probably transmitted through Kent.³⁰⁵ Some of the raw materials, for example the garnets, used in the manufacture do not have an origin in the British Isles and will have been obtained by trade. Albeit that certain individual complete items may have been manufactured abroad and obtained by trade, such as in the case of Sutton Hoo the Coptic dish, the silver bowls, the Greek-inscribed spoons and the Anastasius dish, which are all of east Mediterranean origin, nevertheless much of the work, including the garnet-and-gold cloisonné work common to all of the finds, is undoubtedly of English manufacture. A smith capable of undertaking such work would be a valued member of the court indeed. Since, however, it is hard to conceive of what evidence might emerge to support the identification of such an individual with the post of *ambiht-smið*, this suggestion must remain as speculative as it is novel.

³⁰³ By Dr. Sam Newton, *Time Team Special 18: The King of Bling*, originally broadcast 13 June 2005.

³⁰⁴ For the most recent analysis, see Fern, Dickinson and Webster, *The Staffordshire Hoard*, who suggest that the objects comprised in the hoard were manufactured within the period 600x675, and deposited in the period 650x675.

³⁰⁵ See, inter alia, Martin Carver, "The Anglo-Saxon Burial at Sutton Hoo: An Interim Report", and Roberta Frank, "Beowulf and Sutton Hoo: The Odd Couple", both in Catherine Karkov (ed.), *The Archaeology of Anglo-Saxon England: Basic Readings* (Garland, New York/London, 1999), pp. 279-316 and 317-28 respectively.

Laadrincman means, literally, “lead-warrior” or “lead-man”, a sense which has encouraged commentators to think in terms of a role such as a herald or messenger. Liebermann³⁰⁶ assumed that this position would have been discharged by an unfree servant, and that the purpose of the clause was to lend dignity to the office by affording it the protection that it would have enjoyed had the post been filled by a freeman. Following this, Whitelock³⁰⁷ doubted any correspondence with the official described in *Beowulf* as *ar*, “herald” or “messenger”, who escorts strangers into the king’s presence, precisely because such an individual is, in her view, of noble rank. Oliver doubted this reasoning, reading the clause as providing compensation to the king for the loss of a trusted official, over and above any compensation payable to the deceased official’s relatives. This interpretation is surely to be preferred.

Leodgeld, “person-price”, appears, and is believed by Oliver to be, a gender-neutral synonym of the more usual *wergild*, “man-price”, albeit that she maintains the distinction in her translation to preserve the terminological distinction of the manuscript.

The derivation of the word *leode* was considered in the context of clause 8, above.

Clause 14: *Cyninges mundbyrd, L scillinga*.

“[For violation of] the king’s protection, 50 shillings.”

The purpose of this relatively straightforward clause appears to be to provide protection for the king’s household, retinue and guests, any infraction of which would constitute a violation of the dignity of the king. Clauses 18 and 20 provide similarly in the cases of the *eorl* and *ceorl*, at reduced levels.

³⁰⁶ Felix Liebermann, *Gesetze*, 3:6.

³⁰⁷ Dorothy Whitelock, *English Historical Documents I*, p. 391.

Clause 15: *Gif frigman freum stelþ, III gebete, 7 cyning age þæt wite 7 ealle þa æhtan.*

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

All commentators from Liebermann onwards have noted the illogicality of reading the last part of this clause literally. It would, plainly, serve no purpose for the king to take the fine and all the perpetrator’s goods, since, if all the perpetrator’s goods are to be taken, how is the perpetrator then to pay the three-fold compensation and the fine? Oliver³⁰⁸ accordingly followed Whitelock and Liebermann in reading the second 7 as the adversative “or”. Bill Griffiths³⁰⁹ instead proposes that the king should receive the fine and the stolen goods, or, by implication, their value, since as Oliver noted, one would ordinarily expect the stolen goods to be returned to their owner. It will be seen subsequently that 7 is also used in an adversative sense in clauses 23 and 30, such that her reading is probably to be preferred, albeit that she declined to speculate whether the value of the goods was to provide an upper or a lower limit.

Clause 16: *Gif man wið cyninges mægdenman geligeþ, L scillinga gebete.*

16.1 *Gif hio grindende þeowa sio, XXV scillinga gebete*

16.2 *Sio þridde, XII scillingas.*

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

If she should be a “grinding slave”, let him pay 25 shillings.

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

³⁰⁸ *Beginnings*, p. 68.

³⁰⁹ Bill Griffiths, *An Introduction to Early English Law* (Norfolk: Anglo-Saxon Books, 1995) p. 23.

This clause affords protection to three ranks of women in the king's household, of which the most favoured is the position described as *birele*, "cup-bearer". It is a matter of supposition whether this is a free woman servant or a slave. The other two grades are certainly slaves. The duties of the "grinding-slave" will have included the grinding by hand of corn into meal. Since these and the *birele* have relatively high-status functions involving food and drink, the duties of the third rank are likely to have encompassed all the still more laborious, menial and unpleasant household chores.

Clause 17: *Cyninges fedesl, XX scillinga forgelde.*

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

Although earlier commentators struggled to make sense of this clause, in a detailed article Oliver³¹⁰ convincingly contended that this clause relates to the practice of food render. It was noted in section 1.5 that Æthelberht's court was likely to have been at least in part itinerant. Accordingly, if a designated host was unable to provide hospitality, or wished to offer a monetary payment in commutation, this clause sets the tariff at twenty shillings, presumably per day.

4.4 Offences against *eorlas*

Clause 18: *Gif on eorles tune man mannan ofslæhp, XII scill gebete.*

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

This clause is a mirror of clauses 11 and 13, save that the tariff is set at twelve shillings as opposed to the fifty shillings for the equivalent killing in the king's dwelling, or the six shillings provided by the following clause for the killing of someone in the protection of a *ceorl*. However, although their relative statuses

³¹⁰ Lisi Oliver, "Cyninges fedesl: The Feeding of the King in Æthelberht ch. 12", *Anglo-Saxon England* 27 (1998) pp. 59-75.

fall to be deduced from the values of the fines payable to each of them, the *Laws* are silent as to how an *eorl* might arrive at his status. As noted by Oliver,³¹¹ in l. 369 of *Beowulf*, Wulfgar refers to the troop surrounding King Hroþgar at Heorot as *eorlas*, suggesting that this term may have originated as referring to a member of the *comitatus*, or war band. In the *Laws*, it is likely to refer either to a retainer to the king, or to one who has been awarded land for services rendered to the king. These two situations are, of course not mutually exclusive.

Clause 19: *Gif wið eorles birele man geligeþ, XII scill gebete.*

“If a person lies with a nobleman’s cupbearer, let him pay 12 shillings.”

This clause corresponds to the first part of clause 16 for the killing of the king’s cup-bearer, and adopts the same relative tariff of twelve shillings as opposed to fifty. It will be seen below that clause 21 envisages that the *ceorl* will have the same three grades of female slaves as the king, and no good reason is apparent as to why this circumstance is not catered for here.

Another omission is the statement of a fine for violation of the *eorl*’s *mund*, or protection, provided for by clause 14 in respect of the king, and by clause 20 in respect of the *ceorl*. Oliver deduced this by extrapolation as the same twelve shillings, which seems entirely sound.

4.5 Offences against *ceorlas*

Clause 20: *Ceorles mundbyrd, VI scillingas.*

“[For violation of] a freeman’s protection, 6 shillings.”

It can be seen from this and the following clauses that the *ceorl*, traditionally conceived of as a peasant proprietor, is nevertheless a relatively substantial

³¹¹ *Beginnings*, p. 89.

figure, with his own dependants and slaves. The protection, or *mund*, of the *ceorl* is valued at six shillings, as against fifty provided for by clause 14 in respect of that of the king, and this relative tariff features in a number of other clauses also.

Clause 21: *Gif wið ceorles birelan man geligeþ, VI scillingum gebete.*

21.1 *Aet þære opere ðeowan, L scætta.*

21.2 *Aet þære þriddan, XXX scætta.*

“If a person lies with a freeman’s cupbearer, let him pay with 6 shillings.

For that second [rank of female slaves], 50 sceattas.

For that third [rank], 30 sceattas.”

In distinction to clause 19 in respect of the *eorl*, this clause reverts to the tripartite categorisation of female slaves adopted by clause 16 in respect of the king. The tariff in respect of the *birele*, “cup-bearer”, mirrors that of the *mund* in clause 20, at six shillings as against fifty in respect of that of the king.

At twenty *sceattas* to the shilling, it will be seen that the second rank of female slave owned by the *ceorl* is compensated for at the equivalent of two-and-a-half shillings, whereas on a direct comparison with clause 16 one would have expected three shillings, being half that prescribed for the *birele*. The broad ratios of clause 16 are, however, restored for the third rank of female slave, since thirty *sceattas*, or one-and-a-half shillings, are a quarter of the six shillings prescribed for the *birele*, in roughly the same proportion as twelve shillings bears to fifty in clause 16.

Clause 22: *Gif man in mannes tun ærest geirneþ, VI scillingum gebete.*

22.1 *Se þe æfter irneþ, III scillingas.*

22.2 *Siððan gehwylc scilling,*

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

He who breaks in next, 3 shillings.

Afterwards, each a shilling.”

The purpose of this clause, and the similar clause 28, appears to be to provide additional penalties for breaking and entering over and above those provided for the theft alone. Oliver³¹² supposed the tier of fines to reflect the fact that the first to enter is the ring-leader and the second his subordinate, but as it is as easy to imagine the real ring-leader urging on his confederates from the rear, this explanation may be difficult to sustain. An alternative possibility, the tier of fines may reflect the fact that the most damage is done by the first to enter, making an opening which is big enough for him to squeeze through, which opening is then enlarged by the second to enter, by which time the opening is large enough for the remaining members of the band to pass through relatively unhindered.

Clause 23: *Gif man mannan wæpnum bebyreþ ðær ceas weorð, 7 man nænig yfel ne gedon, VI scillingum gebete.*

23.1 *Gif wegreaf sy gedon, VI scillingum gebete.*

23.2 *Gif man þone man of slæhð, XX scillingum gebete.*

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

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

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

³¹² *Beginnings*, p. 95.

As this clause shows, it was contemplated that the accessory to a crime could be liable in respect of its consequences, even if, as this clause expressly acknowledges, the accessory was not directly involved in its commission. It should be presumed that the tariffs are cumulative, such that the provider of the weapons is to pay six shillings in the case of strife, and a further six if robbery is successfully performed using the weapons, and a further twenty shillings if the victim is killed. In this latter case Liebermann³¹³ assumed that the twenty shillings was paid to the victim's kin, and that the killer was responsible for the remainder of the wergild, but it is as easy to conceive that the entire wergild was paid by the killer, and that the penalties imposed by this clause were paid to the king for disturbance of the peace.

Clause 24: *Gif man mannan ofslæhð, medume leodgeld C scillinga gebete.*

24.1 *Gif man þone man ofslæhð, æt openum grafe, XX scillinga forgelde, 7 in XL nihta ealne leod forgelde.*

24.2 *Gif bana of lande gewiteþ, ða magas healfne leod forgelden.*

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

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.

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

In prescribing the wergild for a freeman of one hundred shillings, this benchmarks the value to the king of the *ambihtsmið* and the *laadrincman*. Oliver³¹⁴ noted with approval the pertinent observation of Reinhold Schmid³¹⁵ that the Frisian custom was to pronounce the accusation of murder at the open

³¹³ Felix Liebermann, *Gesetze*, 3:8.

³¹⁴ *Beginnings*, p. 97.

³¹⁵ Reinhold Schmid, *Die Gesetze der Angelsachsen* (Leipzig: F. A. Brockhaus, 1858) p. 4.

grave, and it is easy enough to suppose that twenty shillings might have represented a more or less satisfactory compromise between requiring the perpetrator and his kin to show a sufficient earnest of their readiness to make compensation, and the amount that they might reasonably have been expected to manage to raise by the time of the burial. The final limb of the clause sits rather oddly with the general principle of Germanic law that the kin is held fully responsible for one of its members. Patrick Wormald³¹⁶ accordingly suggested that this limb is a response to the specific circumstances of an individual case. Oliver³¹⁷ supposed instead that this is a supplementary fine imposed on the perpetrator's kin-group in addition to the wergild as a token that the kin-group is not complicit in his disappearance.

The first element of the compound *leodgeld* was considered in the context of clause 8, above.

Clause 25: *Gif man frige man geb[inde]þ, XX scill gebete.*

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

This clause is to be interpreted as affording compensation for the indignity suffered by the victim. Parallels can be found in a number of the tariffs prescribed for personal injuries, where a higher tariff is imposed for injuries occasioning obvious disfigurements.

Clause 26: *Gif man ceorlæs hlafætan ofslæhð, VI scillingum gebete.*

“If a person kills a freeman's loaf-eater, let him pay with 6 shillings.”

³¹⁶ Patrick Wormald, “*Inter cetera bona – genti suae*: Law-Making and Peace-Keeping in the Earliest English Kingdoms”, *Settimane dello Studio del Centro Italiano di Studi Sull' Alto Medioevo* 42 (1995), p. 973–4.

³¹⁷ *Beginnings*, p. 97.

The *hlæfæta*, literally the “eater of the loaf”, is a dependant of the household. This etymology survives in the modern English “lord”, from *hlaford*, “guardian of the loaf”, and “lady”, from *hlæfdige*, “shaper of the loaf”. The tariff is again six shillings, as against the fifty shillings prescribed by clause 11 for a killing in the king’s household.

Clause 27: *Gif læt ofslæhð þone selestan LXXX scill forgelde.*

27.1 *Gif þone oþerne ofslæhð, LX scillingum forgelde.*

27.2 *Ðone þridan, XL scillingum forgelden.*

This clause gives rise to considerable interest and difficulty, principally in consequence of the fact that *læt* is a *hapax legomona* unattested elsewhere in uncompounded form in Old English. Nor is the syntax of the clause free from doubt. Formally at least, the possibility needs to be put that *læt* may be in the nominative case, and this the subject of the clause. This would, however, make little sense: it would not then be clear which three ranks of men the *læt* is being postulated as killing. Accordingly, the great weight of scholarship has treated *læt* as in the accusative case, giving rise to the following translation:

“If [a person] kills a *læt* of the first rank, let him pay with 80 shillings.

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

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

Three possible explanations of the term *læt* have been put forward: firstly, that it may relate to the remnants of Germanic settlers placed in Kent by the Romans with military obligations connected with the former Saxon Shire forts; secondly, that it may refer to the ethnic Romano-British inhabitants of Kent living under Anglo-Saxon rule; and thirdly, that it may relate to a semi-servile social class of ethnic Anglo-Saxons. The evidence has been dealt with by Oliver on three

occasions³¹⁸ in her published writings, and the matter was also touched upon in varying degrees of detail in two papers presented to the second symposium on Historical Archaeoethnology held under the auspices of the Centre for Interdisciplinary Research on Social Stress in San Marino.³¹⁹

The possibility that the *læt* may perhaps have been a remnant of Germanic settlers placed in Kent during the Roman period was first given prominence by J.N.L. Myres. He postulated³²⁰ that the OE *læt* was derived from the Latin *laeti*, whom he described as barbarian settlers planted out in late Roman times in the frontier provinces of the empire to undertake various military obligations as part of the terms of their land tenure, preceding the more formal arrangements for settlement by barbarian mercenaries or *foederati*, of which he cited Hengist and his Jutish followers as an example. The military obligations envisaged by Myres as undertaken by the *laeti*, or *lætas*, clearly related to the manning of the Saxon Shore forts. It was accordingly for Myres a point in favour of his argument that no equivalent term could be identified in the laws of King Ine of Wessex (*reg.* 688-95), whose kingdom did not include any of the former Saxon Shore. With characteristic diligence, Oliver identified³²¹ usages of *laeta* (the land cultivated) and *laeticus* (the corresponding adjective) in the *Codex Theodosianus*, and an attestation of *laetas* in Eumenius Panegyricus 21.1 (c. 300).

Some points of linguistic analysis emerge here. The manuscript gives no indication of whether *læt* is written with a long or short vowel. In the subsequent discussion of her San Marino paper,³²² Lendinara postulated that if *læt* was to be

³¹⁸ Lisi Oliver, *Language*, #5.2.4, pp. 164-9; *Beginnings*, pp. 91-3; and “Who was Æthelberht’s *læt*?” in Linda Jones Hall (ed.), *Confrontation in Late Antiquity* (Orchard Academic, Cambridge, 2003) pp. 153-63.

³¹⁹ Heinrich Haerke, “Early Anglo-Saxon Social Structure”, and Patrizia Lendinara, “The Kentish Laws”, both in John Hines (ed.), *The Anglo-Saxons from the Migration Period to the Eighth Century: An Ethnographic Perspective* (Boydell, Woodbridge, 1987), respectively pp. 125-70 and pp. 211-45

³²⁰ J. N. L. Myers, *The Earliest English Settlements* (Oxford: Clarendon, 1986) pp. 142-3.

³²¹ But does not reference more fully: *Language*, p. 167.

³²² *Ibid.*, p. 238.

given a long “æ”, its evolution might be similar to OE *stræt* (MnE “street”), derived from Lat. *strata* (with a long “a”).

Oliver also noted³²³ that *scillingum* is a use of the archaic dative of quantity, appearing in OE only in those clauses dealing with freemen and personal injury, and this by virtue of their content likely to be the eldest. Oliver saw this as a point of difficulty. She interpreted this archaic grammatical construction as evidence that the clause dated back to a period of Common West Germanic, both in linguistic terms and also in legal usage, which would seem entirely plausible. Perhaps less securely, however, Oliver concluded that the clause “probably predates a post-invasion incorporation of the guardians of the Saxon Shore into Kentish society.” Whilst this objection certainly needs to be taken very seriously, it need not however necessarily be fatal, given that other examples, such as in the instance of pre-Christian priests contended for above, of possible survivals of traces of very early Anglo-Saxon society can be identified in the *Laws*.

A further interesting point was developed in discussion of Lendinara’s paper jointly by Thomas Charles-Edwards and Ian Wood. If the *læt* is to be identified with the *laetus*, he would probably have been supposed to have been descended from a quite different Germanic tribe to that of the Anglo-Saxon rulers of Kent, or else if of a similar ethnic origin, still so closely identified in the minds of the Anglo-Saxon elite with the former Romano-British regime that it was felt proper to accord them the lower legal standing that their relatively ungenerous *wergild* would imply.

Other scholars, however, have derived *læt* from the OE verb *lætan*, “to release”, and Attenborough³²⁴ cited the cognate continental Germanic forms *litus*, *latus* and *lazzus*. He deduced a class “.... intermediate between freemen and slaves, and consisting presumably of freemen and their descendants, and perhaps also of subject populations.”

³²³ *Language*, pp. 164-9.

³²⁴ Frederick Attenborough, *The Laws of the Earliest English Kings* (Cambridge, 1922) p. 176.

This was followed by Jolliffe,³²⁵ who asserted:

The name.... was applied concurrently with *litus*, *lazzus* and *aldio* to the descendants of conquered tribes which retained personal freedom and certain tribal rights, but were reduced to the position of tributary descendants of the conquerors. Some of them may have come over the sea..., but we have also evidently to look to that class to find the place of the remnants of the Romano-Celtic population of Kent.

This last element found favour with Sir Frank Stenton,³²⁶ who expressed without amplification of his reasoning the apparently firm conclusion that:

There is no trace of any Kentish nobility of British origin, although three classes of men called *læts*, of which the highest possessed much less than a Kentish *ceorl*'s wergild, seem to represent a British peasantry surviving under Jutish rule.

and offered by way of parallel the well-known tripartite division for native Britons appearing in the laws of King Ine of Wessex:

Wealh gafolgyld CXX scillingas, his sunu C, þeowne LX.³²⁷

It is not, however, clear that the parallel with Ine for which Stenton contends necessarily adds real weight to his argument. Ine and his immediate predecessors

³²⁵ J.E.A. Jolliffe, *The Constitutional History of Medieval England* (London, 1937), p. 124.

³²⁶ Sir Frank Stenton, *Anglo-Saxon England* (Clarendon, Oxford, 1943), pp. 303-4.

³²⁷ "A Briton, a tribute-payer, 120 shillings, his son 100, his servant 60. See in particular upon this clause the important papers of Margaret Faull, "The Semantic Development of Old English *Wealh*", *Leeds Studies in English* 8 (1975), pp. 20-44; and Martin Grimmer, "Britons in Early Wessex: The Evidence of the Law Code of Ine", in Nicholas Higham (ed.), *Britons in Anglo-Saxon England* (Woodbridge: Boydell, 2007) pp. 102-14; and most recently the joint paper of Martin Findell and Philip Shaw, "*Volcae?* Foreigners? Britons? The Origins and Development of OE *wealh*", unpublished paper delivered to the British Academy, *Aliens, Foreigners and Strangers in Medieval England 500-1500*, March 2015.

had only relatively recently expanded the kingdom of Wessex into areas of south-western Britain formerly under British rule, such that a significant body of the subjects of Ine would be native Britons for whom his law code would have needed to make provision. These subjects, moreover, would under native British rule have had an internal hierarchy, some traces of which might well be thought likely to have survived into the period of Anglo-Saxon governance. Although, as has been noted, modern advances in genetic studies appear to show that even the early stages of the Anglo-Saxon conquest of lowland Britain did not extend to widespread ethnic cleansing such that the survival into Æthelberht's time of a socially distinct class of ethnic Romano-British cannot be ruled out, it would on its face attest to a high degree of social conservatism if, after some generations of Anglo-Saxon presence in Kent, these ethnic barriers had not been eroded by intermarriage.

After discussing the competing possibilities, Oliver deals more fully with the third possibility, for which she emerges as having most sympathy, namely that the tripartite division in this clause represents a transition through three generations from a servile status towards the class of freeman, becoming fully free in the fourth generation. Oliver has identified parallels throughout early medieval Europe: in Frankish territories, in early Welsh laws, and in old Irish laws. She also identifies instances in Greek and Sanskrit laws where the interval of four generations assumes legal significance. Her most detailed consideration, however, is given to an analysis and amplification of a parallel originally suggested by Seebohm³²⁸ with the *leysings* of the Scandinavian laws. Three classes of *leysings* gradually grew by successive steps over three generations towards a higher grade of freedom, becoming more nearly free until at the ninth generation from the first freeman became fully free.

Clause 28: *Gif frigman edorbrecþe gedeþ, VI scillingum gebete.*

28.1 *Gif man inne feoh genimeþ, se man III geldegebete.*

³²⁸ Fredric Seebohm, *Tribal Custom in Anglo-Saxon Law* (Longman Green & Co, London, 1902) pp. 484-5.

“If a freeman breaks into an enclosure, let him pay with 6 shillings.

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

The distinction between this clause, and the very similar clause 22, would appear to turn on a subtle difference of terminology. *Eodor* literally means “hedge”,³²⁹ although the word is also used figuratively of individuals, as of King Hroþgar in l. 663 of *Beowulf*, described as *eodor Scyldingas*, “protector of the Scyldings”.

Accordingly, if any distinction is to be made between these two provisions, it would seem, following Oliver,³³⁰ that the *tun* in clause 22 refers to a dwelling, or house, whereas the *eodor* of this clause is to be taken as the hedge forming the curtilage of the property. A similar distinction underlies the *burgbryce* and *eodorbryce* of Clause 40 of King Alfred’s Laws,³³¹ which would apparently impose a similar fine for stealing possessions from inside a building as for stealing other goods from the victim’s grounds.

Clause 29: *Gif frigman edor gegangedð, IIII scillingum gebete.*

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

In contrast to the previous clause, the lesser offence equivalent to unlawful entry, but without the element of stealing, carries a lower tariff of only four shillings.

Clause 30: *Gif man mannan ofslea, agene scætte 7 unfacne feo gehwilce gelde.*

³²⁹ Hence *Edoras*, the name given by J. R. R. Tolkien to the fictional seat of King Theoden of Rohan in *The Lord of the Rings*.

³³⁰ Lisi Oliver, *Beginnings*, p. 95.

³³¹ Preserved in Cambridge, Corpus Christi College, MS. 173, fol. 45b: for the text and translation, see Attenborough, *Laws of the Earliest English Kings*, pp. 82/83.

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

The terse wording of this clause prompted J. M. Wallace-Hadrill³³² to focus upon the word *agene*, “his own”, leading him to the rather strained conclusion that “his kin was not merely exempted but actually forbidden to intervene, at least as bankers”, an outcome that would deny one of the basic functions of the kin-group, namely to share responsibility precisely for such duties as the payment of wergild. On the strength of *gehwilc*, Oliver³³³ again read 7 as adversative, and accordingly interprets the clause as a statement merely that the compensation could be paid in goods (albeit goods not tainted by the crime, as would be any stolen goods) as well as money. This would seem the relatively better view. However, given that it is to be doubted whether Æthelberht’s Kent did yet have a circulating currency,³³⁴ were this indeed to be the sense, the reference would be to bullion of the specified weight.

Clause 31: *Gif friman wið friesmannes wif geligeþ, his wergilde abicge, 7 oðer wif his agenum scætte begete 7 ðæm oðrum æt þam gebrenge.*

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

This difficult clause is challenging to analyse. It is perhaps convenient to dispose of the shortest, but by no means the most significant, point first, which is to say that the clause sits oddly at this particular point in the *Laws*. Clauses 73 to 77 deal variously with girls, married women, and widows, and it might be thought that this clause might more naturally have been grouped there, rather than

³³² *Early Germanic Kingship*, p. 42.

³³³ *Beginnings*, p. 97.

³³⁴ Section 1.6, *ante*.

sandwiched between the provisions relating to the *ceorl*, and the long series of clauses dealing with personal injuries.

The second general point to be taken is that, however the precise impact of this clause is analysed – and, as shall be seen, a number of competing interpretations fall to be considered – none of them readily suggest themselves as having been promulgated by a king instructed in the elements of Christian morals or under the influence of Christian bishops: the just verdict of Richardson and Sayles.³³⁵ On any of the competing interpretations, both adultery and separation are matters for monetary compensation, without any conception of marriage as an indissoluble union.

Considerations such as these modify very considerably our understanding of what Bede and his informants meant when they described Æthelberht's *Laws* as being written down *iuxta exempla Romanorum*.³³⁶ As noted by Wallace-Hadrill,³³⁷ on their way to Kent, Augustine and his mission passed through Marseilles, Arles, Vienne, Autun, Tours and Paris, each associated at one time or another with the collection or teaching of law. It was, moreover, to Autun or to Arles that Augustine returned to be consecrated bishop. From any of these cities the missionaries could have collected legal texts, *exempla*. Since there is no evidence of any borrowing by the *Laws* from these sources, such *exempla* were, however, unlikely to be of late Roman legal texts, still less texts of canon law. It is much more likely that the *exempla* were of continental Germanic codes, such as the *Lex Salica*,³³⁸ written towards the end of the reign of King Clovis for Merovingia, or the *Lex Burgundionum*³³⁹ of King Gundabad, commonly called the *Lex Gundobada*. Considerations such as these accordingly strengthen arguments made previously that Æthelberht's *Laws* represent for at least the most part customary law that was already of some standing when it was written down.

³³⁵ *Law and Legislation*, p. 4.

³³⁶ *H. E.* ii. 5, *ante*, section 4.2.1.

³³⁷ *Early Germanic Kingship*, pp. 37-46.

³³⁸ Karl A. Eckhardt, *Germanenrechte, Pactus Legis Salicae*, 65 Titel-Text (Göttingen, 1955).

³³⁹ L. R. De Salis (ed.), *MGH Legum Sect. I*, vol. 2 (Hanover, 1892)

Although the text seems straightforward enough at first sight, it is grammatically ambiguous. As explained by Oliver, *wif* is a neuter noun and the possessive pronoun *his* can be masculine or neuter, It is accordingly unclear to whose *wergild* the clause refers. Three interpretations are grammatically possible: firstly, that the adulterous freeman paid the *wergild* of the wronged husband;³⁴⁰ secondly, that the adulterer paid his own *wergild*;³⁴¹ and finally, that the adulterer paid the *wergild* of the adulterous woman.³⁴²

Some of the more useful analysis is provided by Theodore Rivers in his article for *Anglo-Saxon England* noted above. He observes in the first instance that adultery in early Germanic society was considered only in terms of a sexual liaison involving a married woman.³⁴³ It would not seem that an innocent wife was afforded any redress for the transgressions of her husband, although a provision of the *Lex Visigothorum* noted by Rivers³⁴⁴ and apparently requiring an adulteress to be delivered to a husband's wife for punishment if the wife's husband was convicted of adultery would seem to contradict this view.³⁴⁵ Moreover, because a wife was under the protection of her husband, the crime of adultery entitled the husband to retribution. This retribution took various forms. Amongst the Visigoths, Burgundians and Lombards, the outraged husband was entitled to kill his wife and her lover with impunity when he caught

³⁴⁰ Theodore Rivers, "A Reevaluation of Æthelberht 31", *Zeitschrift der Savigny-Stiftung fuer Rechtsgeschichte, Germanische Abteilung* 93 (1976), pp. 315-8, and more generally "Adultery in early Anglo-Saxon society: Æthelberht 31 in comparison with continental Germanic law", *Anglo-Saxon England* 20 (1991) pp. 19-25.

³⁴¹ See B. Thorpe (ed.), *Ancient Laws and Institutes of England* (2 vols.) (London, 1840), I, 11 and Wilhelm Wilda, *Geschichte des deutschen Strafrechts* (Halle, 1842) p. 847.

³⁴² See, inter alia, R. Schmid (ed.), *Gesetze der Angelsachsen*, 2nd ed., (Leipzig, 1858) p.5 and his footnote to clause 21; Attenborough, *Laws of the Earliest English Kings*, note 31.1 p. 177; and Christine Fell, *Women in Anglo-Saxon England and the Impact of 1066* (London, 1984) p. 64.

³⁴³ H. Brunner, *Deutsche Rechtsgeschichte*, ed. C. F. von Schwerin, 2nd ed., 2 vols., (Berlin, 1906-28), II, 854.

³⁴⁴ Rivers, "Adultery", p. 19 n. 3.

³⁴⁵ Karl Zeumer (ed.), *Leges Visigothorum* III 4.9, *MGH*, Legum section I: Leges nationum Germanicorum I (Hanover, 1902) pp. 150-1.

them *in flagrante delicto*,³⁴⁶ but the laws also permitted the adulteress and her lover to be delivered into the custody of the wronged husband to be dealt with as the latter saw fit.³⁴⁷ The need for retribution no doubt was perceived as affording redress for the husband's loss of honour, which had been slighted in consequence of the adultery. If the adulterous wife was not killed, the adulteress was compelled to make retribution to the husband with payment of the wife's *wergild*.³⁴⁸ Subsequently, in consequence of the growing influence of the Church, the husband lost the power of life and death over the adulterous couple. Rivers³⁴⁹ notes the laws first signalling this change as Grimwald 6 (from 668) and Liutprand 130 (from 733),³⁵⁰ although very probably these reflected changes in social values that were already current.

Rivers draws a contrast between the Continental practice, whereby retribution (in the cases where the adulteress or the adulterous couple were not killed in *flagrante delicto*) was graduated according to the *wergild* of the woman with whom adultery had been committed, with a reading of clause 31 that imposes a compensation "proportionate to the class of the offended husband".³⁵¹ As has been noted, however, the ambiguous grammar of the clause does not permit anywhere near so firm an inference to be drawn. The wording of the clause as we have it would admit no less readily to payment of the woman's *wergild*, despite Rivers' assertion to the contrary. Rivers also notes clause 10 of King Alfred's Laws:

[Be hæmedðingum.] Gif man hæme mid twelfhyndes monnes wife,
 hundtwelftig scill. gebete ðam were; syxhyndum men hund scill. gebete;
 cierliscam men feowertig scill. gebete.

³⁴⁶ *Leges Visigothorum* III.4.1 and III.4.3, pp. 147-8.

³⁴⁷ *Leges Visigothorum* III.4.4, p. 149; Katherine F. Drew, *The Burgundian Code* (Philadelphia: University of Pennsylvania, 1949) p. 68 and *The Lombard Laws* (Philadelphia: University of Pennsylvania, 1973) p. 138.

³⁴⁸ Theodore J. Rivers, *Laws of the Alamans and Bavarians* (Philadelphia, 1977) p. 138.

³⁴⁹ "Adultery", p. 20 n. 7.

³⁵⁰ *The Lombard Laws*, pp. 134 and 201-2.

³⁵¹ "Adultery", p. 10.

If anyone lies with the wife of a man whose *wergild* is 1,200 shillings, he shall pay 120 shillings compensation to the husband; to a husband whose *wergild* is 600 shillings, he shall pay 100 shillings compensation; to a commoner he shall pay 40 shillings compensation [for a similar offence]³⁵²

as attesting to the custom in the earlier law, but at the remove of some three hundred years this inference may not bear quite the weight that Rivers contends for it. After all, in Æthelberht's time the wronged husband's power of life and death attested to by the Continental codes may well have lingered, if indeed still not been current, in the collective consciousness, such that it might well have seemed logical for the life of the adulterous wife to be redeemed with her own *wergild*, rather than anyone else's. By the time of King Alfred, however, the influence of the Church would have drowned out these recollections of the original customary Germanic law, such that in setting a tariff to redress the dishonour of the wronged husband, it would have been entirely logical to do so with regard to the wronged husband's social standing.

The requirement that the adulterer should pay a *wergild* (i.e. *contra* Rivers, declining to draw too firm a conclusion as to whose *wergild* might fall to be paid) and to provide a replacement wife for the wronged husband, even to the extent of bringing the replacement wife to the wronged husband's home, also requires analysis. It is to be assumed that the wronged husband wished to part from his former wife and to take up with the replacement, and that the replacement wife was at least complaisant to the arrangement. The adulterous wife would presumably have returned to her father's family.

In discussing Lendinara's paper "The Kentish Laws",³⁵³ Giorgio Ausenda saw behind this requirement the possibility that the replacement wife might be a member of the adulterer's own family. In thus offering up one of their own family members, the adulterer's family would demonstrate that, despite the

³⁵² Attenborough, *Laws of the Earliest English Kings*, pp. 70/71.

³⁵³ "The Kentish Laws", pp. 232-3.

original affront, they did not consider themselves on a higher status level than those of the offended group. This is explicable in the context of a society in which women married into a family of equal or higher status than their own, but very rarely into a family of lower status. In such a case, family pressure might well be brought to bear upon the woman offered as a replacement to acquiesce in the arrangement, as a means of resolving the situation and avoiding worse consequences for her family. As noted by Ausenda, the fact that the wronged husband did not have to effect any marriage payment (see clause 77 below) and pay *morgengifu* in respect of the replacement wife would have provided further redress.

Rivers³⁵⁴ sees it as “illogical” that the adulterer should be required to pay wergild and furnish a replacement wife, supposing instead that the two are alternatives: another, in this case rather more heavily disguised, use of 7 in its adversative sense. This interpretation would seem to be implicit in Ausenda’s analysis also. These interpretations, however, elide two distinct aspects of the wronged husband’s position. In the first place, there has been a breach of his *mund*, and it is not difficult to see the payment of a wergild (again, leaving open the matter of by reference to whom the *wergild* is to be determined) as the mechanism for dealing with this. In addition, however, the wronged husband would also have paid a bride-price to his wife’s guardian in order to bind and solemnise the marriage. Following the adultery, this also needs to be compensated for, and it is perhaps to make some redress on this score that the requirement that the obligation to provide a replacement wife arises. Albeit unbuttressed by the support of other commentators, this novel analysis of the dual aspect of the wronged husband’s grievances may perhaps merit further consideration.

4.6 Personal injury laws

As noted by Oliver, the personal injury laws can be seen to be laid out in a broadly head-to-foot order, with compensation determined according to two

³⁵⁴ “Adultery”, p. 24.

principles: the physiological impact of the injury and the consequent impairment on the one hand, and the degree to which the damage is visible, on the other.

Clause 32: *Gif man rihthamscyld þurh stinð, mid weorðe forgelde.*

“If a person pierces through the *rihthamscyld*, let him pay with [its] worth.”

Clause 33: *Gif feaxfang geweorð, L sceattas to bote.*

“If seizing of hair occurs, 50 sceattas as restitution.”

At the Kentish reckoning of twenty *sceattas* to the shilling, this clause prescribes a penalty of two-and-a-half shillings. In respect of an assault which need occasion no physical harm, this provision reflects the extent to which the *Laws* seek to compensate for loss of dignity and esteem as well as for injury. Certainly, it seems that hair was a matter of status, for both men and women. In respect of men, one thinks of the Merovingian kings, referred to following the lead of Gregory of Tours as the *reges crinanti*, “the long-haired kings”, for whom wearing long hair was a badge of honour such that other noblemen were obliged to keep their hair cut shorter. By custom, married women kept their hair covered,³⁵⁵ such that the seizing of hair, or being dragged by their hair, would have been perceived as a particular outrage.

Old English poetry provides further instances. In *Judith*, the eponymous heroine pulls a drunken Holofernes to the floor *be feaxe*, “by the hair”, before proceeding to cut off his head. L. 1357 of *Beowulf*, as we have it in the unique manuscript witness, clearly reads *Gefeng þa be eade - nalas for fæhðe mearn*, “he seized her by the shoulder, not caring about the feud”. A number of editors,³⁵⁶ however, have proposed amending *eaxle*, “by the shoulder”, to *feaxe*, “by the hair”, on the

³⁵⁵ See the discussion of the *friwif locbore*, clause 72, *post*.

³⁵⁶ Notably E. G. Stanley, “Did Beowulf Commit *feaxfang* Against Grendel’s Mother?” *Notes and Queries* 221 (1976) pp. 339-40.

basis principally of improving the alliterative structure of the line, but also on the basis of casting a nod in the direction of this clause.

Clause 34: *Gif banes blice weorðeþ, III scillingum gebete.*

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

This needs no particular remark, save that, following Oliver, the primacy of this clause indicates that it is intended to be of general application, and thus refers to any bone so exposed, irrespective of the particular part of the body concerned.

Clause 35: *Gif banes bite weorð, IIII scillingum gebete.*

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

This too needs no particular remark, save plainly that in the case of an aggravated version of the preceding clause, a higher tariff is imposed.

Clause 36: *Gif sio uterre hion gebrocen weorþeð, X scillingum gebete.*

36.1 *Gif butu sien, XX scillingum gebete.*

“If the outer *hion* becomes broken, let him pay with 10 shillings.

If both should be [broken], let him pay with 20 shillings.”

This clause presents some difficulty, since *hion* is otherwise unattested in Old English. Oliver, however, proposed³⁵⁷ a cogent and persuasive interpretation. This clause follows clauses 34 and 35, dealing with the exposure, or cutting into, of a bone. This, coupled with the general head-to-foot layout of these clauses, adds weight to Liebermann’s association of *hion* with the Modern German *Hion*,

³⁵⁷ *Beginnings*, p. 102.

“skull”. The adjective *uterre*, “outer”, implies an *innere*, “inner”, and indeed the sub-clause prescribes a double tariff if both, presumably the “outer” and “inner” skull, are broken.

Oliver considered the possibility that whilst the *uterre hion* refers to the skull-bone, the putative *innere hion* refers to the *dura mater*, a rubbery membrane that surrounds the skull. As she noted, however, it is hard to imagine that it might be possible to damage the *dura mater* without causing damage to the brain, in which case a tariff of a mere twenty shillings, less (for example) than that prescribed by the following clause for the laming of a shoulder, looks hopelessly low. Oliver, surely justifiably, also rejected an alternative association by Liebermann³⁵⁸ of the *uterre hion* with the *dura mater*, and the *innere hion* with the *pia mater*, a very thin membrane surrounding the brain itself, not easily detected even by an experienced surgeon, and of which the Anglo-Saxons might well not have been aware.

Oliver instead made a comparison with the Continental *Lex Salica*,³⁵⁹ which distinguishes three types of blow to the head in order of increasing severity, namely one which draws blood, one which exposes the skull, and one which fractures the skull. In respect of the last, the *Lex Salica* imposes penalty of thirty shillings compared to a wergild of 200 shillings, proportionately lower but nevertheless broadly comparable to a Kentish tariff of twenty shillings as compared with a wergild of 100 shillings. From this Oliver deduced, surely correctly, that the *uterre hion* should be taken to mean the skin surrounding the skull, and the *innere* as the skull-bone itself.

Clause 37: *Gif eaxle gelæmed weorþeð, III scill gebete.*

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

³⁵⁸ Felix Liebermann, “Kentische *hionne*: Hirnhaut”, *Archiv fuer das Studium der neueren Sprachen und Literaturen* 115 (1905), pp. 117-8.

³⁵⁹ Karl A. Eckhardt, *Die Geschichte des Merowingerreiches 481-714, IL Pactus Legis Salicae, Recensiones Merovingicae* (Grettingen: Musterschmidt, 1955) pp. 62-5.

As will be seen from the following clause, this tariff is less than the aggregate prescribed for the loss of all the fingers from one hand, and so can be presumed to cover instances where the use of the arm is merely impaired, rather than lost altogether.

Clause 38: *Gif oþer eare nawiht gehereð, XXV scill gebete.*

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

This, and the following clauses, demonstrate that, as a general principle, loss of sensory perception is afforded a higher tariff than mere physical injury.

Clause 39: *Gif eare of weorð aslagen, XII scill gebete.*

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

At broadly half of that prescribed by the preceding clause, this tariff would seem to acknowledge that the external ear assists in, but is not essential to, the hearing process, and as such is appropriate to a lessening of the acuteness of hearing, rather than its total loss.

Clause 40: *Gif eare þirel weorðeþ, III scill gebete.*

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

This, and the following clause 41, can usefully be compared with clauses 44 to 46 dealing with injuries to the nose. The respective differences in tariffs apparently reflect the relative degree of disfigurement to the victim’s appearance, for whereas damage to an ear may be concealed reasonably effectively by hair or by a hat, an injury to the nose is much more readily apparent.

Clause 41: *Gif eare sceard weorðeþ, VI scill gebete.*

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

This needs no particular comment.

Clause 42: *Gif eage of weorð, L scillingum gebete.*

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

At half a man’s wergild, the tariff reflects the severity of the injury. The clear implication is that a man rendered totally blind is made practically useless to himself and his family.

Clause 43: *Gif muð oþþe eage woh weorðeþ, XII scill gebete.*

“If mouth or eye becomes damaged, let him pay [with] 50 shillings.”

Since the tariff is the same as for the gouging out of an eye, the extent of the damage to the eye envisaged here might sensibly be presumed to have resulted in the loss of sight, even though the eye remains intact in the eyeball. By the same reasoning, a comparable level of damage to the mouth, perhaps preventing the normal consumption of food, might be presumed, Clause 49, below, deals separately with instances of the loss of speech.

Clause 44: *Gif nasu þyrel weorð, VIII scillingum gebete.*

44.1 *Gif hit sio an hleore, III scill gebete.*

44.2 *Gif butu ðyrele sien, VI scill gebete.*

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

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

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

This, the most severe tariff imposed for damage to the nose, would presumably encompass instances resulting in the loss of smell, as with difficulty in breathing, in both cases in consequence of damage to the septum. Evidently such instances are valued less than a loss of hearing.

Clause 45: *Gif nasu ælcor sceard weorð, gehwylc VI scill gebete.*

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

The primacy afforded to injuries to the nose over those to the ear has previously been noted.

Clause 46: *Gif ðirel weorþ, VI scill gebete.*

“If [it] becomes pierced, let him pay [with] 6 shillings.”

This needs no particular comment.

Clause 47: *Se þe cinban forslæhð, mid XX scillingum forgelde.*

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

Given that a broken jawbone will eventually heal, this high tariff, indeed the highest tariff prescribed for an injury that does not result in the permanent loss of use of a part of the body, again presumably reflects in part the obvious, if often eventually temporary, disfigurement to the appearance.

Clause 48: *Æt þam feower toðum fyrestum, æt gehwylcum VI scillingas.*

48.1 *Se toþ se þanne bi standeþ, IIII scill.*

48.2 *Se þe ðonne bi ðam standeþ, III scill.*

48.3 *And þonne siþþan gehwylc, scilling.*

“For the foremost four teeth, for each 6 shillings.

[For] that tooth which is beside there, 4 shillings.

[For] that [tooth] which is beside that one, 3 shillings.

And [for] each of the others, a shilling.”

As noted by Oliver,³⁶⁰ these tariffs reflect damage to the appearance, with progressively higher tariffs being afforded to teeth nearer the front of the mouth, and hence more visible. This is in direct contrast to physiological utility, since whereas the cutting or ripping function performed by the front teeth can be replicated with a knife, the chewing function performed by the molars cannot be so replaced.

Clause 49: *Gif spræc awyrd weorþ, XII scillingas.*

“If speech becomes damaged, 12 shillings.”

This provides parity of treatment for damage to speech with that afforded by clause 39 to an injury likely to result in partial loss of hearing. There is, apparently, no equivalent provision in respect of speech to clause 38 in respect of total loss of hearing. It is not immediately obvious how total loss of speech might be occasioned other than by an injury of the type envisaged by clause 43, although the loss of a tongue might be supposed to be one such.

Clause 50: *Gif widubane gebroce[n] weorðeþ, VI scill gebete.*

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

In contrast to clause 37, this clearly envisages that full use of the arm is retained, albeit accompanied by severe discomfort.

³⁶⁰ *Beginnings*, p. 100.

Clause 51: *Se þe earm þurh stinð, VI scillingum gebete.*

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

This, and the following clause 52, provide parity of treatment for injuries to the arm of a type that may be presumed eventually to heal with no physical impairment.

Clause 52: *Gif earm forbrocen weorð, VI scill gebete.*

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

As clause 51, above.

Clause 53: *Gif þuman of aslæhð, VIII scill gebete.*

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

As will be seen from this and the following clauses, fingers are valued individually. Given that it is the thumb that allows the effective use of a tool, it is unsurprising that the loss of a thumb is compensated for with the highest tariff.

Clause 54: *Gif ðuman nægl of weorðeþ, III scill gebete.*

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

As noted by Oliver,³⁶¹ whereas other clauses refer to fingers or thumbs being struck off, *of aslæhð*, this clause applies when a thumbnail merely comes off, *of weorðeþ*. It is not clear whether this refers to a situation where the upper part of the nail is lost temporarily, but then grows back, as is the case after an impact injury, or the more severe case where the nail is lost at the root, and does not grow

³⁶¹ *Beginnings*, p. 101.

back. This latter instance is undoubtedly the more severe, leading to the loss of some of the grasping power provided for by the fingernail, and the fleshy stump being left painfully unprotected. Liebermann³⁶² could not conceive how a thumbnail could in practice be struck off by contemporary weaponry without damaging the thumb itself, and was accordingly minded to dismiss this clause as legal theorising, but this is not so clear. As has been observed, the clause applies when a nail is lost howsoever, as opposed to being struck off, and it is not hard to imagine the loss of at least part of a nail in consequence of a blow from a blunt instrument.

Clause 55: *Gif man scytefinger of aslæhð, VIII scill gebete.*

“If a person strikes off a shooting finger, let him pay [with] 9 shillings.”

The physiological value of the index, or “shooting”, finger, is obvious, and it is unsurprising that its loss should attract a relatively high tariff.

Clause 56: *Gif man middelfinger of aslæhð, IIII scill gebete.*

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

In contrast to the index finger, the middle finger – which in physiological terms is nearly as useful, albeit perhaps not in a martial context – appears relatively undervalued.

Clause 57: *Gif man goldfinger of aslaæhð, VI scill gebete.*

“If a person strikes off a gold-finger, let him pay [with] 6 shillings.”

This is undoubtedly another instance of a greater level of compensation being afforded for amore visually obvious loss, since the only obvious advantage of the

³⁶² Felix Liebermann, *Gesetze*, 3.10.

ring-finger, the *goldfinger*, over the middle finger is precisely its function as the finger upon which a ring is worn.

Clause 58: *Gif man þone lytlan finger of aslæhð, XI scill gebete.*

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

In physiological terms, it is odd that the little finger should be afforded a higher tariff than any other. Oliver³⁶³ postulated that this reflected the value of the hand-span (i.e. the distance from the end of the thumb to the end of the extended little finger) as a measuring device, but this would not of itself seem a complete explanation.

Clause 59: *Æt þam neglum gehwylcum, scilling.*

“For each of the nails, a shilling.”

Save for the fact that the reduced utility of a fingernail as compared to a thumbnail attracts a lower tariff, the issues raised by this clause are otherwise identical to those emerging from the preceding clause 54.

Clause 60: *Æt þam lærestan whitewamme, III scillingas.*

60.1 *And æt þam maran, VI scill.*

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

And for the greater, 6 shillings.”

Since it was undoubtedly intended that these various tariffs should be internally broadly consistent with one another, the equivalent tariff for the piercing of an ear (clause 40) or of a cheek (clause 44.1) may be presumed to give an indication

³⁶³ *Beginnings*, p. 101.

of the level of disfigurement that is contemplated. In respect of clause 60.1, the parallels are with the gashing (as opposed to the mere piercing) of the ear (clause 41) or nose (clause 45).

Clause 61: *Gif man oþerne mid fyste in naso slæhð, III scill.*

61.1 *Gif dynt sie, scilling.*

61.2 *Gif he heahre handa dyntes onfehð, scill forgelde.*

61.3 *Gif dynt sweart sie buton wædum, XXX scætta gebete.*

61.4 *Gif hit sie binnan wædum, gehwylc XX scætta gebete.*

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

If it should be a blow, a shilling.

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

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

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

The different tariffs prescribed by this clause again illustrate clearly the importance attached to disfigurement of the appearance. The, highly visible, nose is afforded particular protection, whilst a bruise that is visible is compensated for at half as much again as one that is not.

Clause 62: *Gif hrif wund weorðeþ, XII scill gebete.*

62.1 *Gif he þurhðirel weorðeþ, XX scill gebete.*

“If an abdominal wound occurs, let him pay [with] 12 shillings.

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

The compensations for injuries to the lower body can perhaps most usefully be compared with those prescribed by clause 36 for injuries to the head. A wound that merely breaks the skin is afforded a slightly lower tariff than the equivalent head wound, perhaps reflecting the fact that such a wound is likely to be less visible. A more severe wound to the lower body, however, very likely to be capable of causing internal damage, is compensated for no less heavily than the breaking of the skull.

Clause 63: *Gif man gegemed weorðeþ, XXX scill gebete.*

63.1 *Gif man cearwund sie, XXX scill gebete.*

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

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

Oliver³⁶⁴ interpreted clause 63 as a mechanism for compensating the injured party for medical costs, and clause 63.1 as providing additional compensation for a subsequent inability to work. Whilst undoubtedly a possible interpretation, this reads rather more into the clause than is admitted by the unvarnished text. Oliver adduced in support of her reading Calvert Watkins,³⁶⁵ who drew on comparative evidence from Hittite and Old Irish sources to postulate a law of sick maintenance for early Indo-European societies. Whilst this too merits close consideration, it also savours somewhat of a maximalist approach. Oliver also noted the Biblical authority of Exodus 21:18: “...he shall pay for the loss of his time, and shall cause him to be thoroughly healed.” Unfortunately, however, she declined to speculate on whether this may represent a rare, if not unique, instance of a specific provision of the *Laws* perhaps being influenced by Christian doctrine preached by Augustine and his mission.

³⁶⁴ *Beginnings*, p. 100.

³⁶⁵ Calvert Watkins, “Sick-Maintenance in Indo-European”, *Eriu* 27 (1976) pp. 21-5.

Clause 64: *Gif man gekyndelice lim awyrdeþ, þrym leudgeldum hine man forgelde.*

64.1 *Gif he þurhstinð, VI scill gebete.*

64.2 *Gif man inbestinð, VI scill gebete.*

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

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

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

Although the three-wergild tariff is by some distance the highest prescribed by these personal injury clauses, it is explicable in terms not merely of the loss of dignity and personal esteem, but also and more concretely, as recompense for the inability to sire children. The use of the word *him* is suggestive that it is the penis itself to which clause 64 refers, but as noted by Oliver³⁶⁶ the wording of clauses 64.1 and 64.2 are at least as apt to refer to the scrotum. The understandable desire of those responsible for the drafting of the *Laws* to arrive at a suitably delicate circumlocution perhaps inevitably results in a degree of ambiguity.

Clause 65: *Gif þeoh gebrocen weorðeþ, XII scillingum gebete.*

65.1 *Gif he healt weorð, þær motan freond saman.*

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

If he becomes lame, then friends must arbitrate.”

As noted by Oliver,³⁶⁷ an injury to the leg is inherently more consequential than an injury of apparently equal severity to the arm, since the leg injury may

³⁶⁶ *Beginnings*, p. 99.

³⁶⁷ *Beginnings*, p. 100.

necessitate the use of a crutch, thus effectively disabling an arm as well. The requirement that a lamed thigh must go to arbitration, the only such instance of mediation in the *Laws*, is explicable by reference to the obvious possibility for various degrees of disability, and the need for any settlement to be tailored to the individual circumstances. Wider questions, such as the mechanisms whereby such arbitration was carried out, and what might happen in instances where the respective parties might not have mutually acceptable friends to undertake such a process, are unfortunately matters for speculation.

Clause 66: *Gif rib forbrocen weorð, III scill gebete.*

“If a rib becomes broken, let him pay [with] 3 shillings.”

The tariff prescribed here might be thought comparable with those prescribed by clause 61 in respect of blows to the nose and of bruising, another instance of the broad internal consistency of these provisions.

Clause 67: *Gif man þeoh ðurhstingþ, stice gehwilt VI scillingas.*

67.1 *Gyfe ofer ynce, scilling.*

67.2 *Æt twam yncum, twegen.*

67.3 *Ofer þry, II scill.*

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

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

For two inches, two [shillings].

Over three [inches], 3 shillings.”

Although the basic tariff prescribed here is identical to that of clause 51 in respect of the arm, it was noted in respect of clause 65 that injuries to the leg are treated rather more seriously. This proposition is borne out by the provisions of clauses 65.1, 65.2 and 65.3, prescribing additional tariffs for aggravated injuries according to their severity.

Clause 68: *Gif wælt[-]wund weorðeþ, III scillingas gebete.*

“If a “welt-wound” occurs, let him pay 3 shillings.”

Interpretation of this clause is hampered by the fact that *wælt* occurs nowhere else in the Old English corpus, and that the syntax itself is ambiguous. The clause could equally well be understood as either “if a *wælt* becomes wounded”, or “if a *wælt*-wound occurs”.

Considering the former reading first, Oliver³⁶⁸ noted the similarity between *wælt* and OE *wald*, “back”, and accordingly considers the formal possibility that it is a back injury that is in contemplation. This is hardly a compelling analysis, however, particularly since the three-shilling fine would seem on its face to be a little light for a back injury.

Oliver then turned to the possibility that *wælt-wund* might be a compound, noting that Jacob Grimm³⁶⁹ derived *wælt* from the same root as OE *wealte*, “ring”, and Mod. Germ. *waelsen*, “to turn”, postulating that the “turning” was that of a needle used to sew up the wound. This led him to interpret *wælt-wund* as “a wound that requires stitching”. Whilst not wholly persuaded by the semantic connection, Oliver did concede that such an injury would be consistent with the three-shilling tariff assigned to it.

The most plausible interpretation is indeed that with which Oliver eventually concurred, originally suggested by the anonymous reviewer of her manuscript, namely that *wælt* is the predecessor of the Mod. Eng. “welt”, a ridge on the flesh, or scar, left by a healed wound. Such a scar would be of a similar order of disfigurement as the pierced ear of clause 40, or the cheek wound of clause 44.1, both also compensated for with the same three-shilling tariff.

³⁶⁸ *Beginnings*, p. 103.

³⁶⁹ Jacob Grimm, *Geschichte der Deutschen Sprache* (Leipzig: S. Herzel, 1868) p. 666.

Oliver shrewdly also noted³⁷⁰ that this clause may operate as a supplement to the tariffs prescribed by the immediately preceding clauses, such that if any of the injuries therein referred to also left behind a permanent scar, the additional three-shilling tariff is applied. This suggestion would seem very plausible.

Clause 69: *Gif fot of weorðeþ, L scillingum forgelde(n).*

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

It will be seen that this tariff, as with the gouging out of an eye, (see clause 42), represents half of a freeman’s *wergild*. Further, from the following clause 70 and a comparison with clauses 55 to 58, the tariff for striking off all the toes on a foot is 25 shillings (i.e. ten shillings for the big toe as per clause 70, and, moving inwards, successively four-and-a-half, two, three, and five-and-a-half shillings for each of the remaining toes. Effectively, therefore, the striking off of the stump of the foot attracts an additional 25-shilling tariff over and above the aggregate value of the toes.

As observed by Oliver,³⁷¹ no equivalent tariff is prescribed for the loss of the whole hand, which is presumably assessed at the loss of all the individual fingers. Oliver justified this on the basis that whilst the victim can at least hobble on a toeless foot, a fingerless hand is essentially useless.

Clause 70: *Gif seo micle ta of weorðeþ, X scill forgelden.*

70.1 *Æt þam oðrum taum gehwilcum, healf gelde ealswa æt þam fingrum ys cwiden.*

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

³⁷⁰ *Beginnings*, p. 104.

³⁷¹ *Beginnings*, p. 99.

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

See the discussion of clause 69, above.

Clause 71: *Gif þare mycclan taan næge of weorþeð, XXX scætta to bote.*

71.1 *Æt þam oðrum taum gehwilcum, X scættas gebete.*

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

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

Following clause 70, just as toes are compensated for at half the tariff attributable to the corresponding finger, so toenails are compensated for at half the tariff of a fingernail.

4.7 Offences involving women

Clause 72: *Gif friwif locbore leswæs hwæt gedep, XXX scill gebete.*

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

Until relatively recently, the phrase *friwif locbore* had been translated as “freewoman bearing locks”, with the translators assuming that the “locks” referred to were a style of wearing the hair that distinguished a married woman from an unmarried woman, or a free woman from a slave, or even, possibly, a virtuous woman from one of less unimpeachable character.³⁷² In discussing

³⁷² Thus, holding the distinction to be between a married woman and an unmarried woman: Liebermann, *Gesetze*, 3: 13; as between a free woman and a slave: Attenborough, *The Laws of the Earliest English Kings*, p. 178, as usual following Liebermann, and Whitelock, *English*

Patrizia Lendinara's influential paper already considered in detail at section 4.2.4 above, Giorgio Ausenda noted that contemporary Lombard laws distinguished between married women, who by implication kept their heads covered, and women *in capillo* or *in capillis*, apparently unmarried. Dorothy Whitelock, however, took the distinction to be that of a free, as opposed to bond, woman.³⁷³

This interpretation was challenged in a series of influential writings by Christine Fell. She brought to mind a number of key-shaped objects dubbed "girdle-hangers", since they apparently hang from the belt, found in several women's graves from the early Anglo-Saxon period.³⁷⁴ She quoted the authoritative report of Sonia Chadwick Hawkes on the Polhill cemetery:³⁷⁵

Anglo-Saxon women were frequently buried with one or more keys or latch-lifters. At Polhill, the large specimens...are likely to have been door keys, either for house or store-room. They must surely indicate that the women who carried them occupied a position of domestic responsibility in the community, and it is interesting thto note that these were not the women buried with jewellery. It looks, therefore, as if the female grave-goods reflect some class distinction, and that the key-bearer was not the lady of the house, but the housekeeper.

Although Hawkes' analysis was still relatively novel at the time when Fell wrote, it has generally been substantiated by subsequent authority and is now regarded

Historical Documents, p. 359; and on the matter of virtue, Griffiths, *An Introduction to Early English Law*, p. 41.

³⁷³ *English Historical Documents*, p. 359, n. 2.

³⁷⁴ Christine Fell, Cecily Clark and Elizabeth Williams, *Women in Anglo-Saxon England and the Impact of 1066* (Indiana UP, Bloomington, 1984), p. 60.

³⁷⁵ S. C. Hawkes, "The Dating and Social Significance of the Burials in the Polhill Cemetery", in Brian Philip (ed.), *Excavations in West Kent 1960-1970* (Dover: Kent Archaeological Rescue Group for the West Kent Border Archaeological Group, 1973), p. 195.

as mainstream.³⁷⁶ Fell’s argument, therefore, that the woman envisaged by this clause is one to whom the management of a household has been entrusted is very plausible. Whilst acknowledging the force of Fell’s reading, Carole Hough then introduced a third possibility,³⁷⁷ namely that *loc* bears another alternative meaning, that of “a close, conclusion, or settlement”, and that in a legal context *locbore* might easily enough be taken to refer to a woman who had legal competence, one of mature years in a position of responsibility.

It will be recalled that *leswæs* occurred in the similar form *lyswæs* in clause 9, considered in section 4.3 above, and that the unrounding and lowering of “y” to “e” and the back spelling “æ” for “e” are both characteristic of the Kentish dialect, as discussed in section 3.5.³⁷⁸ From the context of both clauses, particularly if, following Fell, *locbore* is taken as referring to keys, Oliver deduced that some form of theft or embezzlement was in contemplation.³⁷⁹ Certainly, the dishonesty in which the woman of this clause, or the subject of clause 9, cannot be sexual impropriety as adultery is dealt with expressly in clause 31. Yet in other contexts, the word bears a more general sense of “evil”, “dishonourable”, or “shameful”, and it is arguable both here and in the context of clause 9 that Oliver is mistaken in contending for so specific a sense. As discussed in the context of clause 73 below, Hough considers that *lyswæs hwæt* is to be taken as referring back to the personal injury laws, i.e. “any wrongdoing of this sort”, and reads the clause as setting the compensation payable not to, but by, a woman of mature years.

Clause 73: *Mægþbot sy swa friges mannes.*

³⁷⁶ Thus, Martin Welch, “The Mid Saxon Final Phase” in Sally Crawford, David Hinton and Helena Hamerow (edd.), *Oxford Handbook of Anglo-Saxon Archaeology* (Oxford, 2011) pp. 266-87 at p. 278; Nick Stoodley, “Childhood to Old Age”, *ibid.*, pp. 641-66 at p. 648.

³⁷⁷ C. Hough, “Two Kentish Laws Concerning Women: A New Reading of Æthelberht 73 and 74”, *Anglia* 119 (2001), pp. 554-78 at p. 558.

³⁷⁸ Campbell, *Old English Grammar*, p. 122.

³⁷⁹ *Beginnings*, p. 111.

“Compensation for [injury to/offence against] a maiden shall be as for a free man.”

Mægð, cognate with Goth. *magaps*, O. Sax. *magað*, O. Frs. *megith*, is generally translated as “maiden”, but in poetic texts *mægð* can also mean “woman”.³⁸⁰ Since there is no equivalent clause stipulating the amount of restitution due to a married woman, Oliver deduced³⁸¹ firstly, that this clause refers not only to compensation due to her kin if she is killed, but also for injury or theft; and secondly, that this clause equates women generally with men in terms of the amount of restitution due to them.

When finalising the proofs of *The Beginnings of English Law*, however, Oliver did not yet have to hand an article published more or less contemporaneously by Carole Hough,³⁸² putting forward an altogether contrary explanation of clauses 72 and 73. On her view, these clauses are to be taken together, and prescribe the tariffs payable by a woman. Hough reads the *leswæs hwæt* of clause 72 as referring back to the personal injury tariffs, to the intent that if a woman in a position of responsibility commits any such offence of violence, she shall be liable to a fine of thirty shillings. The use of *mægð* in the compound *mægþbot* in clause 73 is now, on Hough’s view, readily understandable: having set out the position for a woman in a position of responsibility, it is logical next to deal with the position of a younger woman, and in this case the fine specified to be paid by her is the same as that for a free man. See line 15 of Plate 5, where, contrary to Oliver’s edition where *mægþbot* appears as a single word, *mægþ* appears as the last word on line 15, and *bot* at the beginning of line 16. As noted by Hough, it

³⁸⁰ Thus, in *Beowulf*, l. 3015, the poet describes the “blood-won treasure” heaped on Beowulf’s funeral pyre, and grieves that a beautiful ring-torque shall no longer hang around the neck of a beautiful *mægð*, suggesting that the virtue of the lady in question, if not yet surrendered, has at the least been well bid for.

³⁸¹ *Beginnings*, p. 106.

³⁸² “Two Kentish Laws”. Hough, of course, was equally in ignorance of Oliver’s forthcoming edition, and accordingly was using the old clause-numbering based on Liebermann. The chapters 73 and 74 referred to in the title of Hough’s article are clauses 72 and 73 of Oliver’s edition, followed here.

may be that word-division was intended, such that the clause should read as though, in effect, a colon appeared after *mægþ*: thus, “Maidens: [to pay] compensation as for a freeman”. Certainly, Hough’s argument is persuasive, and provides a good explanation for the brevity of clause 73.

Clause 74: *Mund þare betstan widuwan eorlcundre, L scillinga gebete.*

74.1 *Ðare oþre, XX scll.*

74.2 *Ðare þriddan, XII scll.*

74.3 *Þare feorðan, VI scll.*

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

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

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

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

As plainly appears, widows are divided into four ranks, presumably corresponding to that of the man under whose protection she finds herself. Thus, the protection for the lowest rank is 6 shillings, corresponding to that of a freeman, whilst the 12 shillings for the next lowest corresponds to that of a nobleman. Since 50 shillings corresponds to the king’s protection, Oliver deduced³⁸³ that this corresponds to widows of the royal family, with the intermediate 20 shillings destined for widows not of the royal blood but nevertheless under the protection of the king.

Clause 75: *Gif man widuwan unagne genimeþ, II gelde seo mund sy.*

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

³⁸³ *Beginnings*, p. 106.

The *unagne* of this clause literally means “unowned”, but is best, following Oliver,³⁸⁴ taken in the sense that she has no kin to protect her. If this is indeed correct, such a widow would be particularly vulnerable, such that the tariff for a violation of her protection set at twice what it would otherwise have been is plausible.

Clause 76: *Gif man mægþ gebigeð ceapi, geceapod sy gif hit unfacne is.*

76.1 *Gif hit þonne facne is, e[ft] þær æt ham genrenge, 7 him man his scæt agefe.*

76.2 *Gif hio cwic bearn gebyreþ, healfne scæt age gif ceorl ær swylteþ.*

76.3 *Gif mid bearnum bugan wille, healfne scæt age.*

76.4 *Gif ceorl agan wile, swa an bearn.*

76.5 *Gif hio bearn ne gebyreþ, fæderingmagas fioh agan 7 morgengyfe.*

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

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

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

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

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].

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

³⁸⁴ *Ibid.*

This, taken with clause 31 dealing with adultery, and the following clause 77, has generated a great deal of debate about the nature of marriage as an institution in Æthelberht's Kent. As noted by Oliver, the phrase *gif man mægþ gebigeð ceapi*, "if a man buys a maid with a price" is grammatically similar to a provision of the laws of Hloþhere and Eadric dealing with the purchase of beasts at market: *he þæt feoh...ceape in wic gebohte*, "he bought that animal with a price in the town". Some scholars have read this clause literally, to the effect that the bride was indeed sold to her future husband.³⁸⁵ Other scholars have argued that *gebigan* may have a nuance of meaning different from its modern equivalent such that, properly understood, it might mean merely the exchange of money to seal a marriage contract, i.e. a dower.³⁸⁶

Christine Fell³⁸⁷ identified this money with the *morgengifu* ("morning gift"), asserting that this money was paid to the woman herself, as opposed to her father or wider family, and came under her personal control, to give away, sell or bequeath as she wished. Oliver,³⁸⁸ surely correctly, regarded this as an unwarranted conflation of two separate transfers: a dower, and the morning-gift (as its name suggests) traditionally being given by the husband to his wife on the morning after the marriage is consummated.

The "deception" of clause 76.1 might most obviously be understood to refer to the bride's loss of virginity. Possibly, however, other factors that might only be

³⁸⁵ Thus, Rosalind Hill, "Marriage in Seventh Century England" in Margot H. King and Wesley M. Stevens (edd.), *Saints, Scholars and Heroes: Studies in Medieval Culture in Honour of Charles W. Jones* (Collegeville, MN, 1979), pp. 67-75 at p. 69; Anne L. Klinck, "Anglo-Saxon Women and the Law", *Journal of Medieval History* 8 (1982), pp. 107-21 at p. 109; and (pressed particularly forcefully) Richardson and Sayles, *Law and Legislation*, p. 4.

³⁸⁶ Lorraine Lancaster, "Kinship in Anglo-Saxon Society: I", *British Journal of Sociology* 9 (1958), pp. 230-50 at p. 243; E. Young, "The Anglo-Saxon Family Law", *Essays in Anglo-Saxon Law*, Henry Adams (ed.), (Boston, MA, 1876) pp. 121-82 at p. 164; F. Mezger, "Did the Institution of Marriage by Purchase Exist in Old Germanic Law?", *Speculum* 18 (1943), pp. 369-71 at pp. 369-70; and Fell et al., *Women in Anglo-Saxon England*, p. 16.

³⁸⁷ Fell et al., *Women in Anglo-Saxon England*, pp. 56-7.

³⁸⁸ *Beginnings*, p. 107.

discoverable on intimate acquaintance such as deafness, might have been in contemplation.

Carole Hough³⁸⁹ has provided an excellent analysis of clauses 76.2, 76.3 and 76.4, which on her view need to be read together. Previous scholarship had focussed on *bagan* of clause 76.3, which has two different etymological sources and can accordingly mean either “to turn” or “to change direction” on the one hand, and “to dwell” or “to inhabit” on the other. Taking the word in its first sense, of the woman “going away” with the children, had prompted the development of a notion of Anglo-Saxon divorce laws, unsupported by any other evidence.

Hough explains matters more economically, and more convincingly. On her analysis, these clauses address the situation of a woman with children who is predeceased by her husband. The starting position is that the woman should receive half of the household goods, with, by implication, the other half passing to the children. Oliver asserted³⁹⁰ that if the child had not yet reached the age of ten, the legal age of inheritance, responsibility for protection of the property was instead vested in the meantime in a member of the paternal; kin group. However, this state of affairs only pertained for as long as the widow chose to dwell with the children (clause 76.3). If, as envisaged by clause 76.4, she were to remarry, her claim would be relegated to that of an equal share with each of the children. Oliver deduced in this the first reference to the Kentish practice of gavelkind, whereby property does not pass to the eldest child as sole heir, but is instead divided amongst all the children. Finally, clause 76.5 deals with the death of a childless widow, stipulating that both her property and the morning-gift return to her family.

Clause 77: *Gif man mægþman nede genimeþ, ðam agende L scillinga, 7 eft æt þam agende sinne willan ætgeþicge.*

³⁸⁹ C. Hough, “The Early Kentish “divorce laws”: A Reconsideration of Æthelberht, chs. 79 and 80”, *Anglo-Saxon England* 23 (1994), pp. 19-34.

³⁹⁰ *Beginnings*, p. 112.

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

77.2 *Gif gængang geweorðeþ, XXXV scill 7 cyninge XV scillingas.*

“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].

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].

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

This clause has traditionally been interpreted as dealing with the abduction by force of a maiden with a view to marrying her. Oliver³⁹¹ treated these provisions as of some antiquity, citing the observation originally made by Dorothy Bethurum³⁹² that the alliteration in *nede genimeþ* (“taken by force”) may be an archaic remnant, and noting parallels in Greek and Sanskrit.³⁹³ In contrast to earlier commentators, who perhaps out of an excess of prurience declined to admit the possibility, Oliver postulates without further amplification that that *genimeþ* might even be a euphemism for rape, and albeit that this sense is apparently unattested elsewhere, the possibility is plausible enough in the context and should not necessarily be dismissed out of hand.

As conventionally understood, therefore, one who abducts a maiden must pay the owner of her protection fifty shillings, and in the event that the perpetrator does then take the woman as his wife, the clause makes it clear that a bride-price still falls to be brought into account. Further, if a marriage contract has already been entered into and a bride-price paid *in sceat*, “by goods”, twenty shillings are to be

³⁹¹ *Ibid.*, p. 108.

³⁹² Dorothy Bethurum, “Stylistic Features of the Old English Laws”, *Modern Language Review* 27 (1932) pp. 263-79.

³⁹³ Stephanie Jamieson, “Penelope and the Pigs: Indic Perspectives on the Odyssey”, *Classical Antiquity* 18(2) (1999), pp. 227-72.

paid to the jilted suitor. Whether the jilted suitor would then be entitled to recover his bride-price from the owner of the woman's protection if she proceeded to marry the perpetrator is unclear, but possibly part of the purpose of the fifty-shilling tariff was to place the owner of the maiden's protection in funds to make appropriate restitution.

The otherwise unattested *gængang* in clause 77.2 needs comment. As noted by Fell,³⁹⁴ the sense of *gængang* is easy enough to construe. The first element, *gæn*, is cognate with Mn. German *gegen*, "against", whilst the second element, *gang*, means "path" or "journey". Accordingly, Liebermann³⁹⁵ interpreted this clause as providing that in the event of the abductor repenting of his action and returning the maiden to her home with her virtue still intact, the fifty-shilling tariff fell to be divided as to thirty-five shillings to the owner of the maiden's protection, and fifteen shillings to the king.

Carole Hough considered³⁹⁶ that a fine payable to the king sat oddly in the context of this particular offence. She therefore took *gængang* in its sense of a "going against", in other words a hostile attack upon the woman. Drawing parallels with contemporary Continental laws, which provide that an attack upon a woman traveller on a road is to be fined more heavily than a similar attack upon a man, she viewed this clause as setting out an additional offence independent of the laws dealing with marriage by abduction.

Fell³⁹⁷ adduced a further possibility, namely that the "going against" might refer to an armed clash between the abductor and the jilted suitor to whom the maiden had been betrothed. A weakness in Fell's analysis is that, as she admitted, she

³⁹⁴ Christine Fell, "An Appendix to Carole Hough's Article: A Reappraisal of *Æthelberht 84*", *Nottingham Medieval Studies* 37 (1993), p. 8.

³⁹⁵ *Gesetze*, 3: 16.

³⁹⁶ Carole Hough, "A Reappraisal of *Æthelberht 84*", *Nottingham Medieval Studies* 37 (1993) pp. 1-6.

³⁹⁷ "An Appendix", p. 8.

was unable to explain why on her reading the fine had been reduced, or to whom the thirty-five shillings were payable.

Irrespective of how these points are analysed, one returns to the point made in the context of clause 31 concerning divorce, namely that provisions of this sort appear to represent customary law already of long standing when it was written down, and which appears quite untouched by Christian doctrine. The notion that an abduction of a woman by force and hence plainly against her will might yet be a valid basis for marriage when leavened with the payment of an appropriate monetary restitution, is another matter that one might have supposed should have troubled Augustine. As with clause 31, however, he may well not have considered himself yet sufficiently securely established in Kent to have pushed back against it. Whether Bede's silence upon the point reflects the insufficiency of the information provided to him on the matter by his Canterbury informant, or else is a product of his own editorial discretion in not wishing to detract from the story of Æthelberht's conversion, is similarly a matter for speculation.

4.8 Offences against *esnas*

Clause 78: *Gif man mid esnes cwynan geligeþ be cwicum ceorle, II gebete.*

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

This, and the following three clauses, deal with the position of the *esne*. The word is cognate with Goth. *asans*, “harvest”, and *asneis*, “hireling”, and with the OHG *asni*, glossed “mercenaries”. The sense therefore emerges of someone obliged to perform predominantly agricultural labour, for a master. As is shown by clause 79, the unlawful killing of an *esne* was compensated for not by reference to a wergild, but by reference to the *esne*'s *weorðe*, “worth”. From this it can be deduced that the *esne* was not free, albeit that his status was different from, and apparently not so low, as that of the *þeow* of clauses 82 and 83. This is borne out by clause 1 of the Laws of Hloþhere and Eadric, which envisages that

the *esne* has an *agende*, an “owner”. Similarly, clauses 8 and 10 of the Laws of King Wihtred a century or so later show that both *esne* and *þeow* are subject to flogging as a punishment.

Clause 79: *Gif esne oþerne ofslea unsynningne, ealne weorðe forgelde.*

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

The wording of this clause implies that this fine is to be paid by the *esne* if he kills another of his own rank. This is not inconceivable, since the Laws of King Wihtred do appear to envisage that even slaves might own money. Nevertheless, the first clauses of the Laws of Hloþhere and Eadric, a generation or so prior to those of Wihtred, state unambiguously that the owner is responsible for the fines incurred if an *esne* kills a freeman or noble. This may have emerged as a pragmatic response to the likelihood that the *esne* would have been unable to pay the fine on his own account, such that his owner was obliged to make good this shortfall. Alternatively, it may simply have been understood that the subject of these clauses is the owner of the *esne*, rather than the *esne* himself.

Clause 80: *Gif esnes eage 7 foot ofweorðeþ aslagen, ealne weorðe hine forgelde.*

“If a servant’s eye or foot becomes struck off, let him pay him [i.e. the servant’s master] the entire worth.”

Oliver³⁹⁸ again treated the 7 as in opposition, pointing out that it is unlikely that someone should simultaneously both put out an eye and cut off a foot.

Clause 81: *Gif man mannes esne gebindeþ, VI scill gebete.*

“If a person binds a person’s servant, let him pay [with] 6 shillings.”

³⁹⁸ *Beginnings*, p. 115.

This compares with the twenty shillings prescribed for the same action inflicted upon a *ceorl*, reflecting the lower, and unfree, status of the *esne*.

4.9 Offences against slaves

Clause 82: *Deowæs wegreaf se III scillingas.*

“A slave’s highway robbery shall be [paid for with] 3 shillings.”

There is little to be said on this, or the following clause. As with the *esne*, it may have been understood that this fine and compensation be paid by the *þeow*’s master.

Clause 83: *Gif þeow steleþ, II gelde gebete.*

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

4.10 Summary

Three principal themes emerge strongly from the foregoing detailed examination of the specific provisions of the *Laws*. The first is their relatively narrow scope, dealing as they do almost exclusively with the maintenance of public order through the prescription of a detailed tariff of monetary penalties for personal injury and other offences. It will be seen in Chapter 5 that in both this respect generally, and in the detail of a good number of specific provisions, the *Laws* display considerable similarities with other law codes promulgated broadly contemporaneously amongst other Germanic peoples on the Continent. It will be seen that a critical element to this analysis is the institution of the feud.

Several of Æthelberht’s successors, together with a number of kings in other kingdoms, also promulgated law codes during their reigns. Certain of these codes are no less narrowly drawn than that of Æthelberht, but others do develop the law

into new areas. This is considered in Chapter 8, dealing with the effect of the *Laws* on later codes.

The second theme that emerges strongly is the stratified and intensely hierarchical nature of the society over which Æthelberht ruled, and the differential extent to which it sought to protect its members, whilst the third theme is the relatively weak power of the central state, and the dependence of the *Laws* for their enforcement upon the kin group. These two issues taken together invite discussions of how effective in practice the *Laws* were as a means of protecting the legally vulnerable, dealt with in Chapter 6, and of notions of kingship and of royal authority more generally, dealt with in Chapter 7.

5. Continental parallels

Following the collapse of the Western Roman Empire in the late fifth century,³⁹⁹ political control of the former provinces of the Western Empire fragmented and passed into the hands of the leaders of a number of Germanic peoples in their respective areas of local dominance. “Germanic” is primarily a linguistic designation, identifying peoples speaking either a western or an eastern dialect of the language reconstructed by philologists as Proto-Germanic,⁴⁰⁰ albeit that it is in the broadest sense possible to discern a common cultural heritage also.⁴⁰¹ These peoples had previously transmitted at least the overwhelming part⁴⁰² of their cultural, religious and legal traditions orally, but now encountered amongst their subject peoples a high degree of literacy, specifically amongst those learned in either religion or the law. In consequence, the sixth, seventh and eighth centuries saw a proliferation of written laws by and for the Germanic peoples.⁴⁰³ These laws have two principal features in common. They contain extensive tariffs of compensation for personal injury payable as an alternative to bloodfeud, and (with the exception of Æthelberht’s *Laws*, written of course in the Old

³⁹⁹ Generally dated to 476, following the supplanting of the last Western emperor, Romulus Augustulus, and the establishment by Odoacer (reg. 476-90) of a Gothic kingdom in Italy.

⁴⁰⁰ Defined by philologists as all dialects of Proto-Indo-European that underwent the consonant shift known as Grimm’s Law.

⁴⁰¹ See, for example, Malcolm Todd, *The Early Germans* (Oxford: Blackwell, 1992).

⁴⁰² Acknowledging the possibility that some use may have been made of the runic alphabet, a possibility explored in more detail below in the context of Æthelberht’s Kent. Similar arguments might be presented for the use of runes elsewhere in the Germanic territories.

⁴⁰³ For a historical survey of the development of the Germanic kingdoms, see Matthew Innes, *Introduction to Early Medieval Western Europe, 300-900 AD: The Sword, the Plough and the Book* (Oxford: Routledge, 2007). For surveys of the early history of the Germanic laws, see Katherine Fischer Drew, *Law and Society in Early Medieval Europe: Studies in Legal History* (London: Variorum Reprints, 1988) and Patrick Wormald, “The *Leges Barbariorum*: Law and Ethnicity in the Medieval West”, in Hans-Werner Goetz, Joerg Jarnut and Walter Pohl (edd.), *Regna and Gentes: The Relationship between Late Antique and Early Modern Peoples and Kingdoms in the Transformation of the Roman World* (Leiden and Boston: Brill, 2003), pp. 21-55.

English vernacular, a matter discussed further below) are written in Latin, the continental language of administration and governance.

The earliest laws,⁴⁰⁴ the *Pactus Legis Salicae*,⁴⁰⁵ or later, the *Lex Salica*, were originally enacted in Salic Francia, which is to say the former Roman province of Gaul west of the Rhine, but excluding Brittany and Burgundy, between 507 and 511, with further subsequent amendments and redactions. These were followed closely by the *Leges Burgundionum*⁴⁰⁶ originally compiled by King Gundobad (d. 516) and very possibly revised by his successor King Sigismund (d. 523).

At the beginning of the seventh century, probably some fifteen years or so after Æthelberht's *Laws*, the first redaction of the Alamannic Laws (the *Pactus Legis Alamannorum*)⁴⁰⁷ were promulgated during the reign of Clothar II (reg. 584-629), in all likelihood when he was sole king of Merovingian Gaul (613-29), covering the original Alamannic lands of Alsace, and also Baden, Wurttemberg and Rhaetia. Rothair's *Edictum*⁴⁰⁸ for the Lombards in Italy can be securely

⁴⁰⁴ Strictly, the earliest law code recorded in a Germanic territory was that of the Visigothic King Euric (reg. 466-84), which survives only in fragmentary form: see Wormald, "*Leges Barbariorum*", pp. 26-7. It is heavily romanised, however, and contains no personal injury clauses.

⁴⁰⁵ Karl August Eckhardt (ed.), *Pactus legis Salicae*, MGH, Legum sectio I, Leges nationum Germanicorum 4.1 (Hannover: Hahn, 1962) and *Die Gesetze der Merowingerreiches 481-714*, 2 vols., Germanenrechte 2nd ed., (Goettingen: Musterschmidt, 1955), 1: *Pactus legis Salicae: Recensiones Merovingicae*. For an English translation, see Theodore John Rivers, *Laws of the Salian and Ripuarian Franks* (New York: AMS Press, 1986).

⁴⁰⁶ L. R. de Salis (ed.), *Leges Burgundionum*, MGH, Legum sectio II.1 (Hannover, 1892) pp. 3-122 and Franz Beyerle (ed. and trans.), *Gesetze der Burgunden: Germanenrechte X* (Weimar, 1936). Trans. Katherine Fischer Drew, *The Burgundian Code* (Philadelphia: University of Pennsylvania Press, 1972).

⁴⁰⁷ Karl August Eckhardt (ed.), *Leges Alamannorum 1 und 2*, Germanenrechte Neue Folge, Westgermanisches Recht 6-7, (1: Goettingen, 1958 and 2: Witzenhausen, 1962) and Karl Lehmann (ed.), *Leges Alamannorum*, MGH, Legum sectio I.5 pt. 1 (rev'd) (Hanover, 1962). Trans. and intro. Theodore John Rivers, *Laws of the Alamans and Bavarians* (Philadelphia: University of Pennsylvania Press, 1977).

⁴⁰⁸ Franz Beyerle (ed.), *Leges Langobardum 643-866*, Germanenrechte Neue Folge (Witzenhausen, 1962) and *Die Gesetze der Langobarden*, Germanenrechte Texte und

dated to 643. The *Lex Salica* was amended and extended around 623 as the *Lex Ribuarica* to cover Ripuarian Francia⁴⁰⁹ east of the Rhine. The *Leges Visigothorum*⁴¹⁰ were enacted for Visigothic Spain in 654 and, rather later, the *Lex Baiuvariorum*⁴¹¹ for Bavaria in around 745.

Like Æthelberht's *Laws*, these continental codes do not confine themselves exclusively to providing tariffs for personal injury. Other matters are dealt with also. Even so, it is with personal injury that the various codes are predominantly concerned, and in understanding why this is so, it is necessary to consider the role played by the legal right of feud in maintaining law and order. In a seminal paper examining feud amongst the Franks,⁴¹² Wallace-Hadrill defined feud as having three elements: firstly, the threat of hostility between a prospective victim and a prospective perpetrator, and their respective kin, in the shape of their respective families, lords and retainers; secondly, an actual state of hostility between the two, in which violent revenge was legally sanctioned; and finally, the satisfaction of their differences and a settlement on terms acceptable to both.

Our understanding of the operation of feud has been very considerably informed by the work of early twentieth-century anthropologists observing tribal societies.

Uebersetzungen, 3 vols., 2nd ed. (Witzenhausen, 1962-3); Friedrich Bluhme (ed.), *Leges Langobardum*, MGH, Legum sectio IV (Hanover, 1869). Trans. and ed. Katherine Fischer Drew, *The Lombard Laws* (Philadelphia: University of Pennsylvania Press, 1973).

⁴⁰⁹ Karl August Eckhardt (ed.), *Lex Ribuarica*, Germanenrechte Neue Folge, Westgermanisches Recht 7-8 (Goettingen, 1959 and Hannover, 1966) and Franz Beyerle and Rudolf Buchner (edd.), *Lex Ribuarica*, MGH, Legum sectio I.3, pt. 2 (Hannover, 1954) Trans. Rivers, *Laws of the Salian and Ripuarian Franks* (above).

⁴¹⁰ Karl Zeumer (ed.), *Leges Visigothorum*, MGH, Legum sectio I, Leges nationum Germanicarum I (Hanover, 1902).

⁴¹¹ Ernst von Schwind (ed.), *Lex Baiuvariorum*, MGH, Legum section I.5 pt. 2 (Hanover, 1926) and Karl August Eckhardt (ed. and trans.) *Lex Baiuvariorum*, Germanenrechte Texte und Uebersetzungen Vol. 2 *Die Gesetze der Karolingerreiches*, Pt. 2 *Alemannen und Bayern* (Weimar, 1934), pt. 2, pp. 73-183. Trans. Rivers, *Laws of the Alamans and Bavarians* (above).

⁴¹² J. M. Wallace-Hadrill, "The Bloodfeud of the Franks", repr. in J. M. Wallace-Hadrill, *The Long-Haired Kings and Other Studies in Frankish History* (London: Methuen, 1962) pp. 121-47.

Wallace-Hadrill himself drew heavily upon the work of Max Gluckman⁴¹³ and Margaret Hasluck.⁴¹⁴ Early Germanic societies had similarly primitive concepts of law, and in any event did not have the ability to police themselves even as effectively as the Roman Empire.

The existence of feud in the Germanic homelands of antiquity is attested to by Tacitus, as is the possibility that a feud might be extinguished by payment of appropriate compensation:⁴¹⁵

suscipere tam inimicitias seu patris seu propinqui quam amicitias necesse est; nec inplacabiles durant: luitur enim etiam homicidium certo armentorum ac pecorum numero recipitque satisfactionem universa domus, utiliter in publicum, quia periculosiores sunt inimicitiae iuxta libertatem.⁴¹⁶

The persistence of the institution in England is evidenced by the notorious feud following the killing in 1016 of Earl Uhtred by the thegn Thurbrand, which continued over three generations. Thurbrand was in turn killed by Ealdred, Uhtred's son; Ealdred was killed by Carl, Thurbrand's son; and a number of Carl's sons were killed by Waltheof, son of Earl Siward, whose mother was Ealdred's daughter.⁴¹⁷

⁴¹³ Max Gluckman, *Custom and Conflict in Africa* (Oxford: Oxford University Press, 1956), especially its first chapter, "The Peace in the Feud".

⁴¹⁴ John M. Hutton (ed.), *The Unwritten Law in Albania* (Cambridge: Cambridge University Press, 1954).

⁴¹⁵ Henry Furneaux (ed.), *Cornelii Taciti Opera Minora* (Oxford: Clarendon, 1899), *Germania*, ch. 31.

⁴¹⁶ "Heirs are under an obligation to take up both the feuds and the friendships of a father or kinsman. But feuds do not continue for ever unreconciled. Even homicide can be atoned for by a fixed number of cattle or sheep, the compensation being received by the whole family. This is to the advantage of the community: for private feuds are particularly dangerous where there is such complete liberty." Trans. Harold Mattingley, rev'd Stanley A. Handford, Tacitus: *The Agricola and the Germania* (Harmondsworth: Penguin, 1970), p. 119.

⁴¹⁷ For detailed discussion and historical context, see Richard Fletcher, *Bloodfeud* (Oxford, Oxford University Press, 2003).

Much of the efficacy of feud no doubt arose from its deterrent effect. The knowledge that a particular family member was, for example, liable to behave violently when in drink⁴¹⁸ would no doubt have encouraged his more prudent relatives to exercise a restraining influence upon him, for fear that the wider family might have become enmeshed in the consequences of a drunken outrage. One can suppose that the detailed tariffs were also of value in enabling disputes to be resolved quickly and without further escalation, by reference to a prescribed level of compensation sanctioned by the king apparently *cum consilio sapientum* that preserved honour on all sides, at least in the case of the lower tariffs for the more modest injuries. Another spur to resolution would no doubt have been the very real possibility that some individuals might have found themselves, through blood, marriage or the relationship of lord/retainer, having ties to both parties. Such individuals would have been particularly likely to urge settlement.

Even so, some disputes did degenerate into unrestrained violence. The heavier tariffs for homicide and other serious injuries may have been simply beyond the means of some offenders, even with the assistance of their families, or else the tariffs were of sufficient scale that the families preferred to take their chances in accepting the risk of an escalating cycle of violence. Particularly in cases of homicide, tempers may have run too hot for the injured parties to be prepared to accept composition. Thus, in the episode of Cynewulf and Cyneheard described in the Anglo-Saxon Chronicle in an unusually detailed entry for 757, two armed encounters are described. In the first, a small group of King Cynewulf's men are surprised in an attack on their stronghold by Prince Cyneheard. Although they are offered safety and rewards if they desert their king, they resolve not to do so and die fighting. Subsequently, the victorious Cyneheard and his men are besieged in the same stronghold by reinforcements loyal to the dead King Cynewulf, who make the same offer of safety and rewards to their kinsmen amongst Cyneheard's men. This offer is rejected derisively:

⁴¹⁸ An example given by Eric John, *Reassessing Anglo-Saxon England* (Manchester University Press, 1996) p. 9.

OND þa cuædon hie þæt him nænig mæg leofra nære þonne hiera hlaford,
ond hie næfre his banan folgian noldon.⁴¹⁹

Older commentary⁴²⁰ has taken the unvarnished text as a straightforward assertion that the heroic warrior code required the obligations of the lord/retainer relationship to trump family loyalties. As a very broad general proposition, this may well be right, albeit that more recent and more detailed commentary⁴²¹ suggests that more nuanced readings are certainly possible.

Other surviving Germanic law codes also contain extensive provisions dealing with compensation payments, such that the continental codes have provided a rich hunting-ground for scholars seeking to make comparisons as regards both subject matter and approach.⁴²²

Thus, Wallace-Hadrill asserted⁴²³ that nineteen clauses of Æthelberht's *Laws* had "parallels" with the early *Lex Salica*, albeit that in view of his declining to

⁴¹⁹ The Parker Chronicle, Corpus Christi College, Cambridge, MS. 173, s. a. 755. "But they replied that no relative was dearer to them than their lord, and that they would never follow his killer." Author's translation.

⁴²⁰ *Inter alia* Chadwick, *Studies on Anglo-Saxon Institutions*, p. 363, Stenton, *Anglo-Saxon England*, p. 208 and Dorothy Whitelock, *The Beginnings of English Society*, pp. 32 and 37-8.

⁴²¹ Of which the fountainhead is Stephen D. White, "Kingship and Lordship in Early Medieval England: The Story of Sigebert, Cynewulf and Cyneheard", *Viator* 20 (1989) pp.1-18; repr. in R. M. Liuzza (ed.), *Old English Literature* (New Haven and London: Yale University Press, 2002) pp. 157-81. See also Rolf Bremmer, "The Germanic Context of Cynewulf and Cyneheard Revisited", *Neophilologus* 81 (1997) pp. 445-65 and, for a recent interpretation in an Alfredian context, Francis Leneghan, "Royal Wisdom and the Alfredian Context of Cynewulf and Cyneheard", *Anglo-Saxon England* 39 (2010) pp. 71-104.

⁴²² Of these, the most detailed and widely-ranging is Lisi Oliver, *The Body Legal in Barbarian Law* (Toronto: Toronto University Press, 2010), a work of monograph length that examines not merely the means whereby victims of violence might obtain redress, but also the causes and consequences for daily life of the injuries inflicted; the methods, successes and failures of contemporary medical techniques; and the inter-relationship between victims, perpetrators and their respective families. It will be seen that Oliver's formidable forensic expertise extends beyond linguistic and philological analysis into matters of anatomy and early medicine.

⁴²³ *Early Germanic Kingship*, pp. 37-8.

elaborate in any more detail on what these parallels might be, one supposes that he had in mind general similarities of approach and subject matter, rather than specific details.

Adopting a more detailed approach, Patrick Wormald prepared⁴²⁴ a meticulous table of apparent correspondences between Æthelberht's *Laws* and a number of continental codes, placing particular emphasis on the *Leges Alamannorum*, the *Leges Baiuarorum* and the *Edictum* of King Rothari of the Lombards. Since Wormald, on this narrow point surely correctly, could not conceive that Æthelberht's *Laws* could have been a source for these later continental codes, he therefore inclined to the view that each of these codes might have been the product of early seventh-century Merovingian influence. This analysis was, however, the subject of cogent criticism from Nicholas Brooks,⁴²⁵ who saw this proliferation of law codes as no more than a logical consequence of a number of Germanic-speaking rulers who had recently come to power in sixth- and seventh-century Britain, Gaul, Italy and Spain and who shared a common heritage regarding the role of the feud, extending to their new subjects in their new kingdoms a pattern of compensation payments that had customarily been exacted within their indigenous communities since time immemorial.

Brooks also doubted⁴²⁶ whether Rothari's *Edictum* used Æthelberht's *Laws* – or indeed any other barbarian code – as a model. This is notwithstanding a number of strong correspondences pointed out by Giorgio Ausenda in his contribution to the discussion of Patrizia Lendinara's paper "The Kentish Laws" previously referred to in a number of other contexts. As noted by Ausenda, both the *Edictum* and the *Laws* begin with injuries to the head and move downwards, passing down the arm to the fingers, before then returning to the chest and progressively moving down to the toes. Notwithstanding a small number of divergencies in the list of types of bodily injury for which a tariff is prescribed, there nevertheless

⁴²⁴ Patrick Wormald, *The Making of English Law: King Alfred to the Twelfth Century* (Oxford: Blackwell, 1999), tables 2 and 3, and discussion at pp. 97-100.

⁴²⁵ "The Laws of King Æthelberht of Kent", p. 118.

⁴²⁶ *Ibid.*, p. 119.

exists a very considerable degree of similarity between the two lists, which Ausenda demonstrated in a detailed table annexed to the discussion of Lendinara's paper.⁴²⁷ Since, however, Rothari enacted his *Edictum* in 643, fully a generation and a half after the promulgation by Æthelberht of his *Laws*, there can plainly be no question of any borrowing by Kent from Pavia.

Since Rothari's preamble makes it clear that the *Edictum* was an attempt to consolidate and amend existing law, Brooks does formally consider the possibility that Augustine's missionaries could have been sufficiently familiar with unwritten Lombardic customary law that it might nevertheless have influenced them in the drafting of Æthelberht's *Laws*. Brooks cogently brings to mind, however, the generally difficult relations between Pope Gregory I and the Lombards in consequence of the significant military threat to Rome presented throughout his pontificate from the Lombardic lands to the north and south,⁴²⁸ and the fact that, very possibly precisely on that account, the pope had arranged that Augustine and his followers should commence their journey by sailing directly from Rome to Provence, thus avoiding travelling through the Lombard heartland in the Po valley. Indeed, as noted originally by Wallace-Hadrill,⁴²⁹ Augustine's party passed through Marseilles, Arles, Vienne, Autun, Tours and Paris, all cities admittedly associated historically with the teaching of law, but under Merovingian rather than Lombard control. Given this, the continental law code that the missionaries would have been most likely to have had in mind was, therefore, the *Lex Salica*, albeit that any extensive adoption of measures derived from this showcase of Merovingian domination would have been politically highly unpalatable to Æthelberht.

⁴²⁷ In John Hines (ed.), *The Anglo-Saxons from the Migration Period to the Eighth Century: An Ethnographic Perspective* (Woodbridge: Boydell and Brewer, 1997) pp. 211-30 and discussion at pp. 234-5.

⁴²⁸ As detailed by Robert A. Markus, *Gregory the Great and his World* (Cambridge: Cambridge University Press, 1997) pp. 97-107.

⁴²⁹ *Early Germanic Kingship*, p. 38.

One therefore concludes, with Brooks, that whilst the various continental law codes do “reflect widespread and ancient barbarian attitudes to violent personal injury and the comparable approaches of Germanic ruling groups at similar stages of ethnic formation and territorial establishment”,⁴³⁰ it is not possible to discern any overt borrowings from one to the other.

A further, and highly significant, point of difference between Æthelberht’s *Laws* and their continental counterparts is that the *Laws* – at least in the form in which they have survived today – are in the vernacular Old English rather than in Latin. Whilst it is true that some scholars have contended⁴³¹ that the *Laws* were derived from a Latin original (*Lendinara*), or have suggested more tentatively that in Æthelberht’s time the *Laws* existed only in oral form, and were not written down until sufficiently later (Dumville), there are, as has been pointed out, considerable difficulties with both these views, such that they have in consequence failed to gain real traction. It will be recalled that the weight of the linguistic analysis in section 3 is also supportive of the *Laws* being, essentially, a product of the period for which they claim.

Among the majority of scholars who do accept that the *Laws* as we have them today are, essentially, those as written down by Augustine’s missionaries, isolated details of manuscript transmission apart, a consensus has emerged that the use of vernacular Old English was a logical and necessary expedient. Whereas in the continental kingdoms Latin remained the language of government and administration, this was not so in Kent. It is therefore understandable that Æthelberht would have wished to reinforce the political dominance of his Jutish elite. The use of the vernacular would also no doubt, as a useful fringe benefit, have served gently to reinforce an image of independence from the Merovingian kingdoms.

Nicholas Brooks, however, sought to reinforce these arguments with other considerations. Drawing on the attempts of King Chilperic I (reg. 561-84) to

⁴³⁰ “The Laws of King Æthelberht of Kent”, p.120.

⁴³¹ As discussed at section 4.2.4, above.

introduce additional runic letters into alphabets taught in schools in Neustria,⁴³² the better to help children to read Frankish, and recounting the (admittedly on our current state of knowledge somewhat slender) evidence for literacy in the runic alphabet in pre-Christian England, he advanced the proposition that the possibility that the law recorded in the *Laws* may previously have been recorded and transmitted by pagan rune-masters should at least formally be considered. He noted that if the *Laws* were indeed a transliteration of this sort, the survivals of apparent pre-Christian practices such as the provisions of clause 31 relating to adultery⁴³³ or, in the guise of the protection afforded to Christian clergy, corresponding protections afforded to a pre-Christian priesthood⁴³⁴ could much more readily be understood. On the basis of the existing corpus of surviving runic inscriptions, insufficiency of evidence prevents this possibility from being pressed harder. Brooks himself expressed the hope⁴³⁵ that our knowledge might yet be transformed by the recovery of further such material.

⁴³² Gregory of Tours, *Historiae Francorum*, in Wilhelm Arndt and Bruno Krusch (edd.) *MGH, Scriptores rerum Merovingicarum*, Vol. I (Hanover, 1885), V. 44. Trans. Lewis Thorpe, *Gregory of Tours, The History of the Franks* (Harmondsworth: Penguin, 1974).

⁴³³ Section 4.5, above.

⁴³⁴ Section 4.2.4, above, a conclusion with which, albeit arrived at by a slightly different reasoning, Brooks expressed himself to be in agreement: “The Laws of King Æthelberht of Kent”, p. 115 n. 23.

⁴³⁵ “The Laws of King Æthelberht of Kent”, p. 111.

6. Protection of the legally vulnerable

The examination in chapter 4 of the detailed provisions of the *Laws* revealed an intensely hierarchical view of society, in which some lives valued much more than others. An important distinction falls to be drawn between the classes of people in respect of whom compensation for death or personal injury is payable on the one hand to their kin, and on the other to their employers or owners. Similar, but distinct, issues also arise in respect of women, who lived in a society that was not only highly stratified, but in which political and economic power was exercised overwhelmingly by men. Accordingly, although the *Laws* do provide a series of penalties for offences against those of semi-servile and servile status, and against women, it falls to be considered how effective those provisions might have been as a deterrent to anti-social conduct. Finally, although the *Laws* contain few provisions directly concerning children, and those that do appear generally arise in the context of their mothers, the position of children is also considered briefly.

In addressing such issues in the specific context of Æthelberht's Kent, it is dangerous to apply such evidence as the laws and charters of later Anglo-Saxon England as direct evidence for earlier times. In a memorable paragraph,⁴³⁶ Sir Frank Stenton expressed the view that the Kentish *ceorl* "stands apart from all other English peasants of whom anything definite is known" by virtue of the exceptional detail of the written sources, and considered that the general history of English rural society should be begun with the *ceorl* of early West Saxon law attested in the law codes of Ine and Alfred, considered briefly in chapter 8 below. Æthelberht's Kent he preferred to regard as something of a special case.

Documentary sources and archaeological evidence coincide in dating increasing social differentiation and political centralisation from the late sixth century

⁴³⁶ Sir Frank Stenton, "The Thriving of the Anglo-Saxon Ceorl", in D. M. Stenton (ed.), *Preparatory to Anglo-Saxon England* (Oxford University Press, 1970) pp. 383-93 at p. 384.

onwards.⁴³⁷ This development would have appeared relatively early and very strongly during the reigns of Eormenric and Æthelberht in consequence of the highly lucrative cross-Channel trade with Merovingian Gaul. For earlier periods, the archaeological record suggests a largely flat social structure, with little evidence for the production of surpluses capable of supporting a political elite. This is consistent with what might be expected in the first generations of the migration period: small, essentially local, farming communities lacking the mechanical technology of the Roman period, occupying areas that had in all likelihood experienced a rapid depopulation at the end of the Roman period (section 1.1 above).

Evidence can be put forward that agricultural yields did improve during the first centuries of Anglo-Saxon England. Thus, Richard Hodges⁴³⁸ has compared food-rents levied under the laws of King Ine of Wessex (reg. 690-726) with production estimates for Roman villas in the locality, a comparison from which the Wessex *ceorl* emerges favourably. Very recently, a compelling case has been made by Mark McKerracher for a major improvement in agricultural yields generally during the eighth century.⁴³⁹ Even so, it is unlikely that such improvements would have played more than a marginal part in explaining the emergence of elites enjoying the riches evidenced by the princely burials at Sutton Hoo and at Prittlewell, and by the Staffordshire Hoard. Wealth on this vast scale is much more likely to be explained by the emergence of a politically dominant class that had won power by warfare, thus making itself able not only to extract agricultural surpluses from its own subject peasantry of the sort that would

⁴³⁷ Christopher Scull, “Social Transactions, Gift Exchange, and Power in the Archaeology of the fifth to seventh centuries”, in Helena Hamerow, David A. Hinton and Sally Crawford (edd.), *The Oxford Handbook of Anglo-Saxon Archaeology* (Oxford University Press, 2011), ch. 44, pp. 848-64.

⁴³⁸ Richard Hodges, *Dark Age Economics: The origins of towns and trade AD 600-1000*, 2nd ed. (London: Duckworth, 1989) pp. 136-8.

⁴³⁹ Mark McKerracher, *Farming Transformed in Anglo-Saxon England*, (Oxford: Windgather Press, 2018), *passim*.

almost certainly underlie clause 17 considered in section 4.3 above, but also, and potentially more lucratively, to levy tolls on trade.⁴⁴⁰

It has been seen that such protection as is afforded by the *Laws* to those of semi-servile and servile status is effected by way of tariffs payable to their employers or masters. As under Roman law, slaves were chattels that could be bought and sold.⁴⁴¹ It therefore seems that the purpose of the relevant provisions in the *Laws* is more to protect slave owners from damage to their property by third parties, than to protect slaves from abuse at the hands of their masters. Accordingly, the risk of such abuse at the hands of their employers or masters must no doubt have been very real.

Since Anglo-Saxon England was predominantly an agrarian society, slaves were largely occupied as farm labourers, engaged in physically demanding roles such as ploughmen. No doubt in many cases restraint or self-interest prompted masters to treat their slaves well, and as in the Roman world in the poorer households where distinction between the social classes was less, any difference in lot as between the semi-servile and the servile may have been marginal. Later law codes, however, routinely prescribed whipping as a punishment, and at least in early Anglo-Saxon England, masters could kill their slaves without legal penalty.⁴⁴²

Female slaves carried out the menial tasks of the household. Clause 16 of the *Laws*, considered in section 4.3 above, indicates that the physically arduous duty of corn-grinding was considered a role of middling status, suggesting that other roles were still more demanding or unpleasant. Other tasks suggested by legal

⁴⁴⁰ See on this the discussion of Helena Hamerow, “The earliest Anglo-Saxon kingdoms”, in Paul Fouracre (ed.), *The New Cambridge Medieval History* (Cambridge: Cambridge University Press, 2005) pp. 263-88, *passim*.

⁴⁴¹ Or, in the later period, as amply evidenced by surviving wills, transmitted by legacy on death: Dorothy Whitelock (ed. and trans.) *Anglo-Saxon Wills* (Cambridge University Press, 1930), *passim*.

⁴⁴² Dorothy Whitelock, *The Beginnings of English Society*, *The Pelican History of England* 2 (Harmondsworth, 1952) p. 109.

and testamentary texts include acting as serving maids, wet-nurses, weaving and cheese-making.

The weight of provisions contained in the *Laws* dealing with acts of sexual aggression against women in general, and against female slaves in particular, suggests that female slaves were the subject of sexual as well as physical abuse at the hands of their masters. Although not direct evidence for the pre-Christian era, a provision contained in the law code of King Alfred (reg. 871-99) shows that the problem had persisted into an age when abstinence from sexual intercourse outside of marriage was being preached strongly. Chapter 25 of Alfred's laws deals with the rape of the slave of a commoner, and provides for the payment of a five-shilling tariff to the commoner, and a sixty shilling fine. If the rape is committed by a slave, castration is the penalty. Frequent and well-motivated as such legislation may have been, however, its impact must have been doubtful in the absence of a mechanism for effective enforcement.

Exceptionally, and still more disturbingly to modern sentiment, the archaeological record does disclose a number of richly-furnished burials accompanied by satellite graves containing corpses that are either in unnatural postures consistent with having been bound at the time of burial,⁴⁴³ or that were obviously the victims of violence.⁴⁴⁴ Other explanations of the finds are certainly possible, particularly for the burials at Sutton Hoo, and the better view almost certainly is that these are indeed judicial execution burials of a well-known type. In contrast to ninth- and tenth-century instances associated with Viking activity, evidence for human sacrifice in the earliest post-Roman centuries is now regarded as insubstantial. Even so, a minority of scholars do persist in advancing

⁴⁴³ As at Cuddesdon, supposed to be a "princely" burial from Wessex, but originally and poorly excavated in the nineteenth century: see Tania M. Dickenson, *Cuddesdon and Dorchester-on-Thames*, British Archaeological Reports 1, 1974, pp. 23-4

⁴⁴⁴ As surround Mond 5 at Sutton Hoo: see Hilda Ellis Davidson, "Human Sacrifice in the Late Pagan Period in North-Western Europe" and Martin Carver, "The Anglo-Saxon Cemetery at Sutton Hoo: An Interim Report", both in Martin Carver (ed.), *The Age of Sutton Hoo* (Woodbridge: Boydell, 1992), pp. 331-42 and 343-72 respectively.

the possibility that slaves may have been sacrificed, or at Cuddesdon perhaps even buried alive, to serve their dead master or mistress in the afterlife.

As was discussed in the previous chapter, the fact that the Continental law codes concern themselves to a very great extent with the same subject-matter as the Laws suggest that the position of the semi-servile and servile classes in early Anglo-Saxon England was typical of that pertaining in most of the former provinces of the Western Roman Empire. Certainly, where Christianity was well-established, human sacrifice was no longer tolerated. The teachings of Christianity concerning the indissoluble union of marriage based upon sexual continence outside of it might also have improved the lot of female slaves at the margin, albeit that it would be naïve to press this point too far. What is known is that in the still-pagan Germanic heartlands on the Continent, human sacrifice persisted at least until the eighth century. A letter survives from Pope Gregory dated to 732⁴⁴⁵ replying to a query from Boniface as to what action should be taken in respect of Christians in Germany and Frisia who continued to sell slaves to the heathen for use as sacrifices. Although Gregory was disapproving, his response that penance should be the same as for culpable homicide does not suggest any particular outrage. In contrast, Augustine's anxieties over the appropriate penalties for thefts from a church (section 4.2 above) seem of a less pressing order of magnitude.

Whereas the position of women in Æthelberht's Kent was one of political and economic subordination and relative physical vulnerability, any legal vulnerability emerges rather less strongly. Clauses 72 and, on Hough's interpretation, clause 73 show women to be personally accountable under the law, and in respect of the later Anglo-Saxon period this is confirmed by evidence from charters concerning forfeitures.⁴⁴⁶ In the context of marriage, provisions relating to the *morgengyfe* show that it was possible for a woman to own and

⁴⁴⁵ Discussed by C. H. Talbot, *The Anglo-Saxon Missionaries in Germany* (London, 1954) p. 86

⁴⁴⁶ Thus, S 1457 from the late tenth century reveals the widow Brihtwaru to have suffered forfeiture as an accessory after the fact to theft, and S 916 from the early eleventh century, in the case of one Æthelflæd who assisted her outlawed brother.

retain property independently of her husband, and in the case of the aristocracy, such property could be substantial.⁴⁴⁷ Clause 74 shows that women, like men, could receive compensation for offences against people under their protection, and chapter 11 of the law code of King Alfred specifies that in respect of a sexual assault upon a woman of *ceorl* rank or above, compensation was payable to the woman herself, and not to her male guardian. Æthelberht's *Laws* are largely silent as to matters of evidence and procedure, but later provisions from the law codes of Ine⁴⁴⁸ and Alfred⁴⁴⁹ show that, at least by the middle Anglo-Saxon period, women were oath-worthy, that is to say able to defend themselves on oath against false accusations.

Against these considerations, however, it has been seen that the provisions of clause 31 (concerning adultery) and clause 77 (concerning marriage by capture) seem to reinforce rather than ameliorate the vulnerability of women. It would seem inevitable in such cases that women who lacked male relatives willing and able to intervene effectively upon her behalf would have been at risk of being treated hardly.

The equivalent legal position of women on the Continent is still relatively understudied, with the fullest treatment having been afforded by the relatively recent monograph of Antti Arjava.⁴⁵⁰ Arjava makes a number of general points that bear on this matter. Firstly, from the late third century onwards, the administration of the Roman Empire was usually divided into two or more parts, and over time legal development took different courses in the east and west. The

⁴⁴⁷ Instances are more readily forthcoming from later centuries in respect of which documentary evidence is more plentiful, but not so far removed from Æthelberht's time Sir Frank Stenton deduces on the strength of ch. 63 of the *Historia Brittonum* Bamburgh as having been received by the Northumbrian queen Bebbe as her "morning gift" during the seventh century: "The Historical Bearing of Place-Name Studies: The Place of Women in Anglo-Saxon Society", repr. in Doris M. Stenton, *Preparatory to Anglo-Saxon England* (Oxford University Press, 1970) pp. 314-34 at p. 317.

⁴⁴⁸ Ch. 57.

⁴⁴⁹ Ch. 11.

⁴⁵⁰ Antti Arjava, *Women and Law in Late Antiquity* (Oxford: Clarendon, 1996)

eastern legislation of Justinian in the sixth century contains much valuable historic information, but is not a secure foundation on which to base conclusions as to conditions in the former western Empire, for which sources only become comparatively abundant in the Carolingian era. Arjana therefore candidly doubts⁴⁵¹ whether a comprehensive comparative legal history of women during the Dark Ages can be written.

Secondly, Arjava explains that in the provinces of the former Western Roman Empire, save in the Frankish heartland of north-western Gaul, nowhere did the ruling German elites comprise more than a tiny force of the population. Thus, whether in Visigothic Spain, Frankish (Merovingian) Gaul or Italy, the greater part of the indigenous rural population continued to live much as they had done for generations, albeit paying their taxes to new masters. As such, they retained considerable cultural and legal autonomy. This is in contrast to the position in Æthelberht's Kent, where the proportion of the population of ethnic Germanic descent was likely to have been higher, and certainly not negligible, and the extent of the cultural domination exerted by it significantly greater. It is, therefore, on Arjava's view misleading to speak generally of the legal position of women in Continental Europe in Æthelberht's time, because there were in effect two separate sections of society following different legal traditions in a way that was not the case in Kent. For Continental Europe, the bulk of the evidence is confined to the Germanic elite. Yet in Spain, Roman law remained in force until the mid-seventh century, when the *Lex Visigothorum* became applicable to both population groups.⁴⁵² Italy was a confused mish-mash: in areas under the control of the Byzantines, Byzantine law applied. Around Rome, papal law prevailed. Elsewhere, however, people of Roman descent may well have preserved Roman legal traditions until even the eighth century.⁴⁵³ At the turn of the seventh century, contemporary with Æthelberht's *Laws*, King Clothair confirmed that

⁴⁵¹ *Ibid.*, p. 3.

⁴⁵² Karl Zeumer, "Gesichte der westgotischen Gesetzgebung i-iv", in *Neues Archiv der Gesellschaft fuer Aeltere deutsche Geschichtskunde* 23 (1898) pp. 419-516 at pp. 477-86.

⁴⁵³ Paolo Frezza, "L'influsso del diritto romano giustiniano nelle formule e nelle prassi in Italia", in *Ius Romanum Medii Aevi* I 2 c ee (Milan, 1974).

persons of Roman descent living in Gaul were to continue to use their old law in dealings amongst themselves.⁴⁵⁴ On this basis, therefore, the position is indeed too complicated to admit of a systematic general comparative study.

In conclusion, life at the bottom end of the social scale in a predominantly subsistence agricultural economy with little central authority is inevitably likely to be harsh, and often capricious, according to the whims of one's employers or masters. In this, early Anglo-Saxon England was no exception. In such a society, appealing to the self-interest of the employer or master by being a productive member of the household was likely to be a better safeguard than reliance upon the law. Anglo-Saxon England no doubt had its fair share of aggressive and brutal men, at whose hands women, particularly those at the lower end of the social scale, were likely to have suffered against the backdrop of a legal system that, though not by any means indifferent to their plight, lacked mechanism for enforcement outside of the victim's kin-group.

As was explained in section 1.5, such evidence as can be gleaned from the remains of children found in Anglo-Saxon cemeteries reveals surprisingly little evidence of disease, malnutrition or trauma, suggesting that, on the whole, children may have been treated as well as the material circumstances of their parents may have allowed. Documentary sources tend to reinforce the impression that Anglo-Saxon parents cared for their children. The poem *The Fortunes of Men* from the Exeter Book⁴⁵⁵ evokes an image of doting parents giving their children every care and attention, whilst the Harley Psalter⁴⁵⁶ depicts mothers cuddling infants and holding the hands of older children. Even so, it is likely that the physical chastisement of children was commonplace. Pope Gregory's *Responsiones* to St. Augustine, recommending that theft from a church be punished by the flogging of the offender, will be recalled from section 4.2.4 above. Gregory urges that the flogging be administered to the thief "in love and not in anger, as good fathers do with their children." There is no reason to

⁴⁵⁴ *Praec. Chloth.* 4 (MGH, Capit. I) p. 19.

⁴⁵⁵ Exeter, Cathedral 3501, fols. 8-130 at 87a-88b.

⁴⁵⁶ London, BL, Harley 603

suppose that such a sentiment was more representative of parental practice in Anglo-Saxon England than in any other place or age of the world.

Fosterage seems to have been commonplace in Anglo-Saxon England, reflecting not perhaps parental indifference to their children, but a practical response to the high mortality rates prevalent at the time. In a society where status and safety were determined principally by the size and power of the kin group to which an individual belonged, fosterage was a logical course of action for a parent who might have suspected that there was a real possibility that they might not live sufficiently long to see their children able to survive on their own, and who accordingly sought to widen the circle of individuals who might be able to afford protection to their children.

The few references to children contained in Æthelberht's *Laws* appear in clause 76, making provision for the proper distribution of the goods of the household on family breakdown. Rather more revealing is clause 4 of the laws of Hloþhere and Eadric.⁴⁵⁷ This provides that on the death of a freeman leaving a surviving wife and child, the child should remain under the protection of the mother, whilst a member of the father's kin should be found to stand surety for the child's property until the child reaches the age of ten, apparently the legal age of inheritance. The Kentish laws do not deal with these points expressly, but it seems that the age of ten to twelve was also the age of legal responsibility,⁴⁵⁸ coinciding with the burial practice noted in section 1.5 whereby the proportion of grave-goods appearing in burials increases for both sexes from these ages.

A later provision, however, VI Athelstan chapter 12, apparently reflecting discussions between Athelstan and his counsellors – *þam þe he hit wiðrædde* –

⁴⁵⁷ For a detailed discussion of this specific provision, see Oliver, *Beginnings*, p. 112. For a discussion of the law code as a whole, see section 8.3 below.

⁴⁵⁸ Thus, chapter 7 of the laws of Ine (reg. 688-726) provide that a child of ten can be an accessory to theft, whilst an admittedly much later law of Athelstan (reg. 927-39), II Athelstan chapter 1, expressly confirms that a child of twelve should not escape a capital sentence if caught red-handed in the theft of an item valued at more than eightpence.

decreed that a person under the age of fifteen should not be executed, so long as he did not defend himself, or try to escape and refuse to give himself up, expressly on the basis that the king thought it cruel to put to death such young people and for such slight offences: *him to hreowlic þuhte, þæt manowe geongne man swealde oððe eft for swa lytlan*. The same provision commuted the death sentence to a term of imprisonment.

No doubt also betrothals and in some instances marriages took place at these ages in situations where the financial standing of at least one of the parties made such a marriage economically viable, but too much should not be made of this. For the majority, marriage would have been deferred until such time as the parties were able to provide a living for the household, in practice until such time as the husband had physically matured sufficiently as to perform manual agricultural labour and the wife was capable of performing her share of arduous household tasks.

To modern sentiment these ages seem, of course, shockingly young, although it is instructive to reflect upon how such legal practices persisted until the early modern era, and indeed in some instances endured even into the last century. Thus, the Black Act of 1723 prescribed the death penalty for no less than fifty offences for various acts of theft and poaching, it was only in 1832 that the death penalty was abolished for theft. Further, although in practice in cases involving juveniles the commutation of capital sentences was widespread, the execution of juveniles under the age of 16 was not finally banned in England until the Children Act 1908.

7. Notions of kingship and royal authority

No form of government other than kingship is recorded for any of the states in Anglo-Saxon England. Bede's accounts of Æthelberht's *Laws* being passed *cum conilio sapientum*⁴⁵⁹ and of King Edwin meeting with his council⁴⁶⁰ to discuss the merits of the new, Christian, faith preached by the missionary Paulinus, together with the prologues to the laws of Hlophere and Eadric and of Wihtræd⁴⁶¹ provided fertile ground for nineteenth century constitutional historians looking for early evidence of the Witan(agemot), an institutionalised assembly, or even, on a maximal view prevalent in this period, a "parliament", of the later Anglo-Saxon period.⁴⁶² Such thinking was, however, swept away by Chadwick⁴⁶³ in the 1920s, and has not been revived subsequently. There is no good evidence for a national witan separate from the royal court, or for any legislative authority of the shire or for any other form of local self-government, and the emergence of the hundred as a unit of government cannot be securely dated to earlier than the tenth century, even if some local arrangements may have existed earlier.⁴⁶⁴

The materials from which deductions might be drawn about the nature of the office of kingship prior to Æthelberht's reign are scarce. Few sources contemporary with Æthelberht give any indication of what the functions of a king were considered to be. An Old English gnomic poem, probably late-ninth or

⁴⁵⁹ Section 4.2.2 above.

⁴⁶⁰ *H. E.* ii. 13.

⁴⁶¹ For the prologues, see 4.2.2 above. For summaries of the principal features of the two codes, see chapter 8, below.

⁴⁶² For a typical example of this strand of scholarship, see Edward Augustus Freeman, *The Norman Conquest* (Oxford, 1897), i., pp. 98-115. Such thinking was even engaged in by Liebermann: see *The National Assembly*, pp. 2-3.

⁴⁶³ Hector Munro Chadwick, *The Origin of the English Nation* (Cambridge, 1924) pp. 144-6.

⁴⁶⁴ Henry Royston Loyn, "The Hundred in England in the Tenth and Early Eleventh Centuries", in Harry Hearder and Henry Roston Loyd (edd.), *British Government and Administration: Studies presented to S. B. Chrimes* (Cardiff, 1974), pp. 1-15.

early-tenth century in the form in which we have it, but no less probably derived from earlier material, asserts that:

Cyning sceal rice healdon...⁴⁶⁵

Faced with this relative lack of contemporary material, and given that their narrative was often quite well-served by a cloak of apparent antiquity, it was natural for early commentators to draw on the observations of the Roman historian Tacitus, writing in the early second century AD about the Germanic tribes encountered by the Roman Empire across the Rhine/Danube frontier. Two extracts in particular are widely quoted:

Ch. 7: Reges ex nobilitate, duces ex vitute sumunt. Nec regibus infinita aut libera potestas, et duces exemplo potius quam imperio, si prompti, si conspiciui, si ante aciem agant, admiratione praesunt.

Ch. 11: De minoribus rebus principes consultant, de maioribus omnes, ita tamen ut ea quoque, quorum penes plebem arbitrius est, apud principes praetractentur.⁴⁶⁶

In this, Tacitus is surely drawing at least in part on Roman models in his casting of the institution of kingship, a consideration to which academic scholarship has

⁴⁶⁵ "The king must rule over a realm." Maxims II l. 1a, London, British Library, Cotton Tiberius B I fol. 115a-115b, trans. Sidney A. J. Bradley, *Anglo-Saxon Poetry* (London: Everyman/J. M. Dent, 1982), p. 513.

⁴⁶⁶ "Ch. 7: They choose their kings for their noble birth, their commanders for their valour. The power even of their kings is not absolute or arbitrary. The commanders rely on example rather than on the authority of their rank – on the admiration they win by showing conspicuous energy and courage and by pressing forward in front of their own troops. Ch. 11: On matters of minor importance only the chiefs debate; on major affairs, the whole community. But even where the commons have the decision, the subject is considered in advance by the chiefs." Henry Furneaux (ed.), Cornelius Tacitus, *Opera Minora* (Oxford: Clarendon, 1899), *Germania*, chs. 7 and 11, trans. Henry Mattingley, *Tacitus: The Agricola and the Germania* (Harmondsworth: Penguin, 1948) pp. 107 and 110.

probably paid insufficient regard. Acknowledging that much of the commentary overlooks, or at least down-plays this issue, two different strands have therefore been deduced as running through Germanic kingship: on the one hand, the traditional leadership of rulers who exercised various political and religious functions, and on the other military leadership. It was argued by Jan de Vries that these two aspects of kingship were rooted in two different gods: Tiwaz, or Tyr, and Woden. The political and religious functions conducted by the *reges* of the Tacitus quotation, reflecting what has been termed the “sacral” aspects of kingship, were argued to be centred upon Tyr, the god of law and order, whilst the *duces* performed the regnal role of war-leader, centred upon the cult of Woden.

De Vries also conducted a philological examination of the different words for “king”, or “kingdom”. An older root can be identified throughout the Indo-European language region, thus *rex* (Lat.), *ri* (Ir.), *raja* (Skt.), *reiks* (Goth.) and *rice* (OE). Within the Germanic branch of Indo-European, and thus presumably of later derivation, there began to emerge a wide range of terms of broadly similar meaning centred upon a people, thus *cyning* (OE), literally, “son of the cyn, or family”. Cognates are *kundins* (Goth.), *hendinus* (Burg.), *cuning* (OG) and *konungr* (ON). Of similar derivation are *ðeoden* (OE), “leader of the people”, *ðengel* (OE), “leader of the assembly”, cognate with *þengill* (ON), and *æðeling* (OE), “son of the native land”, hence “prince”.⁴⁶⁷ It has long been observed that in Anglo-Saxon England kingship was over peoples, not of territories,⁴⁶⁸ and it is instructive to see a philological basis for this.

⁴⁶⁷ Readers of *The Lord of the Rings* will of course recognise here the well from which J. R. R. Tolkien drew his names for the fictional King Theoden and his ancestors, the kings of Rohan.

⁴⁶⁸ Thus, to describe Æthelberht as king “of Kent” is a modern construction. A contemporary would have conceived of him as king of the *Cantwara*, the “people of the Kent-dwellers.” For this usage, see the prologues to the laws of Hloþhere and Eadric and of Wihtræd in section 4.2.2, above.

A creditable attempt to synthesise these different strands of scholarship was made by William Chaney.⁴⁶⁹ His response to the dearth of strictly contemporaneous written sources was to draw upon analogous Scandinavian material, archaeology, and comparative religion and folklore. On the whole, Chaney treated his material with sympathy and considerable scholarship, and the work can certainly be read to advantage. Of particular value is his handling of Continental material, which in comparison to Scandinavian sources have tended to receive rather less attention.⁴⁷⁰ Back in the 1970s, however, the value of interdisciplinary study of the Anglo-Saxon period was less well-appreciated than now, with the consequence that Chaney's handling of such diverse material was treated with some suspicion by contemporary scholars.⁴⁷¹

Better-grounded objections can, however, be taken to the use of Tacitus as a starting-point for a discussion of the nature of Anglo-Saxon kingship. Not the least of these is that it was not necessarily any part of Tacitus' purpose in writing as he did to be a model of anthropological exactitude. As noted by Wallace-Hadrill,⁴⁷² Tacitus' principal purpose was to demonstrate that the political troubles faced by Rome in his own time were the consequences of moral decline, by attributing what he saw as lost Roman virtues to the barbaric Germans. These were principally the virtues of the family, and in particular chastity. To this end, it did not serve Tacitus' purpose to idealise the Germans, or their other habits. Thus, Tacitus had occasion by turns to reprove the Germans for their idleness (ch. 15), excessive drinking (ch. 23) and gambling (ch. 24). It follows, therefore, that his observations concerning their political organisation similarly need to be treated with caution.

⁴⁶⁹ William A. Chaney, *The Cult of Kingship in Anglo-Saxon England* (Manchester: Manchester University Press, 1970), *passim*.

⁴⁷⁰ Though he is rather more guarded about the potential benefits of comparative study, a similar point was made a generation ago by Eric John, *Reassessing Anglo-Saxon England* (Manchester: Manchester University Press, 1996) p. 22.

⁴⁷¹ See, for example, the gratuitously poisonous review of Cicely Clark, *English Studies* 55 number 5 (October 1974), pp. 463-4.

⁴⁷² *Germanic Kingship*, pp. 2-3.

Moreover, even if Tacitus' observations were an accurate depiction of the Germans in his own time, one should be wary of using these as evidence of conditions in Æthelberht's Kent half a millennium later. One illustration, for example, of where the model of Germanic kingship drawn from Tacitus is clearly at odds with sixth-century Anglo-Saxon England concerns the religious aspects of kingship. There is no suggestion that either the pagan priest described in the *Vita Sancti Wilfridi*⁴⁷³ or the pagan high-priest Coifi in Bede's account of the conversion of King Edwin⁴⁷⁴ are members of the royal dynasty.

As previously explained in section 1.2, two principal processes have been postulated for the formation of the early Anglo-Saxon kingdoms. The first involves the takeover by an alien group of political authority over an existing territory in the early post-Roman period, as epitomised both by the Kentish origin myth and the evidence for a subsequent annexation of west Kent. One does not, of course, have to accept word for word the accounts of Hengist and Horsa given by Gildas and Bede to admit the possibility that a war-leader possessing the personal characteristics attributed to Hengist by the canon of Old English heroic poetry might well have been a very plausible candidate to have secured political mastery of the kingdom of Kent at a single stroke. Such a figure could indeed be conceived in the traditions of the *dux* described by Tacitus. Helena Hamerow proposes⁴⁷⁵ a similar possibility for the kingdoms of Bernicia, Deira and Lindsey, where the evidence is even more scanty than that for Kent. Of these three, Lindsey, centred upon Lincoln, former Roman *Lindum*, but bordered by the North Sea, the Humber estuary and (in Anglo-Saxon times) the fens and marshes of the rivers Trent and Witham shares most closely with Kent the characteristic of having its boundaries closely defined by geography, and on this score at least might perhaps be thought the most likely of the three candidates.

The alternative, more gradual, process for the formation of early Anglo-Saxon kingdoms postulates a steady coalescence over successive generations of

⁴⁷³ Section 1.5 above.

⁴⁷⁴ *H. E.* ii. 13.

⁴⁷⁵ "The earliest English kingdoms", p. 286.

adjacent settlements, in consequence of which an increasingly hierarchical leadership emerges from small settlements initially organised upon a clannish or tribal basis. Such a process would be entirely consistent with the evidence related in section 1.1 above for the apparent continuity of occupation of the rural areas of Kent (albeit not, of course, the towns) between the late Roman and early Anglo-Saxon periods, particularly if one accepts the broad thrust of the evidence for a significant depopulation following the end of Roman rule, that might have left plenty of room for occupation by settlers of Germanic descent without any need for an accompanying political regime change. On this model, it is hard to see any use at all for the description of Germanic kingship put forward by Tacitus.

Instead, it is more profitable to examine the nature of Æthelberht's royal authority, and the ways in which he exercised, and maintained, it. To this end it is useful to draw upon the methodology of the German economist and sociologist Max Weber, writing in the Wilhelmine and early Weimar periods. In his seminal essay *Die drei reinen Typen der legitimen Herrschaft*⁴⁷⁶, Weber proposed a tripartite classification of authority that has come to be accepted as a useful basis for modern sociological analysis. Weber did not write on Anglo-Saxon England, but he did write extensively⁴⁷⁷ on the great civilisations of antiquity in a way that showed great knowledge of, and sympathy for, his subject matter. It is true that modern commentators have generally been scrupulous to place Weber's classification firmly within the context of the world view of an elite academic

⁴⁷⁶ Max Weber, "Die drei reinen Typen der legitimen Herrschaft" in *Preussische Jahrbuecher* 187 (1922) pp. 1-2, trans. Hans Gerth, "The Three Types of Legitimate Rule" in *Berkeley Publication in Society and Institutions* 4 (1) (1958) pp. 1-11.

⁴⁷⁷ See, for example, the monumental study Max Weber, "Agrarverhaeltnisse in Altertum" in *Handwoerterbuch der Staatswissenschaften* (3rd ed., 1909) vol. 1, pp. 52-108, repr. Max Weber, *Gesammelte Aufsätze zur Sozial- und Wirtschaftsgeschichte* (Tuebingen, 1924) pp. 1-268; trans. R.I. Frank, *The Agrarian Sociology of Ancient Civilisations* (Verso, London/New York, 1988).

writing in Imperial Germany in the late nineteenth and early twentieth centuries. Nevertheless, his classification remains of value as an analytical tool.⁴⁷⁸

Herrschaft is a difficult word to translate. The most literal translation is perhaps “lordship”, although the precise meanings and the senses in which the English and German words are used have diverged. Gerth’s Berkeley translation, one of the first to make Weber’s writings accessible to readers of English, used “rule”, whereas other translators have used “authority”, “dominion” (perhaps an echo of *dominium*, a term used with a very precise meaning in Roman Law) and “domination”. Weber himself defined *Herrschaft* relatively narrowly as the probability that certain specific commands will be obeyed by a given group of persons:

...die Chance, Gehorsam fuer einen bestimmten Befehl zu finden.

Inherently, this definition does not, therefore, seek to include every mode whereby power or influence is exercised, and specifically Weber excluded from his analysis economic methods of compulsion, such as that exercised by a monopolistic supplier, or by organised labour. Weber identified three bases on which authority can be legitimated.

Traditional authority is based upon a system in which authority is legitimate because it has always existed, in which obedience is a matter of personal loyalty. Typically, persons acquire power through inheritance, and delegate it either to personal retainers (in a patrimonial regime) or to personal loyal allies such as vassals or hereditary lords (in a feudal regime). Such persons to whom powers are delegated exercise these powers on an identical basis to their ruler, albeit circumscribed, and are often themselves selected based upon inheritance.

⁴⁷⁸ One instance of Weber’s classification being used in precisely this way is Robert David Sark, *Human territoriality: Its theory and history*, Cambridge Studies in Historical Geography 7 (Cambridge: Cambridge University Press, 1986) pp. 43-7.

Accordingly, self-identification of an individual by reference to his lineage and the lord whom he follows is pervasive in Old English literature. One example among many is the response given by Beowulf to a challenge to say who he is:

We synt gum-cynnes Geata leode
ond Higelaces heorðgeneatas;
Wæs min fæder folcum gecyþed
æþele ord-fruma Ecgþeow haten⁴⁷⁹

Charismatic authority is based on the personal charisma of the leader, who manifests his fitness to lead by virtue of such qualities as heroism in battle, the exercise of magical powers, or the gift of prophecy, independently of tradition or legal rules. Subordinates are drawn from those who have displayed personal devotion to the rules, and from those who possess their own charisma.

The rich legacy of Old English heroic poetry also provides examples of individuals exercising charismatic authority. Thus, in the Finnsburg Fragment, one of the leaders of the defence of a royal hall against a surprise attack is Sigeferth. When challenged by an attacker to identify himself, he does so in contrast to Beowulf in the example above not by reference to his ancestry, but to his own prowess in battle:

“Sigiferþ is min nama”, cweþ he, “ic eom Secgena leod,
wreccea wide cuþ; fæla ic weanu gebad,
headra hilda.....”⁴⁸⁰

⁴⁷⁹ Beowulf, ll. 260-3. “We are sprung of a strain of the Geatish people, Hygelac’s hearth-companions. My father was famous among the folk, a noble chieftain, Ecgtheow was his name!” Trans. William Chaney, *The Cult of Kingship in Anglo-Saxon England* (Manchester UP, 1970) p. 18.

⁴⁸⁰ “My name is Sigeferth”, said he, “I am a prince of the Secgen, a well-known adventurer; many old woes and bitter battles have I experienced....” Alan Bliss (ed.), J.R. R. Tolkien (trans.), *Finn and Hengest: The Fragment and the Episode* (paperback, Harper Collins, London, 1988), pp. 146/7.

Legal authority is characterised by a belief in the legality of normative rules, applied with due process and in accordance with known principles. Subordinates exercising authority are similarly appointed by due process.

Weber's analysis has generally been accepted as providing an interesting insight into how different forms of power are exercised. It has, however, been criticised on a number of grounds,⁴⁸¹ and in particular for a top-down vision that gives great emphasis to the methods by which rules may shape their societies, but that gives hardly any consideration at all to the methods whereby the ruler's subjects are able to challenge ways in which the ruler's powers are exercised. Denigrators of Weber see in this a complacent self-interest: as an elite bourgeois academic enjoying a privileged position within his own society, a society which moreover was itself prior to World War I actively seeking to make up lost ground in securing for itself a colonial empire in a process of which Weber wholeheartedly approved, it may well not have suited him to consider the possibility that a subordinate class might ever have acted decisively against its rulers.

This deficiency is, however, in part made good by a rare instance of Weber's tripartite classification being utilised by a leading historian of Anglo-Saxon England, precisely in the context of a study of how kings were removed from office. David Rollason⁴⁸² sought to examine with particular reference to eighth-century Northumbria the role of assemblies in not only appointing, but also deposing, kings.⁴⁸³ Whereas in some cases kings were simply murdered or deposed by conspiracies, in some cases the workings of an assembly can be seen, lending weight to the view that, on Weber's classification, royal authority in eighth-century Northumbria was based in part on legal authority. Rollason

⁴⁸¹ Summarised *inter alia* in Kieran Allen, *Max Weber: A Critical Introduction* (Photo Press, London/Ann Arbor, 2004) ch. 7.

⁴⁸² "Tonsure, murder and exile: Kings, dynasties and assemblies in eighth-century Northumbria", unpub. paper presented to *Anglo-Saxon Places of Power, Governance and Authority*, Oxford University Department of Continuing Education, March 2011.

⁴⁸³ This may well also have been the real function of the ancient Germanic assembly described by Tacitus in chapter 11 of *Germania*, above.

further argued that the Church could perhaps be seen to play an emerging role in this period in the processes of removing kings from office, especially in view of the developing practice of anointing kings to their office with holy oil. Tonsuring a king, that is to say, disqualifying him from rule by making him a cleric or a monk, emerged as a tool in the Church's hands whereby the role of the assemblies in deposing kings could be legitimated, and given, on Weber's classification and Rollason's view, elements of charismatic as well as legal authority.

His focus on regime change prompted Rollason to develop Weber's classification by taking into account not only how authority is conferred, but also how it is withdrawn. Accordingly, Rollason proposed a tripartite classification of his own.

Personal power: corresponding to Weber's traditional authority, this is characterised by such practices as oath-taking, and is dependent upon personal relationships between the holders of power, and those subject to them. When personal power is withdrawn, this is invariably on the basis of the loyalty of former adherents being transferred to other claimants.

Ideological power: corresponding to Weber's charismatic authority, transfers of ideological power are characterised by a high degree of ceremony. Ideological power is derived from the beliefs of those conferring obedience, whose holders are divinely endowed and who have a special position in the eye of God or the gods. When its holders are removed from office, this is justified by reference to offence having been given to God or the gods.

Bureaucratic power: corresponding to Weber's legal authority, bureaucratic power is characterised by laws and based on the machinery of government, derived from an impersonal system and regulated by impersonal procedures. When its holders are removed from power, this is often justified by reference to the former holder of power having broken his promises. This finds a ready echo in a number of useful observations made in a more general context by Sack, both as to the internal dynamics of organisations and especially of bureaucracies, and

also as to the tendency, particularly as issues of succession arise, for charismatic authority to be replaced by models of either traditional or bureaucratic authority.

Though abstract, classifications such as these are nonetheless helpful in analysing, and rationalising, how Æthelberht derived, exercised and maintained his royal authority. Prior to the mission of Augustine, the bulk of Æthelberht's power is likely to have been derived from four principal sources: firstly, and originally, as a member of the royal house of east Kent, with its control of the lucrative Continental trade through the Channel ports and the emerging trading centre in London; secondly, as the king of West Kent, albeit that in this part of his kingdom the authority of Æthelberht's dynasty may have been established only relatively recently; thirdly, the Frankish alliance through his marriage to Bertha, which amongst other things may well have served to reinforce control of cross-Channel trade through the Kentish ports and London; and finally as a second dynastic alliance through his nephew, Sæberht, king of the East Saxons. Of these, the alliance with Sæberht may in practice have been no less significant than the Frankish alliance, which in the event may not have been so useful to Æthelberht as it may have been to his father Eormenric. The see-saw of dynastic strife in contemporary Merovingian Gaul was examined in section 1.4 above. During this period, advancing the interests of Bertha's husband in Kent would plainly have been a much lower priority for the rival branches of her family than ensuring their own survival. Indeed, during the ascendancy of Charibert II, Æthelberht's connections to Bertha and to Liudhard may have seemed more problematic than valuable. Sæberht, in contrast, proved a willing and committed subordinate, particularly in religious matters. It is instructive that the only see founded outside of Kent in Æthelberht's lifetime was in London. Higham⁴⁸⁴ also notes the likely value to Æthelberht of the ability to call at need upon the support of Sæberht's own war band. It is also entirely possible that Sæberht's apparent acquiescence in the likely annexation of west Kent discussed previously in section 1.2 and very possibly dateable to the reign of Æthelberht's father,

⁴⁸⁴ N. J. Higham, *An English Empire*, pp. 192-3.

Eormenic, may have assisted Æthelberht in establishing his authority in this region.

Until recently, archaeological interpretation of Anglo-Saxon royal sites was relatively underdeveloped and heavily weighted towards the one such site, that of Yeavering in Northumberland, that had been the subject of detailed excavation. In a Kentish context, however, this deficit has now very substantially been made good by the detailed excavations at Lyminge. These were launched to investigate a documented Anglo-Saxon royal nunnery, and the role of Lyminge in elite fifth-/sixth-century Kentish society suggested by a number of well-furnished burials. In addition, however, fieldwork conducted between 2008 and 2015 also revealed an intermediate phase of occupation in the form of a seventh-century “great hall complex”. These findings have now been published.⁴⁸⁵ Further, the director of the Lyminge Project, Gabor Thomas, has subsequently contextualised the “great hall complex” phase of the Lyminge site with similar sites at Dover and Eynsford,⁴⁸⁶ providing a solid archaeological basis for the role played by such sites in the assertion of royal authority in seventh-century Kent. It is instructive that the Eynsford site, located in the Darent valley some six miles from the River Thames at Dartford, lies well beyond the boundary of the historic heartland of the Anglo-Saxon kingdom represented by the River Medway.

The picture of the early Kentish state that emerges from Æthelberht’s *Laws*, now supported by the archaeological evidence described by Thomas and others, shows an itinerant royal household eating and drinking food surpluses collected at the king’s own estates and those of his subjects. Inevitably on these occasions favours and patronage were bestowed, and services offered and accepted. This may be thought of as the epitome of Rollason’s personal power, or of Weber’s

⁴⁸⁵ Gabor Thomas and Alexandra Knox (edd.), *Early Medieval Monasticism in the North Sea Zone: Proceedings of a conference held to celebrate the conclusion of the Lyminge excavations 2008-15*, Anglo-Saxon Studies in Archaeology and History 20 (Oxford: Oxford University School of Archaeology, 2017).

⁴⁸⁶ Gabor Thomas, “Mead-Halls of the Oiscingas: A New Kentish Perspective on the Anglo-Saxon Great Hall Complex Phenomenon”, *Medieval Archaeology* 62/2 (2018) pp. 262-303.

traditional authority. Yet bureaucratic power, corresponding to Weber's legal authority, is also present here, in the shape of the instance of the protection of those at a *cyninges tun* (clause 11), or those drinking with the king at the *ham* of one of his subjects (clause 9), both discussed above in section 4.3. We should not necessarily credit Æthelberht with the devising of such laws, which are likely to have antecedents of some relatively long standing in customary law.

Nevertheless, their inclusion in the *Laws* shows the importance rightly attached to them by Æthelberht. The protection afforded to the *mæþlfrip*, assembly peace (clause 7), can be seen in a similar light.

Finally, it might plausibly be contended that the creation of the Rochester see in 604, although doubtless also welcome to Augustine and his entourage as a demonstration of the continuing progress of their mission, might echo Rollason's ideological power or Weber's charismatic authority. In a geographic region where the authority of Æthelberht's dynasty had not been so long established, a religious buttress for Æthelberht's authority, appropriately subservient to Canterbury, might well have been opportune.

Irrespective of Weber's classifications, these methods whereby authority can in practice be exercised or demonstrated all have in common that they are much easier to apply in the heartlands of a kingdom, rather than at its peripheries or beyond.

Æthelberht's position also posed other challenges. It is timely at this point to recall from section 1.5 the contention of Duncan Sayer⁴⁸⁷ arising from his analysis of the cemeteries at Mill Hill and Finglesham, that during the seventh century the emphasis of the funeral changed from expressing the unity of an extended household centred upon a dominant individual, to emphasising familial relationships. Sayer notes that the period covered by his survey coincides with two other factors: firstly, the emergence of greater vertical social stratification in society, as the wealth generated by the exploitation of Kent's dominant trading

⁴⁸⁷ Duncan Sayer, "Laws, footnotes and cemetery organisations", particularly at p. 168.

position is largely retained by social elites; and secondly, the promulgation by Æthelberht and his successors which, on Sayer's view, begins the process of the suppression by the state of the freedoms of elite kindreds. Ambitiously, therefore, Sayer sees the evolution of cemetery practices as a push-back against these trends, as elite kindreds used burials to emphasise more openly the family unit.

This bold conclusion gives much food for thought. If Sayer's reasoning is securely founded, concern within elite society at the growth of royal authority might have been expected to manifest itself not merely in cemetery practices concerning the dead, but also in direct political opposition to the king by the living. It is worth recalling that whilst there is no evidence for concerted political opposition to Æthelberht within Kent, as will be seen in the following chapter, at the end of the seventh century his successors were not so fortunate.

It may perfectly well have been the case that Æthelberht was simply more adroit than his successors in the exercise of his royal authority, such that internal dissension either never arose, or was quickly and firmly nipped in the bud when it did. On an alternative view, the growth in the wealth of Kent arising from the exploitation of Kent's trading links can cogently be supposed to have begun precisely during Æthelberht's reign. Accordingly, the elite of Æthelberht's Kent might well have been sufficiently content at the pace at which their own material prosperity – which could, of course, have been deployed to acquire, or to cement, their own authority through the acquisition of their own land or retainers – was improving to make it in their own interest to keep faith with the regime, in a way which their grandsons and great-grandsons may not.

A further issue needs detailed discussion. We have seen that Bede named Æthelberht as the third in the succession of *bretwaldas*, following Ælle and Ceawlin, and succeeded by Rædwald and Edwin. Uniquely of these figures, however, Æthelberht has no significant military victory attributed to him by Bede. Indeed, as discussed in section 1.3, the only reference to military action undertaken by Æthelberht is to a defeat suffered by him at *Wibbandun* at the

hands of Ceawlin, in all probability in a part of his kingdom where his authority was relatively weak.

Whilst a modern observer might not necessarily regard Æthelberht's achievement in maintaining his supremacy through statecraft and diplomacy rather than through force of arms as in any sense diminished, Æthelberht and his contemporaries would have viewed matters very differently. The fact that he apparently had no great military victory to his name is likely to have weakened his contemporary reputation very considerably. Æthelberht would himself have been very mindful of the ultimate fate of Ceawlin, who, as described in section 1.3, following what would appear to have been a catastrophic military defeat, was deposed by a rival faction and killed a year later in a graphic illustration of the consequences of a loss of Rollason's personal power.

It is relevant here to return in more detail to the passage in which Bede refers to Rædwald as *bretwalda*, considered only briefly in section 1.3. This contains some rather ambiguous Latin, which has led some commentators to deduce that Rædwald was beginning to eclipse Æthelberht's authority even during the latter's lifetime.⁴⁸⁸

...quartus Reduald rex Orientalium Anglorum, qui etiam uiuente
Aedilbercto eidem suae genti ducatum praebebat, obtenuit.

Exceptionally, the normally authoritative translation of Bertram Colgrave given in the footnote is open to criticism, and a number of alternatives have been put forward. The principal difficulties relate to the phrase *suae genti ducatum praebebat*, where *ducatus* means "leadership", very probably of a military kind, and *praebere* means to "offer" or "present".

⁴⁸⁸ "...the fourth was Rædwald, king of the East Angles, who even during the lifetime of Æthelberht was gaining the leadership for his own race." Colgrave and Mynors, *H.E.* ii. 5, pp. 148/9.

Accordingly, J. M. Wallace-Hadrill,⁴⁸⁹ following Vollrath-Reichelt,⁴⁹⁰ contended for the alternative translation, "...fourthly, Redwald, king of the East Angles, obtained [it], and during the lifetime of Æthelberht he offered the same [Æthelberht] the *ducatus* over his own people." Wallace-Hadrill interpreted this outcome either as the consequence of a high degree of co-operation between the two kings, or else as a settlement perhaps arrived at in consequence of Merovingian influence.

The correct analysis, however, is probably that argued for by Thomas Charles-Edwards⁴⁹¹ in updating Wallace-Hadrill. Ordinarily, Æthelberht as *bretwalda* would have exercised ultimate command, *ducatus*, over the forces of those kings subordinate to him. Charles-Edwards therefore interprets this passage as meaning that, notwithstanding this, Rædwald, even during the lifetime of Æthelberht, nevertheless retained the *ducatus* over his own people, a statement that Bede no doubt intended to attest to the independence of Rædwald, but which nevertheless provides yet another hint at Æthelberht's lack of prowess as a military commander.

Given that Æthelberht no doubt felt very keenly the lack of what Weber would subsequently rationalise as charismatic authority gained through victory in war, not least in consequence of having observed the fate of Ceawlin when his military prowess deserted him, it is perhaps quite understandable that Æthelberht would, after a period of reflection, have chosen to receive the mission of Augustine and, ultimately, to have converted to Christianity. The central tenets of, and the principal claims for, the Christian faith are matters of which Æthelberht is plainly likely to have had some knowledge through his Christian wife Bertha, and the Frankish bishop Liudhard who was part of her household.

⁴⁸⁹ J. M. Wallace-Hadrill, *Bede's Ecclesiastical History of the English People: A Historical Commentary* (Clarendon, 1988), p. 59.

⁴⁹⁰ H. Vollrath-Reichelt, *Koenigsgedanke und Koenigstum bei den Angelsachsen bis zur Mitte des 9. Jahrhunderts* (Cologne and Vienna, 1971) p. 83.

⁴⁹¹ T. Charles-Edwards, *Addenda*, in J.M. Wallace-Hadrill, *Bede's Ecclesiastical History of the English People: A Historical Commentary* (Clarendon, 1988) pp. 220-22.

Æthelberht would not have anticipated the classifications of Weber or Rollason, but would readily have appreciated the value of, initially, co-operation with, and subsequently an alliance with, the representatives of a single God of apparently unlimited powers; representatives, moreover, who were through their faith apparently able to work miracles such as the restoring to sight of the blind man at the conference at Augustine's Oak related by Bede in *H. E.* ii. 2.

Reference should also be made to the recent work of George Molyneaux.⁴⁹² Although it is concerned principally with the events of the tenth century, more than three hundred years after Æthelberht's time, and traces the development of the initially loose domination established in the first half of that century by the Cerdicing dynasty from their Wessex heartlands over other areas of Britain into, by the time of Edgar (reg. 957x9-75) a relatively standard administrative apparatus. Molyneaux draws only slightly upon explicit references to the writings of Weber,⁴⁹³ but recurrent themes throughout the book are the maintenance by the Cerdicing dynasty of domination over rival magnates through a combination of coercion and patronage, and the development of administrative systems that enabled to an increasing degree the regulation of the lives of ordinary people. At a distance of more than three hundred years, it is of course dangerous to draw too specific a set of parallels between the challenges faced by the Cerdicings and those faced by Æthelberht: all coped as best they could with the unique challenges of their own times. Yet one pervasive theme of Molyneaux's analysis is that touched upon earlier in the context of Æthelberht, namely that the exercise of authority becomes more difficult at geographic remove, and to be effective needs to be exercised in different, mutually reinforcing ways.

Summarising, Æthelberht's *Laws* included specific references to the elements of customary law that enhanced the protection of the devices whereby he maintained his own personal power. Further, Æthelberht also ensured that his

⁴⁹² George Molyneaux, *The Formation of the English Kingdom in the Tenth Century*, (Oxford: Oxford University Press, 2015).

⁴⁹³ At p. 235, n. 16.

Laws repeated, with appropriate emendations, the protections for the Christian clergy that had previously been afforded to pagan priests.⁴⁹⁴ There is perhaps no better exposition of the shrewdness of Æthelberht's statecraft than the facility with which he was able almost to anticipate the subsequent classifications of Weber and Rollason in deploying and reinforcing the various constituent elements of his power and authority.

⁴⁹⁴ Section 4.2.4, above.

8. Effect on later laws

Several of Æthelberht's successors, together with a number of kings in other kingdoms, also promulgated law codes during their reigns. In some instances, the purpose in doing so is as likely to have been political as juristic. In others, it is possible to see the law develop into new areas. Instructively, however, a good many of these law codes refer to Æthelberht either expressly or by implication.

8.1 Eadbald (reg. 616-640)

On Æthelberht's death, the Christian mission suffered a severe, though ultimately only temporary, setback. The account given of this episode by Bede in *H. E.* ii. 5 and 6 is distorted by accounts of divine chastisement and miraculous intervention and so needs to be sifted carefully, but the underlying events emerge strongly enough. On his accession, Æthelberht's son and successor, Eadbald, broke with Christian teaching by marrying his step-mother, leading to a rift between him and Laurence, Archbishop of Canterbury.

Very shortly thereafter, King Sæberht also died, to be succeeded by his three sons. Despite their father having converted to Christianity some years ago at the instigation of Æthelberht, these sons had, according to Bede, continued to practice idolatry. On the basis that the sons had declined to become baptised, Bishop Mellitus of London had accordingly refused them the eucharist, whereupon the sons drove Mellitus and his companions from the kingdom.

Things appeared so desperate for the Christian party that Mellitus and Justus, Bishop of Rochester, fled to Gaul. It is at this point that Bede's narrative takes an edifying turn of supernatural interventions. On the eve of his departure, Laurence received in his sleep a scourging from St. Peter,⁴⁹⁵ who exhorted him not to abandon his flock. On the following day, Laurence confronted Eadbald with the marks of his scourging. Eadbald, who had already been inflicted with outbreaks

⁴⁹⁵ A well-worn device in hagiography. For other examples of supernatural floggings, see Jerome, *Epistle 22, Vitas Patrum Emeretensium*, III. viii. 3-4, and Adomnan's *Life of Columba*, III. V.

of madness as divine retribution for his sacrilegious behaviour, was so unnerved by Laurence's account that he gave up his step-mother as wife and received baptism. He also recalled Mellitus and Justus from Gaul, and restored Justus as Bishop of Rochester. In the meantime, the no less sacrilegious conduct of the sons of Sæberht had met a similarly condign end when they were killed shortly afterwards fighting the West Saxons. Even so, it did not prove possible for Eadbald either to retrieve his overlordship of the East Saxons, or to restore Mellitus to his former see in London. Indeed, the East Saxons continued to revert to paganism until the intervention of their new Northumberian overlord, Oswiu, in or around 653, a matter that no doubt contributed to Canterbury, not London, remaining the metropolitan see.⁴⁹⁶

Although there is no indication of any substantial body of legislation having been enacted during his reign, a brief remark of Bede suggests that his reacceptance of Christianity was accompanied by a crackdown upon, and discouragement of, pagan practices:

...atque anathematizato omni idolatriae cultu, abdicato conubio non legitimo, suscepit fidem Christi, et baptizatus ecclesiae rebus, quantum ualuit, in omnibus consulere ac fauere curauit....⁴⁹⁷

8.2 Eorcenberht (reg. 640-664)

Although no record of the specific measures has survived, Bede attests to Eadbald's son, Eorcenberht, taking the firmest measures yet against pagan practices, in a way that suggests that the Christian faith was by now firmly in the ascendant:

⁴⁹⁶ As alertly noted by Barbara Yorke, *Kings and Kingdoms of early Anglo-Saxon England* (London/New York: Routledge, 1990), p. 48.

⁴⁹⁷ "So he banned all idolatrous worship, gave up his unlawful wife, accepted the Christian faith, and was baptized; and thereafter he promoted and furthered the interests of the Church to the best of his ability....", Colgrave and Mynors, *H.E.* ii. 6, pp. 154/5.

Hic primus regnum Anglorum in toto regno suo idola relinqui ac destrui, simul et ieiunius quadraginta dierum obseruari principali auctoritate praecepit. Quae ne facile a quopiam posset contemni, in transgressores dignas et conptentes punitiones proposuit.⁴⁹⁸

Liebermann⁴⁹⁹ supposes that Bede's reference is to a substantial body of laws that for one reason or another has not survived.

8.3 Hlophere (reg. 673-685) and Eadric (reg. 685-6)

Under the rule of Eorcenberht and his younger son and successor Ecgberht (reg. 664-673), taking the throne in preference to his elder brother, Eormenred, Kent appears to have enjoyed a generation and a half of political stability. Bede describes Eorcenberht as having ruled *nobilissime*,⁵⁰⁰ "with distinction", whilst Ecgberht is described⁵⁰¹ as collaborating closely with King Oswiu of Northumbria in connection with the Synod of Whitby, at which the practices of the Roman church in calculating the date of Easter and as regards the correct form of tonsure were decisively preferred over the practices of the Irish church. A later passage shows Ecgberht to be very well apprised of events in Frankish Gaul. This apparent stability had, however, been bought at a price: early in his reign, Ecgberht had Eormenred's two sons, Æthelred and Æthelberht, killed.⁵⁰² When Ecgberht himself died suddenly in 673, his own sons were still children, such that the kingdom passed to his younger brother, Hlophere.

⁴⁹⁸ "He was the first English king to order idols to be abandoned and destroyed throughout the whole kingdom. He also ordered the forty days of Lent to be observed by royal authority. And so that his commands might not be too lightly neglected, he prescribed suitably heavy punishments for offenders." Colgrave and Mynors, *H.E.* iii. 8, pp. 236/7.

⁴⁹⁹ *Gesetze*, 3:17.

⁵⁰⁰ *H.E.* iii. 8.

⁵⁰¹ *H.E.* iii. 29.

⁵⁰² For discussion, see Barbara Yorke, *Kings and Kingdoms of Anglo-Saxon England* (London: Seaby, 1990) pp. 34-5, and D. P. Kirby, *Earliest English Kings*, p. 99. For the hagiographical biography of the murdered men's niece, which preserves the story, see D. W. Rollason, *The Mildreth Legend, A Study in Early Medieval Hagiography in England* (Leicester UP, 1982).

S. 8⁵⁰³, an apparently authentic charter of 679 granting land in Thanet and at Sturry to the then abbot and future Archbishop Beorhtwald, names Eadric, son of Ecgberht, together with Hlophere, apparently in an instance of joint rule, with the senior king, Hlophere, presiding at Canterbury, and the junior, Eadric, ruling from Rochester.⁵⁰⁴ The charter implies that Hlophere had designated Eadric as heir and acknowledged him as co-ruler. Yet in the mid-680s, Eadric conspired with the South Saxons to challenge Hlophere,⁵⁰⁵ who shortly thereafter⁵⁰⁶ died from wounds received in battle.

As we have it extant in the *Textus Roffensis*, the laws of Hlophere and Eadric exist as a single code apparently issued jointly by both kings, and as such have accordingly been presumed to date from the period of joint rule prior to the dissension between them. This need not necessarily be the case: Kirby has suggested⁵⁰⁷ that they may represent a conflation of two originally separate sets of laws, or even a confirmation by Eadric of the laws of his uncle. Kirby's suggestion of a conflation of two originally separate sets of laws is particularly prescient, anticipating as it does the paleographical evidence for this possibility arising from Carole Hough's study of the representation of numbers in the Old English legal texts considered in section 2.8 above.

The laws of Hlophere and Eadric differ from those of Æthelberht in a number of important aspects, of which the most significant is the increased emphasis placed on procedure. Save for the terse reference in clause 65.1 to arbitration in the case

⁵⁰³ For text and discussion, see N. P. Brooks and S. E. Kelly (edd.), *Charters of Christ Church Canterbury Part I* (Oxford UP for The British Academy, 2013) no. 2, pp. 263-70.

⁵⁰⁴ The distinct traditions of east and west Kent have, of course, previously been discussed in section 1.2 and chapter 7, above. For joint kingship in Kent generally, see Barbara Yorke, "Joint Kingship in Kent c. 560 to 785", *Archaeologia Cantiana* 99 (1983) pp. 1-19, albeit that in view of the following remarks it may perhaps be a little too uncritical of the reality of the "joint" rule of Hlophere and Eadric.

⁵⁰⁵ *H.E.* iv. 5.

⁵⁰⁶ *H.E.* iv. 26.

⁵⁰⁷ *Earliest English Kings*, p. 99.

of a thigh wound,⁵⁰⁸ Æthelberht's *Laws* are silent on matters of procedure. In contrast, clauses 6-6.3⁵⁰⁹ of the laws of Hlophere and Eadric deal in detail with the process whereby a charge is brought by one person against another, and impose a requirement for the person against whom a charge is brought to give surety to his accuser. Further, a number of clauses make reference to oath-helpers: men who will vouch in court for a man giving an oath, typically attesting to his innocence in a particular matter.

Provisions relating to the regulation of commerce also appear in much more detail in the laws of Hlophere and Eadric. Thus, clause 5 provides for cases of stolen goods to be dealt with by way of the swearing of oaths as to ownership. Clause 11 provides for a particularly detailed procedure to deal with the position of a Kentishman buying goods in London, the ownership of which is subsequently disputed. Clause 10 deals with the position of merchants travelling to Kent from outside, and where accommodation is provided for such a merchant for a period of three nights or more, the host is made responsible for seeing that his merchant guests obey the law. Such provisions accord well with numismatic evidence attesting to an expansion of coin-based trade at around this period. The minting of silver *sceattas*, much more useful for commerce than higher-value gold coins, by various Anglo-Saxon kingdoms and the Frisians has been dated to the period 670-80.⁵¹⁰

Finally, clauses 7 (dealing with instances of slander), 8 (dealing with the seizure of a goblet from another drinker without provocation, an action likely, in view of the practice attested in heroic poetry of boasting whilst at drink in the meadhall⁵¹¹ to amount to an accusation of lying) and 9 (dealing with a breach of

⁵⁰⁸ Section 4.6, above.

⁵⁰⁹ On Oliver's numbering: see *Beginnings*, chapter 3, pp. 117-46.

⁵¹⁰ Stephane Lebecq, "The Question of Logistics", in Richard Gameson (ed.), *St. Augustine and the Conversion of England* (Stroud: Sutton, 1999) pp. 56-9.

⁵¹¹ Thus, in E. V. Gordon (ed.), *The Battle of Maldon* (London: Methuen, 1937), ll. 212-5, an Anglo-Saxon noble urges his fellows:

the peace whilst men are drinking) all provide for recompense to be given not merely to the injured party but also to the king. Whilst an equivalent arrangement was seen in clause 8 of Æthelberht's *Laws*, it is perhaps possible to discern in the provisions of Hlophere and Eadric a jurisprudential shift, whereby the tariff payable to the king is characterised not so much as compensation for the breach of his peace, but is more overtly penal in character.

Interestingly, no clauses in the laws of Hlophere and Eadric deal with the position of the church. It is possible that this attests to the efficacy of the measures introduced by Eorcenberht to ensure the primacy of the Christian faith, but in view of Eadric's alliance with men of the at this time still very recently pagan kingdom of the South Saxons against Hlophere, this may be a superficial conclusion. The South Saxon king Æthelwalh, who acceded to the throne c. 674, is attested by Bede⁵¹² to have accepted baptism at the suggestion of King Wulhere of the Mercians. Æthelwalh is further attested⁵¹³ to have conferred an estate at Selsey upon Bishop Wilfrid, then in exile from his see in Northumbria. Wilfrid seems, however, very shortly thereafter to have switched his allegiance to Cædwalla, in exile from the kingdom of the West Saxons, who killed Æthelwalh in c. 682. It appears⁵¹⁴ that Wilfrid colluded in Cædwalla's conquest of the still-pagan Isle of Wight and the subsequent murder of the remnants of its former ruling dynasty, even to the extent of receiving one-quarter of the spoils.⁵¹⁵

Genumap þara mæla þe we oft æt meado spræcon,
Ðonne we on bence beot ahofen
nu mæg cunnian hwa cene sy.

“Let us call to mind those declarations we often uttered over mead, when from our seat we heroes in hall would put up pledges about tough fighting; now it can be proved who is brave.” (Trans. S. A. J. Bradley, *Anglo-Saxon Poetry* (London: Everyman/J. M. Dent, 1982) p. 525.

⁵¹² *H. E.* iv. 12.

⁵¹³ *H. E.* iv. 13.

⁵¹⁴ *H. E.* iv. 16.

⁵¹⁵ For an analysis of the wider political background, underpinned by a tale of personal tragedy in the unquiet times of the period, see Dominic Gibbs, “Berhtwold’s Letter to Forthhere and its Wider Context”, *Archaeologia Cantiana* 143 (2018), pp. 237-46.

Such a fragmentary account leaves many details as matters for speculation. Were, for example, the South Saxon allies of Eadric displaced adherents of the dead king Æthelwulf, looking to restore their fortunes in an act of freebootery in concert with Eadric? At any rate, and notwithstanding the opportunistic interventions of Bishop Wilfrid in its affairs, it does not seem likely that the Christian faith had at this time taken any very firm roots in Sussex. That this consideration does not seem to have weighed heavily with Eadric in his choice of allies may perhaps explain the lack of Christian material in the laws.

Eadric died in 686. Thereafter, according to Bede,⁵¹⁶ various usurpers or foreign kings plundered the kingdom. According to the Anglo-Saxon Chronicle, in 686 Kent and the Isle of Wight were devastated by Cædwalla and his brother, Mul, whereupon Mul appears to have taken over as king of Kent. Only the following year, however, in 687, the Chronicle records Mul and twelve of his adherents being burned to death, whereupon Cædwalla launched a further raid in reprisal. A charter ostensibly dating from 690, S. 10, concerning lands in Thanet and at Sturry, is apparently granted by Swæfheard, son of King Sebbi of the East Saxons and styling himself *rex Cantuariorum*. Three further charters from around this time are granted by one Oswine, styling himself variously as *rex Cantiae* (S. 12) and *rex Cantuariorum* (S. 13 and S. 14). Oswine then disappears from the record, to be replaced by Eadric's younger brother, Wihtræd. It seems that for a while Wihtræd and Swæfheard shared, or contested, sovereignty, since it is only in 694 that the Chronicle records Wihtræd as succeeding outright to the kingdom. Using indiction dating as evidence, Oliver⁵¹⁷ dates Wihtræd's laws to September 695.

8.4 Wihtræd (reg. 690-725)

Although the Anglo-Saxon Chronicle entry for 695 records Cædwalla's successor, Ine, as ravaging Kent in revenge for the death of Mul, thereafter no further hostilities between Wessex and Kent are recorded by the Anglo-Saxon

⁵¹⁶ *H. E.* iv. 26.

⁵¹⁷ *Beginnings*, p. 148.

Chronicle or by Bede for a generation. This silence has generally, and plausibly, been accepted as indicating a period of tranquillity between the two kingdoms. Thus, Simon Keynes has suggested that Wihtræd and Ine “entered into some kind of alliance which allowed the kingdoms to prosper independently of each other”.⁵¹⁸ Shortly after his accession, Wihtræd paid compensation on behalf of his people for the death of Mul in an amount of thirty thousand, presumably *sceattas*,⁵¹⁹ consistent with a wish to put his reign on as secure a footing as possible. Indeed, both Wihtræd and Ine may well have been realistic enough to have apprehended that any further strife between their kingdoms might well have weakened them both sufficiently to render them vulnerable to Mercian interference.⁵²⁰

Instructively, both Wihtræd and Ine promulgated a law code, no doubt prompted in part by a wish to burnish their authority and prestige. One clause common to both codes, requiring a stranger who has strayed from the highway to advertise his presence by calling out or by blowing a horn, on pain of being regarded as a thief, is so similar as to suggest at the very least a degree of borrowing, if not indeed more substantial collaboration.⁵²¹ This may usefully be noted in passing as likely to attest to the development of overland trade between the two kingdoms.

A further similarity between the two codes is the emphasis that both place on being the product of a collaborative process between each king and the great men of his kingdom, with primacy being given to the leading clergymen. The conciliatory tone of their respective prologues may speak to a political sub-text. As has been explained, both kings emerged after a period of dynastic strife. If it

⁵¹⁸ Simon Keynes, “England 700-900”, in Rosalind McKitterick (ed.), *The New Cambridge Medieval History*, Vol. II, c. 700-900, pp. 18-42 at p. 26.

⁵¹⁹ ASC, s. a. 694.

⁵²⁰ A view concurred in by David Kirby, *The Earliest English Kings*, rev'd ed. (London: Routledge, 2000), pp. 98-106.

⁵²¹ A suggestion originally made by Felix Liebermann, *Die Gesetze der Angelsachsen* (Halle: Niemeyer, 1897-1916) 3: 30, and followed by Oliver, *Beginnings*, p. 179.

is right to suppose that the decisions to promulgate law codes were intended to boost their authority and prestige, it is not so hard to imagine that they might both have thought it prudent publicly to acknowledge – and so bind in – the leading figures in their respective kingdoms. Consider first the prologue to Wihtræd’s laws:

Ðam mildestan cyninge Cantwara Wihtrede, rixgendum þe fiftan wintra his rices, þy niguðan gebanne, sextan dæge Rugernes, in þære stowe þy hatte Berghamstye, ðær wæs gesamnad eadrige ge[þ]eahtendlic ymcyme: Ðær wæs Brihtwald Bretone heahbisceop, 7 se ærnæmde cyning; eac þan Hrofesceastre bisceop, se ilca Gymbund wæs haten, andward wæs; 7 cwæð ælc had ciricean ðære mægðe anmodlice mid þy hersuman folcy. Ðær ða eadigan fundon mid ealra gemedum ðas domas 7 Cantwara rihtum þeawum æcton, swa hit hyr efter segeþ 7 cwyp:⁵²²

And that of Ine’s laws:

Ic Ine, mid Godes gife, Wesseaxne kyning, mid geðeahte 7 mid lare Cenredes mines fæder 7 Heddes mines biscepes 7 Eorcenwaldes mines biscepes, [7] mid eallum minum ealdormannum 7 þæm ieldstan wutum minre ðeode 7 eac micelre gesommunge Godes ðeora, wæs smeagende be ðære hælo urra sawla 7 be ðæm stapole ures rices, þætte ryht æw 7 ryhte cynedomas ðurh ure folc gefæstnode 7 getrymede wæron, þætte nænig

⁵²² “To the most gracious king of the Kentish people, Wihtræd, ruling in the fifth winter of his reign, in the ninth indiction, sixth day of Rugern, in that place which is called Berghamstead, there was gathered a consiliary assembly of great men. There was Brihtwald, archbishop of Britain, and the aforementioned king; likewise the bishop of Rochester, which same was called Gebmund, was present; and each order of the church of that people spoke with a single mind with the loyal populace. There the great men devised, with the consent of all, these decrees, and added to the just customs of the Kentish peole, as it hereafter says and decrees”: Oliver, *Beginnings*, pp.152/153.

ealdormanna ne us undergeðeodedra æfter þam wære awendede ðas ure domas.⁵²³

These both are in marked contrast to the laws of Æthelberht and of Hloþhere and Eadric. The laws of Hloþhere and Eadric begin with a brief prologue only, making no reference to any council and implying that the contents that follow are the exclusive work of the two kings:

Hloþhere 7 Eadric, Cantwara cyningas, ecton þa æ þa ðe heora aldoras ær geworhton ðyssum domum, þe hyr efter sægeþ⁵²⁴

As they have survived in the *Textus Roffensis*, and as appearing at the head of Plate 1, Æthelberht's *Laws* contain no prologue and are introduced with the later, editorial, prefix

Þis syndon þa domas þe Æðilbirht cyning asette on AGustinus dæge.⁵²⁵

It has been explained above in sections 4.2.2 and 4.2.4 that Æthelberht's *Laws* may originally have contained a prologue, but that in consequence of the way in which the manuscript witnesses of the *Laws* were transmitted, such a prologue has now been lost. Even so, there is no surviving textual basis for Bede's

⁵²³ "I, Ine, by the grace of God king of Wessex, with the advice and instruction of Cenred, my father, of Hedde, my bishop, and of Eorconwald, my bishop, and with all my ealdormæn and the chief councillors of my people, and with a great concourse of the servants of God as well, have been taking counsel for the salvation of our souls and the security of our realm, in order that just law and just decrees may be established and ensured throughout our nation, so that no ealdorman nor subject of ours may from henceforth prevent these our decrees." Attenborough, *Laws of the Earliest English Kings*, pp. 36/37.

⁵²⁴ "Hloþhere and Eadric, kings of the people of Kent, added to the laws that their ancestors made before with these decrees, which are stated hereafter". Oliver, *Beginnings*, pp. 126/127.

⁵²⁵ "These are the decrees which King Æthelberht set in Augustine's time." Oliver, *Beginnings*, pp. 61/62.

assertion⁵²⁶ that the *Laws* were drafted *cum consilio sapientium*, “with the advice of his councillors”.

In contrast to the laws of Hloþhere and Eadric, the laws of Wihtræd concern themselves almost exclusively with ecclesiastical matters. Whether this reflects the strength of Wihtræd’s own faith, or a desire for reasons of *realpolitik* to bind himself closely to Canterbury, is not clear. Clauses 1 and 2⁵²⁷ respectively confer upon the church freedoms from taxation, and a fifty-shilling tariff for breach of its protection, identical with that afforded to the king. Clauses 3 and 4 deal with unlawful matrimony, no doubt reflecting a continuing prevalence of unions not sanctified by the marriage sacrament. Clauses 5 and 6 deal with abuses by ecclesiastics, and how they might be remedied. Clause 7 deals with the procedure for manumitting a slave, and shifts the location from the royal presence specified by continental Germanic parallels to the altar. Clauses 8, 9, 10 and 11 deal with various transgressions of church laws, ranging from the undertaking of work on the Sabbath and breaches of fasting obligations, to the making of sacrifices to devils. Clauses 12, 13, 14, 15 and 16 are concerned with exculpation by way of oath, whilst clauses 17, 18 and 19 specify the processes for bringing charges against church servants not in holy orders. Only the final clauses, 20, 21 and 22, dealing with theft, and clause 23 already described, do not deal with ecclesiastical matters.

8.5 Ine (reg. 688-726)

Ine’s laws are broader in scope, reflecting the fact that they are the first such code to be promulgated amongst the West Saxons. Thus, whilst they contain material dealing with ecclesiastical matters in much the same way as do Wihtræd’s laws, they also deal with procedure, homicide, personal injury and theft. Moreover, Ine’s laws date from very shortly after a rapid expansion of Wessex westwards, into former areas of Celtic-speaking Britain governed by

⁵²⁶ *H. E.* ii. 5.

⁵²⁷ Again, following Oliver’s numbering: *Beginnings*, pp. 147-80.

local rulers. Ine's laws accordingly provide a different level of wergild for those of his subjects of Celtic descent.

Besides being much broader in scope, Ine's laws are much less well organised than those of Æthelberht, and appear to jump from subject to subject apparently at random. Patrick Wormald accordingly considered⁵²⁸ that Ine's laws are "not a code at all, but a series of enactments added to an original core over years or decades." On Wormald's reasoning, "six or seven successive legislative sessions may perhaps be distinguished." Wormald proposed two other conclusions. The first, and in his view of lesser importance, was that this process of accreting successive enactments might well have been continued over the next century and a half by Ine's successors prior to the production of the next edition of laws under King Alfred, to be discussed below. This would raise the possibility that certain of the provisions attributed to Ine are in fact those of his successors. More significant, however, for Wormald was his second conclusion, namely that by Ine's time law-making had gone "live", with law-makers having to respond to real-life problems placed before them. This is exemplified by clause 75:

Gif mon ceap befehþ forstolenne, 7 sio hond tiemð þonne, sio hine mon ætbefehþ, to oþrum men, gif se mon hine þonne onfon ne wille 7 sægþ, þæt he him næfre þæt ne sealed, ac sealde oþer, þonne mot se gecyðan, se ðe hit tiemþ to þære honda, þæt he him nan oðer ne sealde buton þæt ilce.⁵²⁹

Such complicated syntax is very far from the simplicity of Æthelberht's *Laws*. Such a convoluted array of conditional and sub-clauses can sensibly only be

⁵²⁸ Patrick Wormald, *The Making of English Law: King Alfred to the Twelfth Century, Vol. 1: Legislation and its Limits* (Oxford: Blackwell, 1999) p. 105.

⁵²⁹ "If a stolen chattel is attached, and the person in whose possession it is attached vouches it to another man, and if the man will not admit it, and says that he never sold him that, but that he sold him some other thing, he who vouched the man to warranty may declare that he [the witness] sold him none other but that same thing." Attenborough, *Laws of the Earliest English Kings*, pp. 60/61.

regarded as an attempt by a scribe to recall all the facts material to a particular case.

8.6 Alfred (reg. 871-899)

Finally, special mention needs to be made of the much later laws of King Alfred, by whose time Wessex had expanded to subsume the former kingdom of Kent. Alfred's laws are preceded by a very long introduction containing the Ten Commandments and other precepts of Mosaic law, followed by a brief account of church history and of church law. This has been deduced by Wormald⁵³⁰ as evidencing a desire that the English should themselves become, like the Israelites, a Holy People, answerable to God for their actions. Only then does Alfred's code begin, with the following preamble:

Ic ða Ælfred cyning þas togædere gegaderade, 7 awritan het monege þara þe ure forengan heoldon, ða ðe me licodon; 7 manege þara þe me ne licedon ic awearp mid minra witena geðeahte, 7 on oðre wisan bebedad to healdanne. Forðan, ic ne dorste geðristlæcan þara minra awuht fela on gewrit settan, forðam me was uncuð, hwæt þæs ðam lician wolde, ðe æfter us wæron. Ac ða ðe ic gemette awðer oððe on Ines dæge, mines mæges, oððe on Offan Mercna cyninges oððe on Æþelbryhtes, þe ærest fulluhte onfeng on angelcynne, þa ðe me rhytoste ðuhton, ic þa heron gegaderode, 7 þa oðre forlet. Ic ða Ælfred Westseaxne cyning eallum minum witum þas gecowde, 7 hie þa cwædon, þæt him þæt licode eallum to healdanne.⁵³¹

⁵³⁰ Wormald, *The Making of English Law*, pp. 416-29.

⁵³¹ "Now I, Alfred, have collected these laws, and have given orders for copies to be made of many of those which our predecessors observed and which I myself approved of. But many of those I did not approve of I annulled, by the advice of my councillors, while [in other cases] I have ordered changes to be introduced. For I have not dared to presume to set down in writing many of my own, for I cannot tell what [innovations of mine] will meet with the approval of our successors. But those which were the most just of the laws I found – whether they dated from the time of Ine my kinsman, or of Offa, king of the Mercians, or of Æthelberht, who was the first [king] to be baptised in England – these I have collected whilst rejecting the others. I, then,

Alfred's preface was searchingly analysed by Patrick Wormald,⁵³² who largely dismissed Alfred's claim that he had "collected" those laws of Ine, Offa or Æthelberht that were "the most just". Ine's laws were "collected" in the sense that an apparently complete and original, or possibly a complete but redacted to how it, as amended, stood in Alfred's time, set of Ine's laws was transmitted alongside his own.⁵³³ This aside, Wormald asserted that "no single law of Alfred's was an unaltered rehearsal of one of Æthelberht's or Ine's." Wormald pointed out that although Alfred reproduced a version of Æthelberht's clause 11 dealing with royal protection, taking account of different prevailing rates of exchange of gold and silver coinage, Alfred effectively doubled the rate of royal protection. Moreover, whilst Wormald, taking a different view to previous commentators who had simply concluded that no such code had survived, argued that Offa's "law code" is in fact the report by the papal legates George of Ostia and Theophylact of Todi, of the *capitulare* that they laid before Ælfwold's Northumbrian council, then before Offa and the southern English,⁵³⁴ of this there is no trace at all in Alfred's code. Thus, albeit that Alfred remembered Æthelberht as the first English king to receive baptism, and as the promulgator of the first English law code, Alfred was, in the words of Wormald, "therefore professing a greater respect for precedent than he actually practised."

Alfred, King of the West Saxons, have shewn these to all my councillors, and they have declared that it met with the approval of all, that they should be observed." Attenborough, *Laws of the Earliest English Kings*, pp. 62/63.

⁵³² Wormald, *The Making of English Law*, pp. 278-9.

⁵³³ Of which the earliest manuscript witness is Corpus Christi College Cambridge 173, the "Parker" MS, repr. in facs. in R. Flower and H. Smith, *The Parker Chronicle and Laws*, EETS 208 (Oxford, 1941, repr. 1973) and discussed by Wormald, *The Making of English Law*, pp. 163-72.

⁵³⁴ Patrick Wormald, "In Search of King Offa's "Law Code"", in I. N. Wood and N. Lund (edd.), *People and Places in Northern Europe 500-1600: Studies presented to Peter Hayes Sawyer* (Woodbridge, 1991) pp. 25-45, repr. with additions in Wormald, *Legal Culture in the Early Medieval West: Law as Text, Image and Experience* (London, 1999) pp. 210-24.

Æthelberht's influence upon Alfred's code is most clearly seen in the inclusion of a tariff of compensations for personal injury, a feature absent from the laws of Ine. Yet in other respects Alfred's laws represent a considerable departure from those of his predecessors. Central to this new approach was an oath, taken by all freemen aged twelve, to abstain from and denounce any major crime. By this device, crime was rendered an act of disloyalty to the king, punishable by compensation not only to the victim but also to the king and his officials.

In a further departure from the earlier period, Alfred issued detailed prescriptions for the conduct of feuds. If taken at face value, these provisions appear to have been so narrowly drawn that it could only have been in the very last resort that feud remained available as a recourse.

8.7 From Alfred to Cnut (reg. 1016-35)

From the time of Alfred to Cnut, kings continued to legislate actively. Indeed, all but three relatively short-lived kings issued at least two codes each. These develop the concept instituted by Alfred, namely that crime is an injury not just to the victim, but to wider society. Reflecting this hardening of attitudes, death penalties and judicial mutilations are commonplace.

Strong efforts were also made by later kings to build on Alfred's efforts, by restricting further the range of circumstances in which feud could be conducted whilst remaining within the law. The most coherent statement of this policy can be seen in a code of King Edmund (reg. 939-46), of which a number of provisions are expanded upon in a private tract, *Wergeld*, which identifies a number of royal sanctions intended to compel the parties to the feud to reach a settlement. The celebrated feud⁵³⁵ that began when the thegn Thurbrand killed Earl Uhtred early in the eleventh century, and which was continued by their descendants over three generations shows, however, that such attempts met with

⁵³⁵ Described in Fletcher, *Bloodfeud*.

only partial success, so deeply was the institution of feud ingrained within Anglo-Saxon society.

No explicit reference is made to Æthelberht after Alfred's laws. An implicit reference can, however, be detected in *Grið*, a text of Archbishop Wulfstan of York (d. 1023), dated by Wormald to the years before 1014. A theme of Wulfstan's writings and teachings is his concern for the national moral degeneration exemplified by his best-known work, the *Sermo Lupi ad Anglos*, a dire warning about the moral decline of the English and consequent divine punishment in the shape of Viking depredations. *Grið* is attested uniquely by Cotton Nero MS A.i(B), in which it precedes a law code of King Æthelred dated to 1014. The text begins and ends by proclaiming God's protection, *grið*, and laments a lost yesteryear when churches and churchmen were afforded proper respect. It then contains a carefully-compiled summary of legal privileges afforded to the Church by "Southern English" law, which can only be taken to mean the Kentish laws of Æthelberht and his successors, the codes of Ine and Alfred, and the laws of Æthelstan (reg. 924/5-39). As no Anglo-Saxon law code can be securely dated later than 1023, this shows that Æthelberht's *Laws* continued to be remembered, fittingly, almost to the very end of Anglo-Saxon law-making.

9. Conclusions

Consistently with the aims set out in the Introduction, the earlier chapters of this thesis have set out the essential background context of the *Laws*. Thus, chapter 1 has explained the historic, political, economic and religious background to Æthelberht's Kent. The range of competing analyses contained in the historiography summarised in section 1.1 serves to demonstrate that scholarship has yet to reach a fully concluded view as to the processes whereby Roman Britain declined and eventually collapsed, still less as to the detail and relative weight of the causes. Even so, a number of important points do emerge. Chief amongst these are the recent advances in genetic studies, which identify clear traces of the Anglo-Saxon migration in the population of modern England whilst at the same time apparently excluding the possibility of substantial widespread ethnic cleansing, thus substantially bearing out the scepticism with which archaeologists have generally treated the more lurid historical sources. This finding is of primary importance to the discussion in section 4.5 of the meaning of the word *læt* in clause 27. Also of importance is the evidence for the likely survival into Æthelberht's reign of a pre-Christian priesthood, a matter highly relevant to the analysis in section 4.2 of clauses 1-7 of the *Laws*.

Chapter 2 has examined the history and structure of the *Textus Roffensis* manuscript, and the evidence that it provides for the transmission of the *Laws* from Æthelberht's time to the date of the *Textus Roffensis*. Of particular significance here is the evidence set out in section 2.8 for the seniority of the scribe engaged in the compilation of the *Textus Roffensis*. Such evidence comprises the scribe's evident editorial skill and capacity for independent scholarship in handling material from a variety of sources in Latin and Old English, and also – from his other surviving works, which are exclusively patristic in nature – a knowledge of Greek, at least as a copyist but more likely also as a scholar.

The detailed, and at times necessarily technical, linguistic analysis contained in chapter 3 has set out the proofs that enable the *Textus Roffensis* securely to be

regarded as an accurate transmission of the *Laws* as they stood in Æthelberht's own time. Whilst the analysis of dialectal issues contained in section 3.5 is admittedly more equivocal, and acknowledging that the precise detail of the various stages of transmission between the original exemplar dating from the turn of the sixth and seventh centuries and the *Textus Roffensis* remains obscure, nevertheless analysis of the orthographical, phonological and morphological issues to which the *Textus Roffensis* text gives rise shows them to be entirely consistent with a text derived from that exemplar.

After dealing with these necessary preliminaries, a detailed consideration of Æthelberht's *Laws* was undertaken in chapter 4, the most substantial chapter of this thesis. This chapter, though drawing heavily from Oliver's earlier work, nevertheless contains a number of novel points of interpretation, of which the most significant is the argument for the survival in the level of compensations set for thefts from the clergy of similar tariffs for a pre-Christian priesthood. Other matters falling to be noted include the analysis of *læt* in chapter 27, which as previously remarked has gained considerable background colour from recent advances in genetic studies. Further, writing for publication in 2003, Oliver did not then yet have to hand a number of important contributions made by Hough to the discussion of the various clauses in the *Laws* concerning women, considered in section 4.7, for which Oliver's original analysis accordingly needed to be updated. Finally, the discovery of, and the subsequent emerging scholarship surrounding, the Staffordshire Hoard has suggested an interesting, albeit speculative and unproven, interpretation of the function of the *ambiht smið* of clause 13 of the *Laws*.

Chapter 4 also shows, at times starkly, the nature of the society over which Æthelberht ruled: how this society was ordered, and the differential extent to which it sought to protect its constituent members in a stratified and intensely hierarchical manner. Such material can properly be considered to advantage by the legal historian, not least when it highlights certain areas, such as the protection of the legally vulnerable considered in chapter 6, where one may justifiably speculate that the *Laws* operated less effectively. Women and children

who lacked kin able and willing to intervene on their behalf, and members of the semi-servile and servile classes, were undoubtedly at risk of being treated harshly, and it would have been of no consolation to them that their lot would have been likely to be no better in any Continental kingdom of the age.

Chapter 4 also shows the *Laws* to have been relatively narrow in scope. They deal almost exclusively with what can loosely be regarded as the maintenance of public order through the prescription of a detailed tariff of monetary penalties for personal injury and other offences. In this, as with the detail of a number of their specific provisions, the *Laws* display a number of similarities with other law codes promulgated broadly contemporaneously amongst other Germanic peoples on the Continent. Critical to this analysis is the detailed discussion of the feud contained in chapter 5, and the fact that the institution of feud persisted, as has been seen, even into the immediate pre-Conquest period shows that the law codes not only of Æthelberht but also of subsequent kings may have impacted only marginally on the behaviour of his subjects.

It follows from this, therefore, that it is perhaps no less important to remark upon the issues with which the *Laws* do not deal. Other matters that would, even in a nascent civil society, have been of profound importance, such as a system of land ownership and transfer, of inheritance and of contract law, receive no attention at all. This observation might be thought to reinforce one of the principal themes emerging from the Continental parallels examined in chapter 5 and the discussion of the nature of royal authority contained in chapter 7, namely that the purpose of the *Laws* is not merely, or perhaps not even primarily, juristic but is instead **political**. The value of the *Laws* to their student accordingly lies not merely in their structure and content *per se*, instructive as this undoubtedly is, but also in the statement that the fact of their promulgation made about Æthelberht, the authority that he exercised and the parity of esteem that he asserted for himself with his Continental peers, considerations all reinforced by Æthelberht's choice of the vernacular Old English as their language.

The juxtaposition within a very short space of time of the renaissance of civic society from the chaotic impact of the Migration Age on post-Roman Britain, the emergence of a nascent dynasty in Kent struggling to establish and maintain itself against internal and external rivals in both the military and the diplomatic sphere, the adoption of a new religion sanctioned by royal authority and the promulgation of the *Laws* is therefore no coincidence, but rather a complex and interlocking web of inter-dependent and mutually reinforcing strands, all of which are consistent with a view of Æthelberht and his kingdom as representing **a new political order seeking not merely to assert but also to entrench its authority.**

Lest this conclusion be thought to savour too much of *realpolitik*, regard should also be had to the summary discussions of subsequent law codes contained in section 8. For example, the law code of Wihtræd was enacted after a period of dynastic strife, and to this extent is consistent with a desire on the part of the new king to lend legitimacy to his reign. The, more or less contemporary, code of Ine similarly attests to the desire of the ruler for consolidation, in Ine's case after his inheritance of the consequences of the tumultuous reign of Cædwalla and a need to address properly legal complexities posed by the westwards expansion of Wessex into former Celtic territories. Finally, Alfred's code has been interpreted by Wormald as motivated by an ambitious desire that his subjects should become, like the Israelites, a Holy People, accountable to God for their actions. Such an interpretation, which sits foursquare with a plain reading of the introduction to Alfred's code, would speak to a political motivation as well as to a religious one. It is therefore difficult to resist the conclusion that, for Anglo-Saxon kings, the promulgation of law was, if not invariably, at least very often an intensely political act.

ABBREVIATIONS

Burg.	Burgundian
Du.	Dutch
Goth.	Gothic
Icel.	Icelandic
Ir.	Irish
Lat.	Latin
MGH	<i>Monumentum Germaniae Historica</i>
MnE	Modern English
MnF	Modern French
OE	Old English
O. Frs.	Old Frisian
OHG	Old High German
ON	Old Norse
OS	Old Saxon
PIE	Primitive Indo-European
S. (number)	The reference assigned by P. H. Sawyer, <i>Anglo-Saxon Charters, An Annotated List and Bibliography</i> (London: Royal Historical Society, 1968)
Skt.	Sanskrit

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Plate 2: *Ibid.*, fo. 1v, noting *inter alia* the straight-limbed form of "y" in *hwylc*, line 8.

Plate 3: *Ibid.*, fo. 2r

Plate 4: *Ibid.*, fo.2v, noting *inter alia* the "f-shaped" variant "y" of *ge/kyndlice*, spanning the start of the bottom line and the end of the preceding line.

Plate 5: *Ibid.*, fo.3r

Plate 6: *Ibid.*, fo.3v, showing the conclusion of Æthelberht's *Laws* and the commencement of the apparent joint code of Hloþhere and Eadric.

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 ces feoh. iii. sýlde. Cric frýp.
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 lea. 7 me mannan of slehd. 7 ðaman leod zelde
 for zelde. Cýnnýes mandwýp. l. seillinga. Cif
 frýz man frýz seclp. 7. zebete. 7 cýnný aze þ
 pite 7 ealle þa elitan. Cif man þis cýnnýes may
 denman zeltzeth. l. seillinga zebete. Cif ho sýn
 dende þearf. 7. xxx. seillinga zebete. Dio þridde
 xii. seillinga. Cýnnýes fedes. l. xx. seillinga
 forzede. Cif on cýles cune man mannan

De eam Roffu. p. C. omnia omnia

PLATE I

of slaeh. xii. scill gebete. Gif þu ceoþles
 byrele man zeltgeh. xii. scill gebete. Ceoþles mund
 byrd. lvi. scillingas. Gif þu ceoþles byrele man
 ze lizeh. vi. scillingu gebete. Aet þe þe oþere deo
 þa. l. scatta. Aet þe þe þuddan. xxx. scatta. Gif
 man in mannes eun aþere ze tines. vi. scillingu
 gebete. Se þe aþer tines. iii. scillingas. Siddan ze
 hyle scilling. Gif man mannan þeþnum beþneþ
 deþ ceas þeod. 7 man nans s þel ne zedeþ. vi. scillin
 gum gebete. Gif þe þe þeaf s þeod. vi. scillingum
 gebete. Gif man þone man of slaeh. xx. scillingu
 gebete. Gif man mannan of slaeh. medume leod
 zeld. c. scillinga gebete. Gif man mannan of slaeh
 at oþerum tines. xx. scillinga forzelde. 7 in. xl.
 miltu calne leod forzelde. Gif þone of lande
 ze tines. da mag þe healfne leod forzelden. Gif man
 þe tines man gebete. xx. scill gebete. Gif man
 ceoþles hlaf. stan of slaeh. vi. scillingum gebete.
 Gif læt of slaeh þone felestan. Lxx. forzelde.
 Gif þone oþerne of slaeh. Lx. scillingum forzelde.
 Þane þuddan. xl. scilling. forzelden. Gif þu man
 edon þeche zedeþ. vi. scillingum gebete. Gif man
 inne feoh zeminneþ. se man. iii. zelde gebete. Gif
 þu man edon zegan zed. iii. scillingum gebete.

Gif man mannan of slea aȝene scette: tunsacne feo
 ze hylde zelde. Gif hit man mid fines mannes pif
 zeltze. hit þer zelde abize. ȝodeþ pif his aȝene
 scette beze. ȝ ðam oðrum æt þam zebpenze.
 Gif man hit ham seild þurh scind. mid peopðe for
 zelde. Gif þær fars zepoþ. l. scillingum toboze.
 Gif banes blize peopðe. iii. scillingum zebete. Gif
 banes vice peopð. iiii. scillingum zebete. Gif sio
 ætwepe mon zebroccen peopðe. x. scillingum ze
 bete. Gif bucu sien. xx. scillingum zebete. Gif
 eaze zelamed peopðe. xxx. scill zebete. Gif
 oþer eaze napilt zehered. xxv. scill zebete.
 Gif eaze of peopð a slazen. xii. scill. zebete. Gif
 eaze þwel peopðe. iii. scill zebete. Gif eaze
 sceapd peopðe. vi. scill zebete. Gif eaze of pe
 opð. l. scilling zebete. Gif mid oþre eaze þoh
 peopðe. xii. scill zebete. Gif nasu ðwel peopð
 viii. scillingum zebete. Gif hit sio an hleore
 iii. scill zebete. Gif bucu ðwpele sien. vi. scill
 zebete. Gif nasu ælcop sceapd peopð ze hylde.
 vi. scill zebete. Gif ðwel peopð. vi. scill zebete.
 Se þe emban for slahð. mid. xx. scillingum for
 zelde. Et þam feoþer to ðum fynesum æt
 ze hyleum. vi. scillingas. Se to þe þanne

bi scandel. iiii. scill. Se he domie bi dan standeþ.
 iiii. scill. And þon siþþan gehwyle scilling. Gif
 spæc apyrd peopþ. xii. scillingas. Gif piod ba
 ne gehnoced peopþeþ. vi. scill gebete. Se he eapm
 mæth send. vi. scillingum gebete. Gif eapm
 forþnocen peopþ. vi. scill gebete. Gif humanof
 as lehd. xx. scill. Gif duman nægl of peopþeþ.
 iii. scill gebete. Gif man seve fingen of as lehd.
 viii. scill gebete. Gif man middel fingen of as lehd.
 iiii. scill gebete. Gif man gold fingen of as lehd.
 vi. scill gebete. Gif man þone lyelan fingen of
 as lehd. x. scill gebete. **Ac** þam næglum ze
 hwylcum. scilling. **Ac** þam lepestan plite þam
 me. iii. scillingas. **And** æt þam manan. vi. scill.
Gif man oþerne mid fyste manas slehd. iii. scill.
Gif dync sie. scilling. **Gif** he heahpe handa dync
 æt onfehð. scill for zelde. **Gif** dync speap sie
 bucon pedum. xxx. scotta gebete. **Gif** hnt sie
 buman pedum. gehwyle. xx. scotta gebete.
Gif hnt þand peopþeþ. xii. scill gebete. **Gif** he
 þurh dnel peopþeþ. xx. scill gebete. **Gif** man
 ze zemed peopþeþ. xxx. scill gebete. **Gif** man
 ceap þand sie. xxx. scill gebete. **Gif** man ze
 hndelice lim apyrd. þpym leud zeldum hnt

man forzælde. Gif he þurh stind. vi. scill zebede.
 Gif man inbestind. vi. scill zebede. Gif peoh zeþro
 een peoðep. xii. scillingum zebede. Gif he heale
 peoð. þær motan þreond seman. Gif he forþro
 een peoð. iii. scill zebede. Gif man peoh ðurh stangh
 stice zeþilce. vi. scillingas. Gif ðes sines scilling.
 æt eam s̄ncum tpezen. ofes þir. iii. sell. Gif
 þate þind peoðep. iii. scillingas zebede. Gif for
 of peoðep. l. scillingum forzelden. Gif seo mi
 cle ta of peoðep. x. sell forzelden. Ac þam o
 þrum eam zeþileum healf zeldes eal spa æt þam
 forþrum vs eiden. Gif þape in seclan eam naegð
 of peoðep. xxx. seotta cobote. Ac þam oþrum
 zeþileum. x. seottas zebede. Gif þu þif loebore
 les þes. hæt zeðep. xxx. sell zebede. **M**agþ
 þessy spa forzet mannes. Mundþape bet stan
 þidupan eorlcundre. l. scillinga zebede. Dape
 oþre. xx. sell. þape þuddan. xii. sell. þape
 feordan. vi. sell. Gif man þidupan unagie ze
 nemep. ar. zelde seo mund sy. Gif man mað
 zeþzed ceap zeceapod sy. gif hit unfaene is.
 gif hit þonne faene is. ef þær æt ham zeþpen
 ze þim man his seæc aze. Gif hno epe beann
 ze þyþer healfne seæc aze. gif ceopl æn spileþ.

Gif mid bearnum burgum wille. healfne scott age. Gif eow
 aran pile swan bearn. Gif tuo bearn ne zehyret
 dening me. al hoh gear. 7 monzen gise. Gif man
 mag man wile. eowne. dan ageude. l. scillinga. 7
 7. eowne. swan ageude. swine pillan et zehuze. Gif tuo
 oshammon in sceat bepyddod sy. .xx. scillinga ze
 bete. Gif zen sanzge peopdes. .xxxv. scill. 7 cyminge
 xv. scillingas. Gif man mid esnes cyngan zehze
 be eowum ceople. ii. zebete. Gif esne ^{oþerne} of slea unsyn
 nigne. ealne peopde forzelde. Gif esnes eage 7 foce
 of peopdes aflagen. ealne peopde hime forzelde.
 Gif man mannes esne zebndep. vi. sell zebete. Deo
 wof pez weaf se. iii. scillingas. Gif peop stelep.
 iii. zelde zebete. **H**is syndon þa domas de hlophie
 ne 7 eadric eadwara cyningas asetton. **H**
 lofhene. 7 eadric eadwara cyning. ^{as} eetton þa
 s. þa de heora aldoras æt zepolico. **H**
 swum domum he hyr. efter sezes. Gif man
 nes esne eowleundne mannan of slohd. þane de
 ho þreom hundum sell zylde. seazend þone
 banan agefe. 7 do þær þra manwyrðeo. Gif
 se bane of byrste feoppe manwyrð he tozed.
 7 hime gecanne mid godum ærdum. þ he þane
 banan bezeten ne mihte. Gif mannes esne

fruzic mannan of 7 labd þane þesie. hund scilling
 za zeld. seaxend þone þannan a sefe. 7 oþer man
 þyrd þæp to. **Gif** þans of byrste. 7 þan man þyrd
 þum þine man for zelde. þine zecanne mid to
 dum apdum. þ he þane þannambe zetan ne miltce.
Gif fruzman mannan for scele. gif he eft cunna.
 seap melda secege an and þeapone. zecanne þine
 gif he mæge. hæbbe þane fricopa þum apda man
 na. 7 enne mid mæþe. æz hyle man æt þam tume
 þe he to hýpe gif he þ ne mæge zelde sþa he zono
 haze. **Gif** ceopil acpyle belýþendum þise 7 þearn.
 þilt is þ hit þ bearn meddep. folzize. 7 þam man
 an his fædering magum þilsumme beþizean ze
 selle his feoh to healdenne. of þ he .x. þincpasie.
Gif man oþrum mæn feoh for scele. 7 se azend hit
 eft æt fo. zeceme to cýnzes sde gif he mæge.
 7 þane æt zebþeize þe him sde. gif he þ ne
 mæge late an. 7 fo se azend to. **Gif** man oþerme
 sace tilte. 7 he þane ^{mannan} mote an medle oþ þe an þm
 ze. sýmble se man þam oþrum by þizean. zesæl
 le 7 þam þilt apýrce þeto hrom canþapa de
 man zescriften. **Gif** he þonne byþizean for þap
 ne. .xii. scillingas azylde þam cýnize. 7 sio se
 sacý sþa open sþa hio æn þef. **Gif** man oþerme

Incipit Liber secundus de sacramentis
sacramentis archiepiscopi et presbiteri
sacramentis



e moribus...
 habuimus...
 ut...
 in...
 materiam...
 capere...
 renouari...
 neri...
 mei...
 nem...
 nuandam...
 renur...
 derit...
 & bonum...
 capite...
 diceremus...
 qd...
 qd...
 h...
 n...
 ingressus...
 reuognoſce...
 mundo...
 mulo...
 uidisti...
 corporum...
 locus...



Blas de ...

habuit multa in sequenti...
ad quod in...
Incipiunt privilegia a ecclesia sancti
 andreae hrofensis concessa a tempore schil
 berhti regis. qui fide xpiana ab eodem au
 gustino suscepta. eandem ecclesiam con
 strui fecit

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EGNANTE

40

IN IPSE TUVO DNO
 nro ihu xpo. saluatore.
 mense aprilio. sub die
 iiii. kl' maias. indictione
 vii. ego ethelberhtus rex
 filio meo eadbaldo admo
 nitione catholice fidei
 optabile. Nobis est
 aptu semp inquirere.
 qualiter ploca scoe
 panne remecho
 vel stabilitate salutis nre aliquid de portione
 terre nre insubfidis seruoze dei deuocissi
 ma voluntate debeamus offerre. Ideoq; tibi
 scoe andreae tuq; eccliae que est constitu
 ta inuentate hrofi breni tibi prę ee inde