

GERMANIC WOMEN: *MUNDIUM* AND PROPERTY, 400-1000

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Many historians would like to discover a time of relative freedom, security and independence for women of the past. The Germanic era, from 400-1000 AD, was a time of stability, and security due to limitations the law placed upon the *mundwald* and the legal ability of women to possess property. The system of compensations that the Germans initiated in an effort to stop the blood feuds between Germanic families, served as a deterrent to men that might physically or sexually abuse women.

The majority of the sources used in this work were the Germanic Codes generally dated from 498-1024 AD. Ancient Roman and Germanic sources provide background information about the individual tribes. Secondary sources provide a contrast to the ideas of this thesis, and information.

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CHAPTER 1

INTRODUCTION

Over the last several decades the field of women's history has tremendously increased. Women's rights, past and present, have become an important topic both politically and historically. As historians and others re-evaluate the definition of rights and what matters most in society, it seems that the possession of property and the limitations that her guardian might place on that property are the biggest factors in determining the quality of life that women experienced. There was a dramatic change in the structure of women's property rights after the fall of the Roman Empire and before the re-emergence of Roman law. The history of women's property rights and the restrictions that the presence of a *mundium* implies is an important topic when studying the rights of women during the Germanic era, 400-1000 AD.

Several historians have all made important contributions to the study of women's rights, property and ward-ship during the Germanic era; however, the contradictions inherent in these studies, due either to the obscurity of the sources or the subjectivity of the author in question, leave many questions still unanswered. This work will try to distinguish between characteristics that are truly Germanic in nature, and those that arose from contact with the Roman Empire and Christianity. It will also examine the changes occurring within the codes from the fifth through the eleventh century, along with other available narrative and legal sources from this era, in an effort to clear up many of the ambiguities found in past studies.

Suzanne Wemple has made several important contributions to the field of women's history. Wemple's book on women's status in Frankish society from 500 to 900 is an example of the complexities encountered in the study of the rights of Germanic women. For Wemple, women's rights during the Germanic era swung back and forth between relative freedom and

intense restrictions. She begins with the rights of Roman women in the late Empire and compares them to the comments that the historian Tacitus made concerning Germanic women, then turning to the Germanic codes, and contemporary narrative sources with information on Germanic women. Wemple argues that women were highly valued in early Germanic society because:

the socio-economic system is based on a simple division of labor--the men functioning as hunters and warriors and the women producing vegetable foods and tending to domestic details- women's contributions to the well- being of their society were fully appreciated. But while Germanic women shared the life of their husbands, even to the extent of accompanying them to battle and giving them advice, they were dominated by, and dependent upon men's superior physical strength. Two directly conflicting notions about women governed the relationship between the sexes among the Germanic tribes: the wife was regarded as the helpmate of her husband, while the daughter was treated as a chattel, whose fate depended upon her nearest male relatives.¹

According to Wemple, as the barbarian tribes settled within the Roman Empire, the duties of women changed, and this was detrimental to their value in Germanic society.

Wemple believes that in the Merovingian era, during the sixth and seventh centuries AD, "The emphasis in the codes on women's reproductive function and defenselessness fostered acceptance of the concept of feminine passivity and dependence, particularly in the upper classes, where women were not expected to perform physical labor. Discouraged from bearing arms and defending themselves, women in the Merovingian aristocracy were isolated in more narrowly defined sex roles than their Germanic ancestors. The prevailing stereotype of women as helpless creatures provided, moreover, justification for sexual double standards and the subjection of women to the authority of their husbands, principles that were incorporated in the Germanic codes." Wemple further explains that widows in Germanic society acquired the rights

¹ Suzanne Wemple, *Women in Frankish Society: Marriage and the Cloister 500 to 900* (Philadelphia: University of Pennsylvania Press, 1981), 14-5.

and the powers of their deceased husbands, so long as they did not remarry.²

She summarizes in this way: “The obvious conclusion of this study is that the position of women in Frankish society was not static. It differed in each social group and fluctuated within each group under the impact of different historical forces.” She states: “. . . in the Merovingian period, when both royal and ecclesiastical authority had been feeble and decentralized, women could exercise considerable power as members of the landed aristocracy and as heads of monasteries. For all the sexual asymmetry, women were less marginal in Merovingian than in Carolingian society. Ambition in a woman was tolerated as long as she did not appear too independent and achieved her goals by using her sexual power, social connections, and wealth.” In summary, Wemple believes that when women were a necessary component to the basic survival of the village, they acquired a more equitable lifestyle as mates, not as daughters, but as the tribes settled and life became more stable, men no longer valued wives for their ability to provide for the community and focused more on the benefits of their reproductive capabilities. In this settled society, the widow achieved the greatest equality because she assumed the position of her deceased spouse.³

The majority of Wemple’s writings tend to focus on the double standards that appear in the Germanic codes. Sexual double standards are the focus of one of her articles, where states: “Ideals about sexual purity took shape in the early Middle Ages and dominated the social and intellectual scene of medieval and modern times. It was the duty of the female to uphold and practice the sexual restraint that distinguished the two genders. If they did so, they were praised; those that did not were condemned.” Wemple believes that this was an unfair expectation and

² Wemple, *Women in Frankish Society*, 29, 31.

³ *Ibid.*, 194.

that the focus on chastity served as a tool to further limit women's importance in Germanic society.⁴

Most historians agree with Wemple about the existence of sexual double standards in Germanic society. James Brundage concentrates a portion of his study on the sexual double standards. When writing about the customary marriages of the Germans, he states "These unions were not necessarily sexually exclusive; married men commonly maintained one or more concubines in addition to their wives. The concubines were usually servant or slave girls, and the children of these unions could claim no share in their father's estate." Brundage's book covers sexual relations from the "Ancient world" to modern times. He makes no judgment about the value of women in society, simply pointing out that double standards did exist in Germanic society. These double standards were clearly not, however, a Germanic invention. Vern Bullough also notes that sexual double standards existed. "A wife was expected to be chaste, but she had no control over her husband, and the marriage could be easily dissolved if he wanted. Concubinage was widespread and polygamy was not unknown." Katherine Fischer Drew notes that the Lombards created laws regulating inheritance for children born of the father's extramarital unions. According to Jordanes, a sixth-century Germanic historian, Theodoric the Great, King of the Ostrogoths and the Romans from 488 to 526, was the son of a concubine. Sexual double standards existed, as they existed in many societies, but they were by no means inherent to German nature.⁵

⁴ Suzanne Wemple, "Consent and Dissent to Sexual Intercourse in Germanic Societies from the Fifth to the Tenth Century," in *Consent in Coercion to Sex and Marriage in Ancient and Medieval Societies* ed. Ageliki E. Laiou (Washington: Dumbarton Oaks, 1993), 242.

⁵ James Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: The University of Chicago Press, 1987), 130; Vern Bullough, *The Subordinate Sex: A History of Attitudes Toward Women* (Chicago: University of Illinois Press, 1973), 156; Katherine Fischer Drew, introduction to *Lombard Laws*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1976), 33; Jordanes, *The Origins and Deeds of the Goths*, trans. (Princeton: Princeton University Press, 1908), 85-6.

Germanic women's ability to appear in the public sector as workers, benefactresses and clerical leaders also provide information about their economic and social opportunities. Wemple believes that the era from 400 to 100 was a time of dramatic change for women in the field of employment. "In the very early Middle Ages, in the fifth, sixth, and seventh centuries, society was loosely organized and the role of women proved open-ended, their contributions to life extensive. In Carolingian times, when kings triumphed over the aristocracy and bishops over the monasteries, the scope of women's activities was delineated narrowly and their involvement outside the home or monastery was curtailed." She further explains that this strict control changes, at least in the role of married women in the absence of their husbands. "A growing number of tenth century wives became castellans, mistresses of landed property, proprietors of churches, participants of secular and ecclesiastical assemblies, and exercisers of military command and attendant rights of justice. Land was the only source of power, and women could inherit land from their husbands or family; they could exercise the power if their husbands were away at war or feuds at the royal or imperial court, or had died."⁶

David Herlihy discusses the many political options open to women in the Merovingian era; Herlihy found that women had a strong presence in the courts, and cites the church council at Nantes in 660, which made a point of complaining about the presence of women in the courts, concluding that: "If women faced disapproval in their public participation in assemblies and courts, they retained an unquestioned role in household management. For the great families, this was the equivalent to the administration of estates and even realms." Unlike Wemple, Herlihy believed that during the Merovingian era, most women, even those of the nobility played a vital part in the functioning of Germanic society, regardless of whether or not their husbands were

⁶ Suzanne Wemple, "Women From the Fifth to the Tenth Century," *A History of Women in the West. Vol.2. Silences of the Middle Ages* ed. Christiane Klapische-Zuber (Cambridge: Harvard University Press, 1992 pp. 169-201), 200-

present because the home was the women's domain and had been since at least the time of the historian Tacitus.⁷

One of the reasons that many historians focus on the limited powers of Germanic women is due to the institution of the *mundwald*. The *mundwald* meant the personal guardianship one person held over another. The guardian was responsible for collecting any compensation for injuries that occurred to the ward, ensuring his or her safety, and protecting his or her interests in court. Jo Ann Moran Cruz and Richard Gerberding believe that this system of guardianship prevented women from owning property and that Roman women had greater inheritance rights: "Barbarian women, however, did not enjoy these rights until the barbarian kingdoms were reasonably well established. This development most likely reflects increasing Roman influence in the legal systems of those kingdoms." These authors believe that any property rights Germanic women eventually held were of Roman origin.⁸

Elise Boulding points out one of the key problems with the study of women's rights in the Germanic era. "Original tribal traditions differed, so those using the barbarians as an excuse for the suppression of women tend to quote Saxon, Thuringian, and Lombard law, while those who would look at tribal life as the source of freedom for women tend to quote Burgundian and Visigothic law." The issue that Boulding illuminates is that the codes are difficult to interpret. The laws among the Germans varied and it is difficult to make comparisons. Many of the codes that remain are fragments of the laws that once existed in writing. Unwritten custom formed the basis of Germanic societies. Furthermore, there is a difficulty in understanding the terminology

1, 184.

⁷ David Herlihy, *Opera Muliebria: Women and Work in Medieval Europe* (New York: McGraw-Hill, 1990), 42-3.

⁸ Theodore Rivers, introduction to *The Laws of the Alamans and Bavarians* trans. Theodore Rivers (Philadelphia: University of Pennsylvania Press, 1977), 30; Jo Ann Moran Cruz and Richard Gerberding, *Medieval Worlds: An Introduction to European History 300-1492* (Boston: Houghton Mifflin Company, 2004), 89.

of the codes. These are the reasons why historians viewing the same material sometimes arrive at differing conclusions.⁹

In contrast to Boulding's statement about the Lombards suppressive towards women, Katherine Fischer Drew commends them for their provision of women's property rights. In discussing the rights of Lombard women and the property that they inherited at the time of their marriage, Drew states: "These gifts might well have been of very considerable size and the woman seems to have had some claim to both as part of her separate property which in the event of her death passed to her heirs rather than to her husband." Drew also points out that her ownership rights were limited because the Lombard woman was never "legally competent," but she also says, "But even if not legally competent, the Lombard women enjoyed considerable protection at law. Her husband or *mundwald* might not dissipate her property nor seriously mistreat her. A husband could put his wife aside only if she were guilty of adultery or of plotting against his life--putting her aside for any other cause subjected him to the loss of his wife's *mundium* and the payment of a very large fine." Barbara Kreutz in her article "The Twilight of Morgengabe" also focuses on women's property rights in Lombard society, furthering the idea that kin was important in ensuring that the woman's *mundwald* did not exploit her property rights and dissipate her estate. A law of Liutprand, King of the Lombards in the early eighth century, stipulated that a woman could not alienate her property without the presence of her family in front of a judge. According to Kreutz, who studied relevant charters from the ninth century, "if the evidence of our charters can be trusted, no Lombard law was observed more scrupulously. Transactions involving women-- whether widowed or with living husbands-- always take place in the presence of a *judex*, or *sculdais* (an official whose duties included

⁹ Elise Boulding, *Underside of History: A View of Women Through Time* (London: Sage Publications, 1992), 301.

judgments), , or sometimes even a *gastald*. And two or three *propinqui parentes* (the woman's nearest male relatives), are always present and vocal."¹⁰

While Kreutz and Drew studied the morning-gift, Theodore Rivers studied the bridal-price, both of which were property transfers that occurred at the time of the wedding. "There can be little doubt that the earliest form of marriage among the Franks, like all primitive peoples, was by wife--purchase, in which the bride was merely an object of the sale between the bridegroom and the wife's family. This conclusion can easily be drawn because traces of this type of marriage remain in Salic laws The Bridegroom confirmed his intent to marry the woman he chose by giving to her parents a payment which bound all parties to the contract." He later stated that the bridal price "evolved instead into the dower, which was the provision the husband gave his wife for her pension after his death." Rivers seems to imply that early Germanic brides had little input into the selection of their spouses and mirrors Wemple's concept of daughters traded and treated like property instead of people.¹¹

S. P. Scott believes that the Visigoths were very liberal in allowing their widows property rights. "While the wife had the right to the use of half of the deceased husband's property during her lifetime, he had a right to the use of only one third of hers, as he has today. The favor generally shown to the wife in the stipulations of the marriage contract, are largely the result of the independence enjoyed by the sex under the Teutonic and Scandinavian customs."¹² Property rights were an important component in the lives of women and probably the most important

¹⁰ Drew, introduction *Lombards Laws*, 32, 33; Barbara Kreutz, "The Twilight of *Morgengabe*" in *Portraits of medieval Renaissance Living: Essays in Memory of David Herlihy* ed. Samuel K. Cohn and Stephen A. Epstein (Ann Arbor: University of Michigan Press, 1996), 139.

¹¹ Theodore Rivers, introduction to *Laws of the Salian and Ripuarians Franks*, trans. Theodore Rivers (New York: AMS Press, 1986), 20-1.

¹² S. P. Scott, introduction to *The Visigothic Code*, trans. S.P. Scott (Littleton, CO: Fred B. Rothman & CO., 1982), 125-6.

factor in ensuring their well-being, security, and independence, greater even than that of the *mundium*.

Another example of the confusion found in understanding the Germanic codes can be found in the introductions of Theodore Rivers *Laws of the Salian and Ripuarian Franks* and that of Katherine Fischer Drew's *Laws of the Salian Franks*. Here two historians, who both have experience translating Germanic codes, take separate and opposing positions concerning the quality of life for women under the Salian codes, based on the same concept of women's control over their own property. Drew states:

In many ways, the Frankish woman seems almost legally self-competent. She was able to own and inherit property (as among the other Germans), , and this property was kept separate from her husband's property. Among the other Germans, however (with the exception of the Visigoths), , the husband administered his wife's property even though he could not dispose of it without the consent of his wife or her relatives. Among the Franks, the wife may have administered her own property. At least she could be assessed composition separately from her husband, which implies that she had an independent control.

Rivers used the concept of the *mundium* to denigrate the power of women.

Being under male guardianship prevented women from taking an oath or defending themselves with weapons. What property a wife brought with her to marriage was managed by her husband, with the exception of her personal property. As long as her husband was still living, a wife could not dispose of any property without his consent, but her personal property was not liable for any obligations her husband may have incurred.

Here are two talented historians presenting two opposing views about the amount of power Frankish women had over their own property. Theodore Rivers focuses on the power of the guardian as a limitation upon the property rights of Germanic women, while Katherine Fischer Drew focuses on the obligations the law placed on the guardian as an enhancement of Germanic

women's property rights. Translators and historians sometimes view the material through the biases of their own lives.¹³

Historians view their subjects through their personal biases making it difficult to determine how great the quality of life was for people of the past. The study of the Germanic law codes can at least reveal what lawmakers of that era felt to be necessary in protecting and providing a decent quality of life for women. Germanic lawmakers sought to protect women from physical abuse, restrict women from committing crimes, and monitor their rights to inherit property. Though these laws did vacillate to a certain extent due to the rising influence of the Catholic Church and Roman law, for the most part these basic protections were fairly stable. The most important issues for determining what constitutes the rights and importance of women during the Germanic era rests on their ability to own property and the powers and limitations of their guardians. While the Germanic era was not a "golden age" for women, the study of the laws show that it was at least an era of greater privileges and securities than those of their Roman predecessors or their Renaissance descendants.

In proving this thesis, this work will first examine contemporary Roman and Greek narratives about the invading Germanic tribes, and then turn to Germanic authors' narratives during the Middle Ages in order to define basic Germanic traits within these tribes. This is important in determining what rights and protections the Germans valued. This work will then proceed to examine the law codes in chronological order to find these important traits and detail any changes which occurred due to the influence of the Catholic Church or Roman laws.

¹³ Katherine Fischer Drew, introduction to *Laws of the Salian Franks*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1991), 43; Rivers, introduction to *Laws of the Salian and Ripuarian Franks*, 21.

CHAPTER 2

EARLY HISTORIES OF THE GERMANS

In order to be able to make an assessment of whether women had more rights under Germanic, Roman, or Christian law, it is necessary to determine what aspects of Germanic law were truly German. Unfortunately there are no surviving written records of the Germans prior to German contact with Roman society. The historian must seek Germanic traditions, through the eyes of the Romans. There are some excellent sources of Germanic behavior in Roman accounts, even if they are slightly biased.

The Romans had been aware of the existence of the Germans for several centuries before the fall of the Roman Empire in the fifth century. One of the first mentions of the Germans that survived is *The Conquest of Gaul* by Gaius Julius Caesar, written sometime after 51 BC. The work is an account of Rome's triumph over Gaul and the majority of the enemies in it were of either unclear descent or Celtic; however, the book does include information about those whom Caesar referred to as the Germans. Overall, the work is about the war and his mention of women is rare, but the author does illuminate several important issues about the Germans.

Caesar, while writing about people that he called the Gauls, mentioned the institution of compensation. He explained that these were the Gauls and not the Germans who lived further on the borders. Caesar was speaking of the Celts; nevertheless, the tradition of compensation which Caesar speaks of, meaning money paid to compensate for an injury whether criminal or accidental, was also a Germanic trait, which will be evident in their laws. Caesar stated that the religious leaders of the Gauls, or the "Druids," were responsible for serving as judges as well. He says, "They act as judges in practically all disputes, whether between tribes or between individuals; when any crime is committed, or a murder takes place, or a dispute arises about an

inheritance or a boundary, it is they who adjudicate the matter and appoint the compensation to be paid and received by the parties concerned. Any individual or tribe failing to accept their award is banned from taking part in sacrifice--the heaviest punishment that can be inflicted upon a Gaul." Historians generally agree that the Germanic tribes used this compensation to substitute for the blood feud that the injured party or kin might feel inclined to start. This passage did not mention a blood feud, but it is clear that the Gauls intended to ensure that the injured party accepted the compensation. The Celts were not unlike their Germanic neighbors in this aspect. This is important in the scope of women's rights because part of their value in Germanic society was portrayed through the amount of compensation owed for their injuries. Several historians have used the value of women's compensation as a direct sign of their value to Germanic society.¹

Several historians have argued that the Germans were a polygamous society and chastity held no importance for the male sex. Many historians credited the Catholic Church with the encouragement of monogamy and sexual abstinence; however, Caesar stated, long before the Church had any influence, "Those who preserved their chastity longest are most highly commended by their friends; for they think that continence makes young men taller, stronger, and more muscular. To have intercourse with a woman before the age of twenty is considered perfectly scandalous. They attempt no concealment, however, of the facts of sex: men and women bathe together in the rivers, and they wear nothing but hides or short garments of hairy skin, which leaves most of the body bare." Though some of the later Germanic laws promoted

¹ Julius Caesar, *The Conquest of Gaul*, trans. S. A. Handford (London: Penguin Books, 1982), 140.

sexual double standards, according to Caesar chastity was as important to the Germanic male as the female.²

Cornelius Tacitus, a Roman living in the first century AD, also wrote about the invading barbarians in his essay about the Germans titled *Germania*, which he wrote in 98 AD. The intention of Tacitus's work was to chastise the Romans by comparing them to the morally and physically superior Germans. So, while his work is important, historians must view it to some extent as propaganda. Although he had never actually traveled to Gaul and Germany; he still provides information about the Germans. His information about society is so different from Roman society that it be genuinely German.

Tacitus illuminates the importance of women in his essay about the Germans. He recorded the volatile emotions that wife and kin inspired in these warriors. In the *Germania*, Tacitus stated: "It is considered a crime to limit the number of children or to put to death any of the children born after the first, and there good customs have greater influence than good laws elsewhere." In another section of the *Germania*, he wrote: "and what is a particular incitement to bravery, neither chance nor a miscellaneous grouping brings about the cavalry or infantry formation, but families and clans; and close by are their dear ones, whence are heard the wailings of women and the crying of children. These are each man's most sacred witnesses, these are his greatest supporters: it is to their mothers and to their wives that they bring their wounds; and the women do not quake to count or examine their blows, and they furnish sustenance and encouragement to the fighters." Wemple has said of this era that Germanic men valued the aid of their wives, but considered their daughters expendable. While she is right about the

² Wemple, "Consent and Dissent to Sexual Intercourse in Germanic Societies from the Fifth to the Tenth Century" in *Consent and Coercion to Sex and Marriage in Ancient and Medieval Societies*, ed. Ageliki E Laiou (Washington: Dumbarton Oaks, 1993 pp 227-244), 242; Caesar, *Conquest of Gaul*, 143.

supportive efforts of the wives, she is wrong to believe that Germanic fathers did not care about their daughters.³ Children mattered immensely to the Germans.

The presence of women near the sites of battles also provide a glimpse of the importance of chastity for the Germans. “It is recorded that some battle lines, when already broken and giving way, were restored by the women, by persistent prayers and showing their breasts and pointing to the nearness of captivity, which the Germans fear much more violently for the sake of their women, to such a degree that the spirits of states are more effectively kept under control when the latter are ordered to include girls of high birth among the hostages. They even think that there is a sacred and prophetic quality in women, and so they neither reject their advice nor scorn their forecasts.”⁴ Women made an important contribution to Germanic society even on the battlefield.

The presence of these women near the fields of slaughter also helped contribute to the perception of Germanic women as warriors. Romans, seeing these women near the field, may have believed that they fought in the actual battles. Later historians also depicted these women as warriors, and some Germanic historians have depicted mythological stories of women who fought. There are, however, several examples of women that did actually take to the field of battle in defense of their honor and their kin.

Like Caesar before him, Tacitus assumed that an increased sexual drive limited a person’s physical strength. “The young men experience love late, and for this reason their strength is not exhausted. Nor are the girls hurried into marriage; they have the same youthful vigor and similar stature: they are well matched in age and strength when they enter upon

³ Tacitus, *Agricola, Germania, and Dialogue on Orators*, trans. Herbert W. Benario (Norman: University of Oklahoma Press, 1991), 73, 67; Wemple, “*Women in Frankish Society: Marriage and the Cloister, 500-900* (Philadelphia: University of Pennsylvania Press, 1981), 14-5.

⁴ Tacitus, *Germania*, 67.

marriage, and the children reproduce the strength of their parents.” This also illuminates important aspects of normal Germanic marriages. Germanic couples were close in age, had a mutually helpful relationship, and had close ties to their surrounding kin.⁵

These women were not just helpmates, they were also daughters and family members. Not only did couples generally share the responsibilities, and wives participate in the wars, but these marriages were generally monogamous. “For almost alone of the barbarians they are content with one wife apiece with only a very few exceptions, who are the objects of many offers of marriages not because of their own lust but on account of their high rank.” He later stated, “As a result, they live with chastity secured, corrupted by no attractions of games, by no seductions of banquets. Men and women alike are ignorant of secret correspondence. Although their population is so great, there are very few cases of adultery, the punishment for which is immediate and left to the husbands: in the presence of her relatives, the husband drives her naked from the home, with her hair cut off, and whips her through the whole village. Indeed, there is no pardon for prostituted chastity; such a woman would not find a husband regardless of her beauty, youth, or wealth.” The rest of this passage was a veiled attempt to humiliate the Romans and the debauchery of their sexual relations. Sexual double standards existed in Germanic society; this fact cannot be denied; however, the existence of concubinage and polygamy that are the worst of the offences were not as prevalent as some have previously thought.⁶

The Germans that Tacitus studied had a bridal price instead of a dowry. These gifts were supposed to be symbolic of the life that the bride accepted:

The wife does not bring a dowry to the husband, but rather the reverse occurs. Parents and relatives are present and pass judgment upon the gifts, gifts not suited to womanly pleasure nor with which the new bride may deck herself out, but cattle and a bridled horse and a shield with *framea* and sword. In return for these gifts a wife is obtained, and

⁵ Ibid., 73.

⁶ Ibid., 72, 73.

she in turn brings the man some weapon: they consider this exchange of gifts their greatest bond, these their sacred rites, these their marriage divinities. So that the woman may not think herself beyond the contemplation of brave acts and unaffected by the disasters of wars, she is reminded by the very first ceremonies with which her marriage begins that she comes as a partner in labors and dangers, who will suffer and dare the same thing as her husband in peace, the same thing in war . . . So must she live and die, with the understanding that she is receiving things she is to hand on to her children, unimpaired and in worthy state, which her daughters-in-law may receive and which may be handed on again to grandchildren.⁷

Women brought something to the marriage. The concept of the bridal purchase was beneficial to the woman in question as will be seen in the discussion of property rights below. In this example, the Germans instituted a partible inheritance that passed through the female line to their son's brides. The property stayed with a specific family, and yet it went through the female side. In later centuries when lawmakers wrote the Germanic codes, the Burgundians mentioned marriage ornaments that the women brought to the marriage, and historians have assumed that this was jewelry. There is no way to be certain, but it may have been swords instead of clothing and baubles.⁸

Tacitus further illuminated the issues of inheritance when he stated: "Nonetheless, each person's own children are his heirs and successors, and there is no will. If there are no children, the next priority in inheritance is held by brothers, paternal uncles, and maternal uncles." The division of inheritance to both the mother's and the father's brothers implies that both the male and the female had property to bequeath.⁹

Ammianus Marcellinus was a Greek historian who lived during the fourth century AD. For the majority of his life, he was in the military and served on the frontiers, in his later life he settled in Rome where he wrote his history of the Roman Empire titled, *Rerum Gestarum Libri Qui Supersunt*. In his history there is some information about the invading Germanic tribes, and

⁷ Ibid., 72.

⁸ *The Burgundian Code*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1949), 59.

like his predecessor Tacitus, his first volume contained a short section about the Germans. He calls them the “Gauls” and these Germanic tribes were distinct from the Franks and the Alamans, both of whom he writes about from time to time and were already familiar to the Romans and Greeks. These newly arriving Germanic tribes were invading the area that the Romans and Greeks referred to as Gaul.

According to Marcellinus, the Gauls were a fierce tribe and their women matched their mates, thus continuing to document the Germanic tradition of warrior women:

Almost all the Gauls are of tall stature, fair and ruddy, terrible for the fierceness of their eyes, fond of quarrelling, and of overbearing insolence. In fact, a whole band of foreigners will be unable to cope with one of them in a fight, if he call in his wife, stronger than he by far and with flashing eyes; least of all when she swells her neck and gnashes her teeth, and poising her huge white arms, proceeds to rain punches mingled with kicks, like shots discharged by the twisted cords of a catapult. The voices of them are formidable and threatening, alike when they are good- natured or angry. But all of them with equal care keep clean and neat, and in those districts, particularly in Aquitania, no man or woman can be seen, be she never so poor, in soiled and ragged clothing, as elsewhere.¹⁰

The Romans were at war with these German men, and Marcellinus depicted them as less masculine in an effort to encourage the Roman military. Nevertheless, Germanic women had a military prowess that seemed to stun the Romans and the Greeks.

Procopius of Caesarea, a Greek lawyer, chronicled the events of the Gothic Wars of the mid-fifth century. The majority of his writings dealt with men and war, but there were some interesting bits of information about women. Wartime for women was dangerous and often fatal. Procopius mentioned several important women, including Amalasantha, the powerful daughter of King Theodoric the Great.

⁹ Tacitus, *Germania*, 73.

¹⁰ Ammianus Marcellinus, *Rerum Gestarum Libri Qui Supersunt* Vol.1 in *Ammianus Marcellinus in Three Volumes*, trans. John C. Rolfe (Cambridge: Harvard University Press, 1950), 195, 197.

During the Gothic wars, women were treated as plunder by the triumphant armies. Procopius told the story of the surrender of Milan which Mundilas defended. He had strongly urged the Romans to fight against the invading armies, “but not one of the soldiers was willing to undergo the danger.” The barbarians spared the lives of the soldiers, but they destroyed the city and all the male inhabitants. Furthermore, the barbarians enslaved the women and gave them to “the Burgundians by way of repaying them for their alliance.” In a later episode on the Italian plains, the Franks, under the guise of friendship, crossed the Po River. “But, upon getting control of the bridge, the Franks began to sacrifice the women and children of the Goths whom they found at hand and to throw their bodies into the river as the first- fruits of the war.” Facing death and slavery Germanic women encouraged their men to fight. The Goths, under the leadership of Vittigis, surrendered to the Byzantine army under Belisarius without even a fight. “But when the women, as they sat at the gate, had seen the whole army (for they had heard from their husbands that the enemy were men of great size and too numerous to be counted), they all spat upon the faces of their husbands, and pointing with their hands to the victors, reviled them for their cowardice.” These women were not afraid of their spouses, though in this case, they were upset and with good reason. The women did not appear to be subservient to their husbands in any way.¹¹

Procopius’ books contain the story of Amalasantha. In 527 AD, she reigned over the Goths in the name of her eight-year-old son, Atalaric. According to Procopius, “she proved to be endowed with wisdom and regard for justice in the highest degree, displaying to a great extent the masculine temper. As long as she stood at the head of the government she inflicted punishment upon no Roman in any case either by touching his person or by imposing a fine. Furthermore, she did not give way to the Goths in their mad desire to wrong them, but she even

¹¹ Procopius, *History of the Wars* Vol. 4, trans. H. B. Dewing (Cambridge: University Press, 1904), 55, 87, 135.

restored to the children of Symmachus and Boetius their fathers' estates." This and the Roman education of her son made the queen unpopular with her Gothic followers. She finally gave way and discontinued the education of her son; but because of this he became a drunken troubled person. In an effort to save her life, in the face of a disloyal and dying son, she attempted to give her throne to the Emperor Justinian, and after securing certain conditions, which later went unheeded, allowed Theodatus to control the throne. Theodatus was a wealthy, Gothic landowner, but he was unpopular because he had stolen much of his money. Amalasantha never intended for Theodatus to reign, but after the death of her son, she needed a man on the throne. She planned to retain the power, but he imprisoned her instead. In the end, the Goths killed her. "For the relatives of the Goths who had been slain by her came before Theodatus declaring that neither his life nor theirs was secure unless Amalasantha should be put out of their way as quickly as possible. And as soon as he gave in to them, they went to the island and killed Amalasantha--an act which grieved exceedingly all the Italians and the Goths as well. For the woman had the strictest regard for every kind of virtue"¹²

The story of Amalasantha is important in the details it contains about the Germans. In the first place she was able to reign in the name of her son; throughout the Germanic era, several queens reigned as regents in the name of their sons. In the second place, even after her son obtained his majority, she retained the throne. In part this was because he was unsuitable as a leader, but as long as he remained alive, she had title to the throne. Furthermore, this woman fought when necessary against her fellow Goths, and while this made her unpopular among a certain segment of the population, many of her followers mourned her death because she had been such an upstanding woman. Amalasantha's struggle against her Gothic followers to

¹² Procopius, *History of the Wars* Vol. 4, trans. H. B. Dewing (Cambridge: Harvard University Press, 1904), 15, 17, 5, 27; Procopius, *History of the Wars* Vol. 3, 33,35, 37, 41.

provide her son with a Roman education portrays Germanic cultural preferences. The Goths wanted their future king to know and understand the ways and needs of the Goths, which they felt were very different from those of the Romans.

These Roman and Greek sources discussing the invading Germans made several similar comments. Tacitus and Marcellinus were familiar with the work of Julius Caesar, but they both also have examples of the behavior of the Germans that match the expected Germanic traits, which continued in the codes. These traits were the concept of paying compensation for offenses, the power and importance of family, and marriage inheritances that passed from the husband to the wife. Along with these traits was an emphasis on chastity and a mutual relationship within the marriage. The sources also document the tradition of warrior women, these women who matched their husbands in strength and vitality, as was often seen in the works of Procopius.

Several Germanic authors also wrote histories. Jordanes, a monk living in Burgundy during the sixth century, wrote *Origins and Deeds of the Goths*, which he claimed to base on Cassiodorus's history. Jordanes' history covered the migration and movement of both the Ostrogoths and the Visigoths, which initially were the Goths. According to Jordanes, the Goths had been in the area since before the time of Alexander the Great (356- 323 BC),. In political and military histories, women often appear through marriage alliances and causes for wars. Jordanes said of one important alliance: "Then Philip the father of Alexander the Great, made alliance with the Goths and took to wife Medopa, the daughter of King Gudila, so that he might render the kingdom of Macedon more secure by the help of this marriage." According to Jordanes, King Darius III of Persia, a contemporary of Alexander the Great, also sought an alliance with the Goths through a marriage. Darius III ". . . demanded in marriage the daughter

of Antyrus, King of the Goths, asking for her hand and at the same time making threats in case they did not fulfill his wish. The Goths spurned this alliance and brought his embassy to naught. Inflamed with anger because his offer had been rejected, he led an army of 700,000 armed men against them and sought to avenge his wounded feelings by inflicting a public injury.”

Historians believe that these stories reflect a mythological past that Cassiodorus had created for the Goths. Jordanes felt that these stories were important enough to be included in his history of the Goths, and he may have believed them to be true. Jordanes included other alliances, more likely rooted in fact instead of fiction. Theodoric made an alliance with the Franks in 493 AD. “He sent an embassy to Lodoin, King of the Franks, and asked for his daughter Audefleda in marriage. Lodoin freely and gladly gave her, and also his sons Celdebert and Heldebert and Thiudebert, believing that by this alliance a league would be formed and that they would be associated with the race of the Goths.” There is nothing revolutionary in the tales of marriage alliances and battles over offended feelings, but it shows that Jordanes found these political marriages acceptable. This also emphasizes the importance of children in forming political alliances. The children were close to their kin and would serve as representatives of their families’ interests, while serving in distant lands.¹³

Another mythological tale that reflected the growing tradition of warrior women was the tale of the Amazons, whom Jordanes believed descended from the Goths. These women, according to Jordanes, apparently lived several centuries before the time of Alexander the Great.

After his (king Tanausis) death, while the army under his successors was engaged in an expedition in other parts, a neighboring tribe attempted to carry off the women of the Goths as booty. But they made a brave resistance, as they had been taught to do by their husbands, and routed in disgrace the enemy who had come upon them. When they had won this victory, they were inspired with greater daring. Mutually encouraging each other, they took up arms and chose two of the bolder, Lampeto and Marpesia, to act as

¹³ Ian Wood, *The Merovingian Kingdom, 450-751* (New York: Longman, 1994), 35; Jordanes, *The Origins and Deeds of the Goths*, trans. Charles Mierow (Princeton: Princeton University Press, 1908), 20, 19-20, 94.

their leaders. While they were in command, they cast lots both for the defense of their own country and the devastation of other lands. So Lampeto remained to guard their native land and Marpesia took a company of women and led this novel army into Asia . . . Then these Scythian- born women, who had by such a chance gained control over the kingdoms of Asia, held them for almost a hundred years, and at last came back to their own kinsfolk in the Marpesian rocks I have mentioned above, namely the Caucasus Mountains. . . . Fearing their race would fail, they sought marriage with neighboring tribes. They appointed a day for meeting once in every year, so that when they should return to the same place on that day in the following year each mother might give over to the father whatever male child she had borne, but should herself keep and train for warfare whatever children of the female sex were born. Or else, as some maintain, they exposed the males, destroying the life of the ill- fated child with a hate like that of a stepmother. Among them childbearing was detested, though everywhere else it is desired. The terror of their cruelty was increased by common rumour; for what hope, pray, would there be for a captive, when it was considered wrong to spare even a son?¹⁴

Jordanes was not concerned about the ancient women defending themselves, especially since they were initially fighting to preserve their chastity. He was however worried about the possible destruction of the male children and the fact that these women did not enjoy pregnancy. Jordanes believed that in his era, women preferred to bear children. These ancient warrior women appeared to have lost their instinct to nurture their young. For Jordanes, there was no question that women had the right to fight in order to defend their honor in the absence of men on their side; however, at the point where they disregarded their side of the mutual relationship, Jordanes criticized them. The importance of women's ability to reproduce and nurture the young of the community is fundamental to any civilized society. It is not surprising that the Jordanes criticized these mythological women for abandoning that role, while he commended their valor and their strength.

Paul the Deacon, an eighth-century Lombard, also included a tale of the Amazons in his *History of the Lombards*. "At this time a certain prostitute had brought forth seven little boys at a birth, and the mother, more cruel than all wild beasts, threw them into a fish-pond to be drowned." The legend continued that King Agelmund found the babies and saved the one that

¹⁴ Jordanes, *Origins and Deeds*, 15-6, 17-8.

survived, who became King Lamissio, a great fighter and killer of the Amazons. “They say that when the Langobards, pursuing their way with their king, came to a certain river and were forbidden by the Amazons to cross to the other side, this man fought with the strongest of them, swimming in the river, and killed her and won for himself the glory of great praise and a passage also for the Langobards.” Paul the Deacon was uncertain of the accuracy of this myth¹⁵.

Jordanes provided another example of mythological warrior women in Queen Tomyris, who battled the Persian King Cyrus. Jordanes did not criticize this woman at all. “Though she could have stopped the approaching Cyrus at the river Araxes, yet she permitted him to cross, preferring to overcome him in battle rather than to thwart him by advantage of position . . . But when the battle was renewed, the Gettae and their queen defeated, conquered and overwhelmed the Parthians and took rich plunder from them . . . After achieving this victory and winning so much booty from her enemies, Queen Tomyris crossed over into that part of Moesia which is now called Lesser Scythia – a name borrowed from great Scythia,--and built on the Moesian shore of Pontus the city of Tomi, named after herself.” As long as the women continued their role as nurturer, Jordanes had no qualms about their fighting. There were no specific warnings against this warrior behavior in women.¹⁶

There are also several compassionate tales about the relationship between fathers and daughters, brothers and sisters. These stories were not mythological. In one example, Huneric, son of Vandal King Gaiseric, brutally ruined the face of his bride, the Visigothic King Theodorid’s daughter. King Gaiseric, concerned that Theodorid “would avenge the injury done to his daughter,” sought the aid of Attila the Hun. The injury done to the woman was gruesome. Her husband “ . . . because of the mere suspicion that she was attempting to poison him, he cut

¹⁵ Paul the Deacon, *History of the Lombards*, trans. William Foulke (Philadelphia: University of Pennsylvania Press, 1907), 26-7.

off her nose and mutilated her ears. He sent her back to her father in Gaul thus despoiled of her natural charms. So the wretched girl presented a pitiable aspect ever after, and the cruelty which would stir even strangers still more surely incited her father to vengeance.” Whether these men sought vengeance on behalf of their kin either through honor or affection is not clear; however, the possible repercussions of such violence served as a deterrent.¹⁷

Athavulf, a king of the Goths, captured Emperor Honorius’s sister Placidia. “. . . Athavulf was attracted by her nobility, beauty, and chaste purity, so he took her as his wife in lawful marriage at Forum Julii, a city of Aemilia.” Emperor Honorius was unhappy at the theft of his sister and determined to get her back. He might also have been unaware of the marriage because he promised her in marriage to another. “Moreover Honorius was eager to free his sister Placidia from the disgrace of servitude, and made an agreement with Constantius that if by peace or war or any means so ever he could bring her back to the kingdom, he should have her in marriage. Pleased with this promise, Constantius set out for Spain with an armed force and in almost royal splendor. Valia, the king of the Goths, met him at a pass in the Pyrenees with as great a force. Here upon embassies were sent by both sides and it was decided to make peace on the following terms, namely that Valia should give up Placidia, the Emperor’s sister, and should not refuse to aid the Roman Empire when occasion demanded.” Honorius was Roman, but Germanic readers well understood the respect and regard he felt for his sister. These stories depicted the concerns of the family for their kin, even for those sent to distant lands in order to form marriage alliances. The stories also reflect tales of vengeance and the recurrence of the

¹⁶ Jordanes, *Origin and Deeds*, 19-20.

¹⁷ *Ibid.*, 57-8.

blood feud in an effort to defend the woman harmed, as well as the importance of women as conduits of property.¹⁸

Paul the Deacon related the tale of King Alboin and his wife Queen Rosemund that reflected the emotions that family members felt for one another. King Alboin had murdered Rosemund's father. Then around 572 AD, the king made a fatal mistake. "While he sat in merriment at a banquet at Verona longer than was proper, with the cup which he had made of the head of his father-in-law, King Cunimund, he ordered it to be given to the queen to drink wine, and he invited her to drink merrily with her father. . . . Then Rosemund, when she heard this thing, conceived in her heart deep anguish she could not restrain, and straight away she burned to revenge the death of her father." She contrived to have her husband killed. He ". . . perished by the scheme of one little woman." Rosemund remarried and escaped with "Albsuinda, the daughter of the king, and all the treasure of the Langobards, and came swiftly to Ravenna." In Ravenna, she poisoned her new husband, who forced her to take the drink as well.¹⁹

Jordanes had little patience for women that did not attempt to preserve their honor and chastity. Attila the Hun demanded the Emperor Valentinian's daughter Honoria in marriage. ". . . with her due share of the royal wealth. For it was said that Honoria, although bound to chastity for the honor of the imperial court and kept in constraint by command of her brother, had secretly dispatched a eunuch to summon Attila that she might have his protection against her brother's power--a shameful thing indeed, to get license for her passion at the cost of the public weal." This occurred in 452 AD, and it is an example of the debauchery of the falling Roman Empire.²⁰

¹⁸ Ibid., 49-51.

¹⁹ Paul the Deacon, *History of the Lombards*, 81, 83-5.

²⁰ Jordanes, *Origins and Deeds*, 69-70.

The importance of chastity was always an important component in the life of a Germanic woman. In the evidence the Roman historians have presented, the necessity of chastity seems to apply to both the men and the women, with a few notable exceptions. This generally remains the case in the laws, though in most cases the women were more severely punished for the loss of their chastity. This was not a new Germanic institution, nor was it due to the influence of the Romans or the Catholic Church.

The importance of women within the family structure remains a constant throughout the centuries of Germanic law. Fathers and brothers sought the best interest of the female kin, this being enforced in the law. Women also passed on important familial inheritances, and this also remains a constant within Germanic society. For most of the Germanic era, spouses were close in age and in general the couple retained strong ties to their own kin. This does not imply that other cultures did not share the same concern for their female kin; but the main point at issue here is that several historians have attempted to deny the importance of female in the family in the Germanic world. Furthermore, these women had an importance within the clan long before the influence of either the Romans or the Catholic Church.

The blood feud, and the system of compensation implemented to prevent the feud, remained traditions throughout the Germanic era. Many of the laws mentioned a series of fines in order to prevent the further injuries of the feud. The fines increased with the severity of the infliction. People within a kin group were keenly aware of the offences done to members of their families and were quick to either demand payment or initiate battles. Compensation and the blood feud were Germanic institutions that the Romans and the Catholic Church could not combat. Furthermore, these issues were important in determining the value of the importance of different crimes committed by and against women within Germanic society.

CHAPTER 3

AN INTRODUCTION TO THE TRIBES AND THEIR CODES

Most of the Germans formulated a code after settling within or on the outskirts of the Roman Empire. The German codes are divided into three sets. The earliest or the least likely to reflect Roman or Catholic influences are in the first section. These codes were generally written during the fifth and early sixth centuries. The second grouping of Germanic codes were those written by tribes that were issuing further codes, or tribes that redacted their initial laws in the late sixth through the eighth centuries. The third set of laws are those of the Anglo-Saxons, who reissued sets of codes continually from the ninth to the eleventh century. Through the codes, the historian can see the changes in the laws that occurred because of the influence of the Catholic Church and the existing Roman infrastructure. This should help to clarify the questions of what laws reflected Germanic customs, and what laws reflected something foreign to the ancient Germanic societies.

The Visigoths settled in the Catalonian area around 415 AD. According to the translator of the Visigothic Code, S. P. Scott, Euric promulgated the first written customs for the Visigoths in the late 400s. “This collection is unfortunately lost, but many of its provisions were incorporated into the Visigothic Code, although, no doubt subjected to important and numerous modifications in the course of centuries.” Katherine Fischer Drew believes that Euric wrote his code around 481 AD. Alaric II followed suit in the early 500s, publishing his “*Brevium Alaricianum*, a body of laws compiled mainly from the Codes of Justinian and Theodosius.” The authors of the Visigothic Code divided their laws into four separate sections and one of the sections Scott considered “those based on ancient Gothic customs.” According to historian Roger Collins, the ancient laws “have been accepted as deriving from the otherwise lost ‘Code of

Leovigild,' and include revised texts of items that can be found in the 'Code of Euric'."

Leovigild was the King of Spain up to the year 586 AD. This "Ancient Law" section of the Visigothic code is included along with the Burgundian laws and the *Pactus Legis Salicae* as the oldest representatives of Germanic law.¹

By 413 AD, the Burgundians had settled within the Roman Empire as *foederati*. The Romans had invited these Germans to settle on the borders of the Empire in order to help the Roman government stop the further influx of barbarian tribes. In exchange for military service, the Romans gave the tribe land. By 532, the Burgundians had lost their independence to the Salian Franks; however, the Burgundian people continued to abide by the laws of their tribe. According to Katherine Fischer Drew: "The Germanic code was issued in several parts between the years 483 and 532 and is known as the *Liber Constitutionum* or the *Lex Gundobada*. . . The Burgundian rulers were clearly following Visigothic precedent in these affairs and, as in the case of the Visigoths, almost certainly employed Roman jurists in the preparation of their compilations."²

The Salian Franks moved into the Roman Empire during the fourth century. The Romans allowed them to live near modern Belgium and become allies of the Roman Empire. Ammianus Marcellinus in his history explained that Julian, one of the Caesars in the Roman military, decided to win over the Franks in 356 AD in order to obtain control of an important town. "So, having entered Cologne, he did not stir from there until he had overawed the Frankish kings and

¹ S. P. Scott, introduction to *The Visigothic Code*, trans. S. P. Scott (Littleton, CO: Fred B. Rothman & Co., 1982), xxiv-xxv; Katherine Fischer Drew, introduction to *The Laws of the Salian Franks*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1991), 23; Scott, *Visigothic Code*, xxv; Collins, *Visigothic Spain*, (Oxford: Blackwell, 2004), 234.

² Katherine Fischer Drew, introduction to *The Burgundian Code*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1949), 2-3, 24; Drew, *Laws of the Salian Franks*, 24.

lessened their pugnacity, had made a peace with them which would benefit the state meanwhile, and had recovered that very strongly fortified city.”³

The Salian Franks recorded their laws between 507 and 511 during the reign of King Clovis, thus making the Salians and the Burgundians reasonably contemporary to each other. The timeframe was not the only tie the Salian Franks and the Burgundians shared. In 493 AD, King Clovis married Clotilda, “the Catholic niece of the Burgundian King Gundobad.” King Clovis would have been familiar with the Burgundian laws, furthermore, the Burgundians were Catholic, and eventually the Salian Franks adopted this form of Christianity instead of the Arianism of other Germanic tribes. The Salian Franks added a series of laws throughout the sixth century that historians commonly refer to as the capitularies. These laws and lawmakers were “... *Pactus pro Tenore pacis* of Childebert I and Chlotar I (ca. 524), both of whom were sons of Clovis, plus an edict by Chilperic (ca. 575) and a decree by Childebert II (596).”⁴

The Angles and Saxons were Germanic invaders who moved to Britain from the North European coast in the early 400s. King Vortigern of the Britons asked the Angles to come to Britain and fight the Picts in exchange for land. The Angles arrived around 449 AD, and several tribes of the Saxons and the Jutes soon joined them, each able to stake out a different area of England in which to live because the Britons were too weak to repel them. The earliest Anglo-Saxon code of laws were not contemporary with the Burgundians, Salian Franks, and the Visigoths, but Roman society had the least influence on the Anglo- Saxons. According to Katherine Fischer Drew, “. . . they had no Roman personnel, no Roman jurists, to employ in their administrations. As a result of these factors, the Anglo-Saxon codes more closely approach pure

³ Ammianus Marcellinus, *Rerum Gestarum Libri Qui Supersunt* Vol 1 in *Ammianus Marcellinus in Three Volumes*, trans. John C. Rolfe (Cambridge: Harvard University Press, 1950), 211.

⁴ Theodore Rivers, introduction to *Laws of the Salian and Ripuarian Franks*, trans. Theodore Rivers (New York: AMS Press, 1986), 3; Drew, *Laws of the Salian Franks*, 28-9; Rivers, *Laws of the Salian and Ripuarian Franks*, 3.

Germanic custom than any other early Germanic legislation.” According to the Venerable Bede, a Catholic historian in the early seventh century: “Rome fell to the Goths in the 1164th year after its foundation, and Roman rule came to an end in Britain almost 470 years after the landing of Gaius Julius Caesar.” This occurred quite a few years before the Angles and the Saxons arrived, any surviving Roman infrastructure would have been in disrepair.⁵

According to the historian, Paul the Deacon, the Lombards had arrived in Italy under the leadership of Ibor and Aio, whose mother Gambara had been a respected advisor in the tribe. The Lombards invaded Italy during the late sixth century, finding little political or social infrastructure and little resistance. Italy had previously endured decades of war. Conquest of the territory did not guarantee a successful rule for the Lombards. Only the impending invasion of other barbarians in 584 AD forced several argumentative dukes to participate “in a regal election that put Authari on the Lombard throne.” The extent of Roman influence on the laws of the Lombards is uncertain. Rothair, the first king to issue written laws for the Lombards was: “. . . elected in 636. . . was an Arian and, as such, was opposed to Roman influences in his kingdom.” Though Katherine Fischer Drew believes that remaining Roman advocates counseled Lombard lawmakers. Rothair’s edict was promulgated in 643 AD, and King Grimwald’s laws were issued in 668 AD, considerably later than the Burgundians, Visigoths and the Franks, but because the Roman state was so disorganized when the Lombards arrived, they deserve to be categorized as a Germanic code that the Romans had little influence over. In 774 AD, Charlemagne conquered the northern portions of Lombard Italy, but the Lombards managed to retain sovereignty in parts of Southern Italy until the Norman conquest of the eleventh century. According to the *Carolingian Chronicles*, “All the Lombards came from every city of Italy and

⁵ *Anglo-Saxon Chronicles*, trans. Anne Savage (New York: St. Martin’s/ Marek, 1983), 29; Drew, *Laws of the Salian Franks*, 25-6; The Venerable Bede, *A History of the English Church and People*, trans. Leo Shirley-Price

submitted to the rule of the glorious King Charles and of the Franks.” However, at the most, the Franks never had more than a nominal sovereignty over the Southern Italian Lombards. The Lombards had codified their laws long before the Franks intervened.⁶

The second set of laws are dated from the late seventh and eighth centuries. Several Germanic tribes transcribed their laws in the seventh century. The Ripuarian Franks were a small group that eventually lost their independence to the Salian Franks. The code of the Ripuarian Franks is entitled *Lex Ribuaria*, and like the Salian, reflects only a portion of the unwritten customs society recognized as law.⁷

The Visigoths had several kings responsible for issuing laws during the seventh century. Flavius Chintasvintus, Flavius Recesvintus and Flavius Egica all issued laws between the years 642 and 687. The Visigothic reign over Spain ended in 711 AD.⁸

The Alamanni tribe had been neighbors and occasional allies of the Salian Franks for several centuries. Ammianus Marcellinus reported the existence of the Alamanni as early as 354 AD, during which time the Alamans had at least two kings. The Alamans had two editions of their laws. The earliest is entitled *Pactus Legis Alamannorum* and dates between 613 and 629 AD; the second series of laws titled the *Lantfridana Manuscripts*, dated from 717 to 719.⁹

The Bavarians were also allies through marriage to the kings of the Salian Franks. Hiltrude, the sister of Pepin the Short, married Odilo of Bavaria. During the year 748 AD, Grifo,

(Edinburgh: R & R Clark Ltd., 1955), 50.

⁶ Paul the Deacon, *History of the Lombards*, trans., William Foulke (Philadelphia: University of Pennsylvania Press, 1907), 5; Drew, *Laws of the Salian Franks*, 26; Katherine Fischer Drew, introduction to *Lombards Laws*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1976), 66, 17; Drew, *Laws of the Salian Franks*, 26; Barbara Kreutz, *Before the Normans: Southern Italy in the Ninth and Tenth Centuries* (Philadelphia: University of Pennsylvania Press, 1991), 1,5; *Carolingian Chronicles and Nithard's Histories*, trans. Bernhard Walter Scholz and Barbara Rogers (Ann Arbor: The University of Michigan Press, 1970), 50;

⁷ Drew, *Laws of the Salian Franks*, 9.

⁸ Roger Collins, *Visigothic Spain, 409-711* (Oxford: Blackwell, 2004), 234-7.

⁹ Marcellinus, *Rerum Gestarum Libri Qui Supersunt* Vol. 1, 79; Theodore Rivers, in introduction to *The Laws of the Alamans and Bavarians* trans. Theodore Rivers (Philadelphia: University of Pennsylvania, 1977), 24.

Hiltrude's brother, invaded and conquered Bavaria. In retaliation, Pepin the Short invaded Bavaria, quelled his brother Grifo's invasion, and installed Tassilo, Hiltrude's son as Duke of Bavaria. After the year, 748 AD, Bavaria was a troubled province of the Salian Franks. Bavarian lawmakers wrote the *Ingolstadt Manuscript* between 744 and 748 AD. These lawmakers explicitly tied their fellow countrymen to the Salian Franks in the introduction to their laws. "This law-book pertains to the king and his princes and to all the Christian people who live under the Merovingian kingdom."¹⁰

According to Katherine Fischer Drew, the Ripuarian, Bavarian, and Alamanic codes: "were prepared under Frankish leadership and reflect significant Salic influence." Furthermore, the codes of both the Alamans and the Bavarians reflect a significant influence of the Catholic Church. Theodore Rivers said, "Not only did the clergy aid in promulgating these codes, but they also added laws that protected themselves and church property from injury."¹¹

The Anglo-Saxons published two further codes in the seventh century and none in the eighth. King Ine of Wessex recorded his laws between 688- 694 AD, and Wihtried the King of Kent issued his laws in 695 AD. These laws indicate the greater influence of the Catholic Church. They possessed few laws dealing with women, and the ones that did covered religious topics, such as incest and witchcraft.

The Lombards also had further redactions of their laws. King Liutprand issued laws on a regular basis from 713 AD to 735 AD, King Ratchis from 745 to 746 AD, and King Aistulf from 750 to 755 AD. The majority of these laws dealt with issues that needed constant reiteration, and the importance of women is evident in the many repetitions about safety and property.

¹⁰ Scholz, *Carolingian Chronicles*, 33, 39; Rivers, *Laws of the Alamans*, 24.

¹¹ Drew, *Laws of the Salian Franks*, 9; Rivers, *Laws of the Alamans*, 38-9.

In the years 802-3 AD, Charlemagne, the king of the Franks, reissued the *Pactus Legis Salicae* under the title *Lex Salica Karolina*. The majority of Charlemagne's redaction remained the same; however, a few of the laws changed reflecting the influence of the Catholic Church.¹²

With the exception of the capitularies of Charlemagne and his successors, and the Catholic Church Canon Law, the Anglo-Saxons were the only Germans to redact further laws in the ninth through eleventh century. Alfred the Great, the king of Wessex, left a series of laws between the years 871 and 900 AD. Edward the Elder left laws between the years, 900- 925, though just one of them dealt with the rights of women. Æthelstan left laws and an Ordinance on Charities between 925- 939 AD. King Edmund left laws after 942 AD, as did King Edgar 962- 963 AD. The laws of Æthelred 991 to 1015 AD, and King Canute from 1020 to 1034 AD followed these laws. Throughout these centuries, though England was in turmoil facing recurrent Danish invasions, the English kings managed to solidify their hold on England. No longer were there the laws of the King of Wessex, and the laws of the King of Kent. In fact, according to King Alfred the Great, he compiled every possible existing law code in an attempt to ascertain the best laws for the English nation. "Then I, King Alfred, collected these together and ordered to be written many of them which our forefathers observed, those which I liked; and many of those which I did not like, I rejected with the advice of my councilors, and ordered them to be differently observed. For I dared not to presume to set in writing at all many of my own, because it was unknown to me what would please those who should come after us. But those which I found anywhere, which seemed to me most just, either of the time of my kinsman, King Ine, or of Offa, King of the Mercians, or of Ethelbert, who first among the English received baptism, I collected herein, and omitted the others." The various Anglo-Saxon tribes had become a nation, though one not destined to avoid invasion for long. By the time William the

¹² Rivers, *Laws of the Salian and Ripuarian Franks*, 3-4.

Conqueror arrived, he found a highly sophisticated form of government, that these later laws had created. Within the various king's laws, the importance of women's rights is evidenced.¹³

Though some of these codes reflect an awareness of the Roman legal system, the majority of the laws within all of these codes reflect a uniquely Germanic outlook concerning women's property rights and guardianship. Throughout the Germanic era, the influence of the Catholic Church increased, but the essential rights to property remained static. The majority of these codes were numbered either during promulgation or translation, and none of them numbered consistently. Whenever possible this text includes these numbers to facilitate easier references for the reader, and better comparisons between conflicting translations.

¹³ Dorothy Whitelock, "Laws of Alfred" in *English Historical Documents* Vol. 1 500-1042 gen. ed. David Douglas (New York: Oxford University Press, 1955, pp. 372-380), 373.

CHAPTER 4

GUARDIANS AND COURT RIGHTS

The issue of guardianship among the German nations is an important and controversial issue for historians. Most of the Germanic tribes required that women at some point in their lifetime have a guardian called in the laws *mund*, *mundium*, or *mundwald*. These all meant that the women in question were under the control of men to some extent. Most often, the woman's guardian was her nearest male relative, followed by her husband, and then in some Germanic areas a relative of her husband after his death. In other areas, the law released the woman from guardianship after she had become a widow.¹

Sometimes the Germanic concept of *mundium* meant protection in the sense of an extension of the peace. King Æthelberht of Kent in the late sixth century used the term to establish his protection over certain areas. "8. For the breach of the king's personal protection (*mund-bryd*), a fine of fifty shillings." The Lombards of the seventh century also believed that the king had special protections. "369. In royal suits which belong to the crown and in which compensation is expected or guilt sought a double composition shall be paid according to ancient custom. However, in cases involving the guardianship (*mundium*) of free women, or murder, or causes for which a composition of 900 *solidi* has been established, we order a single fold payment remain in force [even in royal cases]." The Lombards also had laws protecting particular areas. A person's courtyard was an area of safety and in Rothair's Edict of the seventh century the law had formidable penalties against invading this safe area. "32. If a freeman is found in someone else's courtyard at night and does not willingly give his hands to be bound, he may be killed and no compensation may be sought by his relatives. But if he gives his hands to

¹ *Laws of the Alamans and Bavarians*, trans. Theodore Rivers (Philadelphia: University of Pennsylvania Press, 1977), 30.

be bound and they have been bound, he still must pay eighty *solidi* for himself, because it is not consistent with reason that a man should silently or secretly enter someone else's courtyard at night; if he has some useful purpose, he should call out before he enters." The extension of the Germanic king's peace and a man's ability to protect and defend his interest described in these laws serve as an example of the purposes of the female's *mundwald*.²

The issue of guardianship under the Anglo-Saxons was less clear than it was under other Germanic tribes, and often times guardianship remained a protection of important property as well as people. The later Anglo-Saxon kings in the early tenth century had laws pertaining to protection, but the protection was generally over places or things. "34. And if anyone damages a national warship, he shall with all diligence make compensation for it, and shall pay to the king the fine due for breach of his '*mund*'; and if it be destroyed so as to be useless, he shall pay for it in full, and shall give to the king the fine due for breach of his '*mund*'." In another example, this one concerning the protection of a place, Æthelred's law stated: "4. And if the protection of the church is broken in some other respect, without the taking of life, amends shall diligently be made in accordance with the nature of the offence, whether it be fighting or robbery or illicit intercourse or whatever it may be." King Canute in the eleventh century Proclamation II stated: "12. These are the dues to which the king is entitled from all men in Wessex, namely, [the payments for] violation of his *mund*, and for attacks on people's houses, for assault and for neglecting military service, unless he desires to show especial honour to anyone [by granting him these dues]." The law also protected religious festivals charging higher compensation during holidays, than on other days. The extension of special protections over days, homes, and

² *An Introduction to Early English Laws*, trans. Bill Griffiths (Norfolk: Anglo-Saxon Books, 1955), 33; *Lombard Laws*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1976), 125, 58.

military equipment denoted the importance of peace and safety in the Germanic world. The *mundwald* did not imply abject subordination of women.³

The implications of guardianship over women in the context of the Germanic written laws varied widely. In a harsh example, the late fifth-century Burgundian law stated: “100. If any woman, Burgundian or Roman, gives herself voluntarily in marriage to a husband, we order that the husband have the property of that woman; just as he has power over her, so also over her property and all her possessions.” This was an unusual power in comparison to the other Germanic codes.⁴

In most areas, the woman’s guardian obtained the compensation for sexual violations that men committed against her meaning that the right was often monetary. For the earliest Anglo-Saxons the definitions were a little unclear. The laws stated: “75. The compensation to be paid for violation of the *mund* of a widow of the best class, [that is, of a widow] of the nobility, shall be 50 shillings. 1. For violation of the *mund* of a widow of the second class, 20 shillings; of the third class, 12 shillings; of the fourth class, 6 shillings. 76. If a man takes a widow who does not [of right] belong to him, double the value of the *mund* shall be paid.”⁵

In the Burgundian adultery case of Aunegild in the early sixth century, the lawmakers stated that Aunegild, a once-married widow, retained “her own legal competence.” The law still required that she obtain the approval of her parents to enter another marriage, in a sense implying that she was still under the nominal control of her own kin; however, her consent was required to enter into the second marriage, too, which was not the case in a few of the codes.⁶

³ *The Laws of England: From Edmund to Henry I-Part One, Edmund to Canute*, trans. A. J. Robertson (Cambridge: At the University Press, 1925), 101, 119, 181, 201.

⁴ *The Burgundian Code*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1949), 85.

⁵ *The Laws of the Earliest English Kings*, trans. F. L. Attenborough (New York: Russell and Russell, 1963), 15.

⁶ *Burgundian Code*, trans. Drew, 60.

Concerning Aunegild's case, the deceased husband's kin were entitled to the woman's *wittimon*, which was her bridal-price. The law did not mention that the deceased's kin needed to release her *mundium*, as is the case in other Germanic codes.⁷ For instance, in the early sixth century *Pactus Legis Salicae* the law required the approval of the deceased's kin in order for the widow to remarry:

44.1 If it happens that a man dies and leaves a widow, he who wishes to marry her should take her before a thunginus (*Thunginum*) or hundred man (*centenarium*) so that the thunginus or hundredman may convene a court, and in that court he [the man who wishes to marry the widow] should have a shield and three men should demand three causes. 2. And then the man who would marry the widow should have three *solidi* of equal weight and one *denarius*. And there should be three men who should weigh or hold or appraise his *solidi*; and when this is done and everything is in order, the man to whom she [the widow] is promised may marry her. 3. If he does not do this and marries her anyway . . . , he shall be liable to pay twenty-five hundred *denarii* (i.e., sixty-two and one-half *solidi*) to him to whom the betrothal fine is owed.⁸

Theodore Rivers believed that the Franks instituted this system of release of the *mundium* in order to ensure that no one coerced the widow into remarriage. This law was reiterated in the first capitulary because lawmakers believed the protection of women was so important:

100.1 If after the death of her husband, a widowed woman wishes to give herself to another husband, first let him who wishes to take her pay the ring- money in accordance with the law. And the wife, if she has children by her former husband, must seek advice from the relatives of her children. And if she received a dower of twenty-five *solidi*, let her give three *solidi* as an *achasius* to the relatives, who are the nearest to the deceased husband, that is, if the father and mother are not living, (then) the brother of the deceased, or perhaps a nephew (the son of the eldest brother) is owed the *achasius*. And if these are not alive, then let [the claimant] ask the judge in court, that is, the count or *graf*, for her. Let her place herself under the king's protection and let the public treasury acquire the *achasiu*, which one must give to the relatives of the dead husband. 2. But if she received a dower of sixty- two and a half *solidi*, an *achasius* of six *solidi* should be given, that is, one –tenth of each solidus is due for the *achasius*. However, after the death of the mother, let the children, if they are without some portion [of the inheritance], make claim to the dower for themselves, which the former husband gave and let them assert it. The mother should not attempt to sell or give away the dower. If the wife of the former husband does not have children and she wishes to take her dower to her second marriage,

⁷ *Ibid.*, 61.

⁸ *The Laws of the Salian Franks*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1991), 108-9.

let her give the *achasius*, as we described above. And thus let her prepare the table and decorate the bed with a quilt. And in the presence of nine witnesses, let her invite the relatives of the deceased husband and say ‘All of you should know as my witnesses that I have given the *achasius* so that I have made peace with [my late husband’s] relatives, and that I have prepared a bed, a suitable bed quilt, a table and chairs made ready, which I brought from my father’s house, [and] which I leave here’ And let it be permitted to give her two- thirds of the dower from the other husband. 3. But if she does not do this, let her lose two- thirds of the dower and, in addition, let her be held liable to the public treasury for sixty- two and one-half *solidi*. 4. Concerning maidservants or freedwomen, let one- half of [the compensation] of this law be required.⁹

Another important point about the *mundium* is whom the law allowed to be the guardian. Some historians maintain that the person in charge of the *mundium* denigrated the position of the ward. Certainly, the *mundwald* had the power to stifle a ward’s personal desire, but many of the Germanic codes limit the amount of power that the *mundwald* can possess. Furthermore, it is important to consider who this *mundwald* is. Some Germanic codes allowed women to become the wards of their widowed daughter-in-laws. In the case of the Lombards, if the *mundwald* committed several specified offenses, the laws allowed the woman to select her next *mundwald*, and women may have chosen their daughters to hold at least a portion of their *mundium*. A law dealing with women joining the monastery mentioned a situation where a woman held the *mundium* of another woman, which was unusual for the Lombards. “101.6 ... if she has sons or daughters who possess her *mundium* . . .” Visigothic law allowed women to prepare the contractual agreements for their daughter’s weddings, which no one could revoke. The Visigoths under Flavius Recesvintus allowed a widowed woman to select her own husband as long as he was an older man.¹⁰

Widows in most areas could become the guardians of their children, if they chose not to remarry. The late fifth-century Burgundian Code stated: “59. If the father is dead, let a

⁹ *The Laws of the Salian and Ripuarian Franks*, trans. Theodore Rivers (New York: AMS Press, 1986), 130-1.

grandchild with all of his possessions be given over to the supervision and care of the grandfather if his mother has decided upon a second marriage. Moreover, if she fails to remarry because she has chosen chastity, let her children with all their property remain in her power” (Drew, BC, 65). A later Burgundian law stated: “85.1 If a mother wishes to assume guardianship (*tutela*), no other relationship (*parentela*) shall be placed before her.” The early sixth-century Salian Franks did not mention women becoming guardians; any answer to the question of Salian women as guardians during the early sixth century would be speculation. In the Ancient Law of the Visigothic Code, widows had guardianship of their children, unless they decided to remarry:

3.1.8 If the father should be dead, the right to dispose of the children of both sexes in marriage shall belong to the mother. If the mother also should be dead, or if she should have married a second time, the brothers shall have the right to select the husbands or wives for the other children. But if any of their brothers should not be of age, which is indispensable when their brother or sister is to be disposed of in marriage; then the paternal uncles shall have the authority. Where a brother is of full age, and declines the advice of his relatives, he shall have the power to marry without their consent. But if a suitor, equal to a sister in rank, should seek her in marriage; then her uncle or her brother should consult with the other relatives as to whether said suitor shall be accepted, or rejected by common consent.¹¹

The Anglo-Saxons under Kings Hlothere and Eadric of Kent in their law code written between 673-685, allowed widows the right to retain their children, with the advice of near kin. “6. If a man dies leaving a wife and child it is right that the child should accompany the mother; and one of his father’s relatives who is willing to act, shall be given to him as his guardian to take care of his property, until he is ten years old.” The Anglo-Saxons under the laws of King Ine of Wessex during the late seventh century, widows became guardians of their children. “38. If a husband has a child by his wife and the husband dies, the mother shall have her child and rear it, and [every year] 6 shillings shall be given for its maintenance--a cow in summer and an ox in

¹⁰ Jo Ann Moran Cruz and Richard Gerberding, *Medieval Worlds: An Introduction to European History 300-1492* (Boston: Houghton Mifflin Company, 2004), 89; *Lombards Laws*, trans. Drew, 188; *The Visigothic Code*, trans. S. P. Scott (Littleton, CO: Fred B. Rothman & Co., 1982), 77-8.

winter; the relatives shall keep the family home until the child reaches maturity.” Dorothy Whitelock translated the end of this law “the kinsmen are to take charge of the paternal home, until the child is grown up.” The laws are not clear about where the woman and her child reside. The Visigoths under seventh-century King Flavius Chintasvintus allowed widows to hold the *mundium* of their younger children as long as they did not remarry. “After the death of the father, the mother shall have the guardianship of the minor children, if she should wish it, provided she remains a widow; and she shall make an inventory of the property to which the children are entitled, by means of which their rights to their inheritance may be established. But if the mother should marry again, any one of the sons who has attained his majority, that is, who has reached the age of twenty years, may assume the guardianship of his younger brothers. . . . If any of the brothers should not be of lawful age, or of proper character to undertake the guardianship of orphans, a paternal uncle or a cousin may assume this duty.”¹²

Rothair’s edict in the seventh century required that all Lombard women have a guardian. “204. No free woman who lives according to the rules of the law of the Lombards within the jurisdiction of the realm is permitted to live under her own legal control, that is, to be legally competent . . . but she ought always to remain under the control of some man or of the king. Nor may a woman have the right to give away or alienate any of her moveable property without the consent of him who possesses her *mundium*.” In the eighth-century this law changed, it then required the approval of the woman’s kin when dealing with the transfer of her personal

¹¹ *Burgundian Code*, trans. Drew, 65, 78; *Visigothic Code*, trans. Scott, 81.

¹² *Laws of the Earliest English Kings*, trans. Attenborough, 19, 49; “The Laws of Ine (688-694),” trans. Dorothy Whitelock in *English Historical Documents*, Vol. 1: *English Historical Documents, 500-1042* edited by David Douglass (New York: Oxford University Press, 1955 pp. 364-372), 368; *Visigothic Code*, trans. Scott, 132-3.

property. This law limited the ways in which the spouse might abuse his wife. He could not use force to gain her consent to sell because he also needed the consent of her family.¹³

The concept of the *mundium* in Rothair's Edict seems to be primarily a financial power. The Lombards divided the *mundium* between family members. "161. If a man leaves legitimate and natural sons as well as legitimate and natural sisters, the legitimate sons shall receive two-thirds of the sisters' *mund* and the natural sons one-third." The Lombard concept of *mundium* was more flexible than that of other Germanic tribes. Lombard women were always under the *mundium* of someone, but oftentimes several people held the *mundium* of one woman.¹⁴

Even in the event that one person held the woman's *mundium*, the right could be disputed. In certain cases, husbands had to prove that they held the *mundium* of their wives. "165. If anyone says regarding another man's wife that the right to her *mundium* (guardianship) belongs to him and not to her husband, then he who has her as a wife shall offer oath with his twelve legal oath helpers to the effect that he had legally acquired the *mundium* of that woman from its former possessor and it ought not to belong to the other. If he is able to do this, he shall have her *mundium*. For it seems to be unjust that such an important case should be settled by a duel between the two men." Possessing the *mundium* was a valuable asset.¹⁵

Holding the *mundium* was also a responsibility. The *mundwald* in Lombard law was expected to cover his guardians expenses. "184. If, when a father hands over his daughter to another as wife . . . one of his friends gives something to the woman and the gift is accepted, then that gift will be under the control of the man who has acquired her *mundium* since the husband must make the return gift (*launigild*) himself if one is required." The guardian was responsible

¹³ *Lombards Laws*, trans. Drew, 92, 154-5.

¹⁴ *Ibid.*, 79.

¹⁵ *Ibid.*, 80.

for making the counter-gift, so it seems natural that he would have possession of the first gift. This only happened if the husband held her *mundium*.¹⁶

Lombard rulers attempted to ensure that guardians did not abuse their wards. Lombard widows remained in the *mundium* of their deceased husbands kin; however, under Rothair's Edict in the seventh century, if they refused to release her into a second marriage with an appropriate spouse, they "shall not have her *mundium* because they refused their consent: therefore her *mundium* shall return to the near relatives who first gave her to a husband. And if there are no legitimate relatives, then her *mundium* shall belong to the king's fisc. If she is a woman who does not wish or is not able to have another husband, then she shall be in the power of that one to whom her *mundium* belongs. And if that one provides inadequately for her or treats her ill and it is proved, then it is lawful that she should return to her relatives." Rothair's edict displayed a desire for the widow leave the *mundium* of her deceased husband, "and if afterwards the husband dies, then the woman ought to go to another husband, to her relatives, or to the court of the king. In such an event the heirs of the first husband should receive half of the marriage portion as established above, and she should be handed over again by hand (*per mano*) in similar manner as she was handed over to her first husband." These laws could not possibly have guaranteed that all women were safe from greedy in-laws, but the laws certainly served as a deterrent.¹⁷

Furthermore, in Rothair's edict of the seventh century it was illegal for guardians to abuse their wards. "195. If anyone who possess the *mundium* of a free girl or woman- with the exception of her father or brother- plots against the life of that girl or woman or tries to hand her over to a husband without her consent or voluntarily consents that someone do her violence, or if

¹⁶ Ibid., 86.

¹⁷ *Lombards Laws*, trans. Drew, 85-6.

he plans one of these offences. And it is proved, he shall lose her *mundium* . . . And if the man who possesses her *mundium* denies this offense, he may clear himself [by oath]; and if he clears himself, he shall keep her guardianship as before.” In the eighth century these somewhat limited crimes were further defined.¹⁸

Lombard lawmakers sought to ensure that guardians would not discredit the reputation of their wards. In Rothair’s edict law 196, if any guardian other than her immediate kin “[unjustly] charges her with having committed adultery, he shall lose her guardianship.” The same penalty occurred if he falsely accused “her of being a witch (*striga*) or enchantress (*masca*).”¹⁹

The Visigothic law of the fifth and sixth centuries further illuminates another important aspect of the presence and the purpose of guardians. When the guardian was also a girl’s parents, they had the right to make important decisions on her behalf, but if her guardian were anyone else, then the law limited his power over the girl. Like the Lombard guardians, distant Visigothic kin could not marry their wards without the consent of the woman in question. This law did not allow the brother to make the final decision about his sister’s marriage. The law required that he seek the advice of the family. A further law stated that the brother could not refuse the girl her choice of suitor, if he was from the same social class. “3.1.9 If the brothers of the girl should put off her marriage, with the expectation that she, taking refuge with her intended husband, may lose what she would have inherited from her father according to law; and they should repulse her suitor two or three times; the girl, as soon as the deceit of her brothers becomes evident, should she deem that her suitor is her equal in birth, shall then receive from her brothers whatever property she is entitled to inherit from her parents.” This law continued stating that if the brothers were clearly acting in her best interest then the girl lost her parental

¹⁸ Ibid., 89.

¹⁹ Ibid., 89-90.

inheritance, but the law did not require that her family completely disown her. In the Ancient Law of the Visigoths, lawmakers also punished brothers for allowing her abduction “for the reason that they have disposed of her in marriage to a person of vile character, or against her own will, when they should have protected her honor, they shall lose the half of their property, which shall be given to their sister, and in addition, they shall each receive fifty lashes in public: so that others, admonished by this, may take warning.” Property was an important issue in the Germanic nations and the Visigoths through this law and the laws protecting a woman’s right to appear in court clearly intended to ensure property rights to their women.²⁰

By the early seventh century, the *Lex Ribuaria* allowed the church the right to hold a woman’s *mundium*. In the eighth century *Lantfridana Manuscripts* of the Alamans, the duke or the church could hold the *mundium* of certain women, thus providing the guardian with the right to collect any compensation due her. “32. If anyone does something contrary to law to women who are in the duke’s service, let him compensate for all things three times what other Alamannic [women] are compensated.” The same triple fines applied to women of the church as well.²¹

The *mundwald* also had a responsibility to ensure his ward’s good behavior in certain situations. The Lombards under King Liutprand in 713 AD allowed guardians to disinherit their wards, in certain situations. “5.5 If daughters or sisters act contrary to the wish of their father or brother, then the father or the brother has the right to judge concerning their property in whatever manner and to whatever extent is pleasing to him. And that which he decides shall remain firmly in effect.” The law expected daughters and sisters to obey.²²

²⁰ *Visigothic Code*, trans. Scott, 81, 90.

²¹ *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 185; *Laws of the Alamans*, trans. Rivers, 76, 73.

²² *Lombards Laws*, trans. Drew, 146.

Some of the Germanic codes limited the amount of property a *mundwald* might obtain from his ward. According to Lombard law, when a ward died, her *mundwald* was not entitled to her property, unless he was her husband. “14.8 If it happens that one of the sisters dies, then those who have remained unmarried and those who have gone to husbands shall succeed to the portion of their dead sister. The near [male] relatives of her *mundwald* may receive as much as her *mundium* was worth; but they shall receive nothing from her property. If, however, she who died had already been given in marriage, then he who had acquired her and her *mundium* shall succeed to her property.” In Lombard law the husband was entitled to inherit his wife’s property in the event that there were no surviving heirs to the union.²³

Furthermore, by 723 AD, King Liutprand limited the amount of compensation that a guardian might acquire in the case of an abducted ward. “31.2 In the case where someone abducts a free unconsecrated woman, for which offense an earlier edict set a composition of 900 *solidi*, we decree that of the 450 *solidi* designated to go to the relatives or to the *mundwald*, whoever the *mundwald* is shall receive 150 *solidi* for his trouble in collecting the penalty. The woman herself who endured the shame or injury shall have the remaining 300. If, however, the woman has father or brother and she is in his *mundium*, then the father or brother may share the 450 *solidi* composition with the daughter or sister as pleases him. But any other *mundwald* or relative shall divide that composition as set forth above.”²⁴ Lombard women were entitled to a portion of their compensation.

Lombard law further restricted the property rights of a woman’s spouse. A husband could not force his wife to make a sale concerning her property:

22.3 If a woman wishes to sell her property with the consent of her husband or in community with him, the man who wishes to buy [from her] or those who wish to sell to

²³ Ibid., 149-50.

²⁴ Ibid., 160.

her shall notify two or three of the relatives who are nearest in relationship to her. If in the presence of these relatives the woman says that she has acted under compulsion, then that which she sold shall not be valid. But if in the presence of her relatives or of the judge who presides in that place she claims that she did not act under compulsion but voluntarily sold her property, then that which she sold ought to remain valid from that day forth, provided nevertheless that the relatives who were present or the judge set their hand to the charter [detailing the sale]. If it happens that the woman's husband dies [thereafter] and she goes to another husband, the sale shall still remain valid. Moreover, the scribe who prepares the charter shall write it only with the approval of the relatives or of the judge, as is said above. If it is done otherwise, the sale shall be invalid and the above noted scribe shall be as guilty as the man who forges a charter.²⁵

This restrictive clause provided women with extensive property rights. According to Barbara Kreutz, by the ninth century, a buyer expected the approval of the wife and kin before purchasing property from the husband because she and her family used this law, in conjunction with inheritance laws, to regain property after his death. “And finally—doubtless the most irritating complication—if ever the husband wished to sell any part of his holdings, he was well advised to secure the approval of his wife and her relatives. Otherwise they might later claim that the property sold had included part of the wife's share.”²⁶

Like the Lombards, the Visigoths also limited the husband's ability to force his wife to give him property, under King Flavius Chintasvintus of the seventh century. The same law also limited the ability of the husband to alienate his property to his wife. “If a husband should give any property to his wife, he must describe it in a written instrument and affix his signature or seal thereto. And, in order that his gift may be valid, it is necessary that two or three freeborn witnesses should attest the document. This law shall also apply to a wife who wishes to confer any gift upon her husband, provided the gift was not extorted by the husband through violence;

²⁵ Ibid., 154-5.

²⁶ Barbara Kreutz, “Twilight of Morgengabe,” in *Portraits of Medieval and Renaissance Living: Essays in Memory of David Herlihy* ed. Samuel K. Cohn, Jr. and Stephen A. Epstein (Ann Arbor: University of Michigan Press, 1996 pp. 131-147), 141.

to the end that the provisions of the law relating to the disposition of property may be, in every respect, preserved.”²⁷

The ability to sell property was extremely limited for the Lombards in the sixth through the eighth centuries. The law did not allow minors to sell their property, and parents had to retain ownership of a majority of their belongings to bequeath to their heirs. In a telling law, the historian can see that life was very hard on the Italian countryside, and that King Liutprand of the eighth century was a compassionate person that cared about the hardships of his subjects to the best of his ability. “149.7 This law concerns children who are under age and who are in great need and are dying from hunger. It seems right to us that, since it is a time of hunger, they should have the right to sell part of their land or of their other property with [the advice of] a representative of the king or one of his judges in such an amount that they are enabled to live and to free themselves from hunger and will not die. The judge who presides in that place ought to make provision for this if the minor does it because of his hunger--but it should be done in the judge’s presence and with the help of God. ... In the charter sale it should be noted that this sale was made on account of the necessity created by hunger” As Lombard law protected the wife from making a forced sale, the law also protected minors from the same situation.²⁸

Beyond the property limits, the Lombards also regulated the ways in which a guardian might treat his ward. He could not allow or force her to marry before she reached puberty and without her consent:

If a girl is betrothed or married before she is twelve years old, he who took or betrothed her shall pay the composition for abduction, as is provided in this law book; that is, he shall pay 900 *solidi*, half to the king and half to the child herself [cf. Rothair 191] and she shall return to her home and to her property. She shall remain there up to the abovementioned time [i.e., until she is twelve years old]; afterwards, moreover, she may chose for herself and marry him whom she chooses. If, moreover, her *mundwald* had

²⁷ *Visigothic Code*, trans. Scott, 155.

²⁸ *Lombard Laws*, trans. Drew, 212.

given his consent or had handed her over before the girl was twelve years old, he shall pay 300 *solidi* as composition to the royal fisc and he shall lose her *mundium* and the girl with her property shall be in the *mundium* of the palace. However, a father or brother has the right to give or betroth his daughter or sister to whomever or at whatever age he pleases. We have conceded this privilege because we believe that a father ought not [and will not] give his daughter or a brother [give] his sister to any man with evil intent contrary to reason.

King Liutprand reissued this law in 729 AD stipulating that the girl in question must have finished her twelfth year because, “it appears to us that girls are not mature before they have completed twelve years.” This law denoted several things about the purpose of the *mundwald*. Lawmakers intended this man to provide for the best interest of the girl in question. If the child were under twelve at the time of the engagement, she would have been too young to comprehend the seriousness of the situation at hand. A ward lost the right to a girl’s *mundium* for mistreating her in this way. The Catholic Church believed that marriage ought to be consensual between the two spouses, but the concession to allow close kin to marry their young daughters implied that religion was not the basis for this ruling. The law further declared that a girl’s close relatives would not harm her. Moreover, King Liutprand defined the types of abuse that the state found unacceptable in 731 AD:

120.4 An earlier law provides that he who mistreats his ward shall lose her *mundium*, but the law does not define such mistreatment [Rothair 182]. We now state that it is mistreatment if he lets her go hungry or does not give her clothes or shoes according to the quality of his wealth, or if he presumes to give her as a wife to someone else’s slave or aldius, or if he strikes her dishonorably (unless she is still a child and in honest discipline he is trying to show her woman’s work or is correcting her evil ways just as he would do with his own daughter), or if he sets her forcefully to indecent work, or if he has intercourse with her. If anyone presumes to do any of these things, we say that it is ill treatment. In addition, the guardian may not presume to marry his ward to a freeman without her consent, because there can be no worse treatment than that she be forced to marry a man whom she does not want. Therefore we decree that in the case of such treatment or injury or intercourse, the *mundwald* shall pay composition to that woman and he shall lose her *mundium* as the edict states [Rothair 43- 74].²⁹

²⁹ *Lombards Laws*, trans. Drew, 148-9, 192, 197.

The guardians also had other responsibilities in order to protect wards from making bad decisions. Under King Liutprand of the Lombards the law stated:

100.5 No man who holds the *mundium* of a woman may permit her to take the veil or assume the habit of a nun within a year after the death of her husband. If she wishes to do this on her own authority within a year, let her come to the king's palace and request our clemency; ... If anyone presumes to do this within a year without the king's permission, he [the *mundwald*] shall pay his wergeld as composition to the king and the *mundium* of the woman and her property shall pass to the control of the palace. He who attempts to do this within a year [does it] on account of greed or worldly ambition and not out of the love of God or for saving her soul; for after the death of her husband, while her grief is new, he is able to incline the woman's mind in any direction he chooses. But when she has returned to herself and the desires of the flesh return, she may fall into adultery and behave as neither nun or lay woman should.³⁰

While the power of a woman's *mundwald* was not clear in the later laws of the ninth through eleventh centuries, there were some laws that protected the wards from forced marriages. King Canute in the eleventh century explicitly stated that a woman had to consent to her marriage. "74. And no woman or maiden shall ever be forced to marry a man whom she dislikes, nor shall she be given for money." A further law stated: "And although she has been married by force, she shall lose her possessions, unless she is willing to leave the man and return home and never afterward be his." This law referred to a widow that was forced into marriage within a year after the death of her spouse. The laws did not mention the *mundwald* specifically, but a guardian or a lord might have the power to force the woman into marriage.³¹

Other Germanic codes prevented the forced sexual abuse of women, thus limiting the occasional perverted guardian. Furthermore, the eighth-century Lombard law restricted husbands from forcing their wives into sexually indecent behavior:

130.1 In the case where a man gives his wife permission to do evil by saying to his wife, 'Go, sleep with such a man,' or by saying to the man, 'Come sleep with my wife,' and where such an evil deed has been carried out and it is proved that it was done through the advice of the husband himself, we decree as follows. The woman who consents to and

³⁰ Ibid., 187-8.

³¹ *Laws of England from Edmund to Henry I*, trans. Robertson, 213, 211, 213.

commits such an evil thing shall be killed, in accordance with an earlier edict, because she ought not to commit nor hide such a case [Rothair 212]. For if a woman's husband commits adultery with his maidservant or with another woman, the wife herself should proclaim this to the king's court or to the judges; therefore she ought by no means to be silent when he first says such a thing to her. ... The husband, moreover, who offered such counsel to her or to the other man, and who gave authority to his wife to commit such an evil deed, shall pay as composition to the wife's relatives such an amount as would be paid if she were killed in a brawl ... If the woman has children, the children shall have her property. If she does not have children, her property shall return to her relatives. We do this because we believe that the wretched man who sought to do this thing [did it] so that he might get rid of his wife and have her property. The man who commits adultery with another man's wife, even though he had the consent of her husband, shall be handed over to the woman's relatives and not to the husband who consented to such an evil deed or gave his illegal advice.³²

Germanic guardians were also important in representing a woman's interest in court.

Most of the Germanic codes allowed women some minimal court rights, and women did have judicial responsibilities from time to time. However, for every day issues, the woman's guardian, alone or in conjunction with her kin, represented her interests to the judges.

Most Germanic women had nominal rights to appear as witnesses or take cases to court. Late fifth-century Burgundian law expected older women to be competent in the eyes of the law. Certain women made legal oaths. "7.1 If a native freeman, either barbarian or Roman, is accused of a crime through suspicion, let him render oath, and let him swear with his wife and sons and twelve relatives: if indeed he does not have a wife and sons and he has mother or father, let him complete the designated number with father and mother." Furthermore, lawmakers refused women the right "to deny questioning (to refuse to reply to an inquiry)." Burgundian women were fully capable of serving as oath takers, but this was somewhat unusual among other Germanic codes. Salian women in the early sixth century *Pactus Legis Salicae* delivered messages to their husbands, but the laws did not refer to them as witnesses. "1.3 He who summons another man should go with witnesses to that man's house and summon him thus or, if

³² *Lombard Laws*, trans, Drew, 201-2.

the man summoned is not present, he shall deliver the charge to that one's wife or to some other member of his family so he or she will make known to him [the accused] that he has been summoned to court." Salian law never mentioned the right of women to appear in court or serve as oath-takers, so the issue for those women is obscure. However, David Herlihy noted that church officials complained about the constant presence of women in the courts.³³

Visigothic lawmakers clearly created a role for women in their court system. An Ancient Law, reads:

No woman can conduct a case under the authority of another, but she is not forbidden to transact her own business in court. Nor can a husband conduct the case of his wife without authority from her; and, indeed, he should protect himself with such an instrument in writing, that the wife may not repudiate the whole proceeding; and if she should repudiate it, the husband shall undergo the penalty to which he is liable who presumed to conduct a case without the authority of his wife. And if the husband should lose a case which he prosecuted without the order of his wife, her rights shall in no way be prejudiced; and she can afterwards either prosecute the case herself, or can authorize anyone she wishes to do whatever is proper in the matter. And if the case should go justly against her husband, and the wife should believe that the adversary who prevailed should again be sued; and after the second trial, it should be apparent that her husband was not unjustly beaten in the first trial, the wife shall render satisfaction as prescribed by law, not only to the judge who first heard the case, but also to the other party whom she brought into court for the second time.³⁴

This Visigothic Law had huge implications; the law protected the woman from what was more than likely property loss even to the extent of rendering judgments made against her husband invalid, if he lacked her permission to attempt the suit.

The ability to appear in court is an important component in the quality of someone's life. Several of the seventh and eighth centuries Germanic codes allowed women at least the ability to appear in court to protect their property interests. The seventh-century *Lex Ribuaria* allowed women to appear in court in answers to summons after the age of fifteen. "If a Ripuarian man

³³ *Burgundian Code*, trans. Drew, 29, 33; *Laws of the Salian Franks*, trans. Drew, 65; David Herlihy, *Opera Muliebria: Women and Work in Medieval Europe* (New York: McGraw-Hill, 1990), 42-3.

³⁴ *Visigothic Code*, trans. Scott, 50.

dies or is killed and he leaves a son, let [his son] neither prosecute a complaint nor, being called into court, respond until his fifteenth year. However, after [he is] fifteen. Let him either respond or choose a defender [that is, a champion who would engage in trial by combat for him]. And let a daughter do likewise.” The Alamans in the eighth-century *Lantfridana Manuscripts* allowed women to swear oaths concerning their property ownership. “54.3 If, however, that woman says: ‘My husband gave a *morgengeba* [morning-gift] to me,’ let her estimate its worth, either in gold, silver, slaves, or horses, estimating the property at twelve *solidi*. Then let it be permitted to that woman to swear on her heart and say: ‘My husband gave this property to me under my own jurisdiction, and I should possess it.’” The Anglo-Saxons allowed women to swear oaths attesting to their innocence in cases of a husband’s theft. Lombards also allowed women, in conjunction with some of her relatives, to appear in court when they sold their property: “She should say to the judge: ‘I wish to sell my property.’ The relatives shall set their hands to the charter of sale and she may then make the sale; if her *mundwald* thus consents to it, that which she has sold shall be valid.” The eighth-century king of the Lombards, King Liutprand, did not allow women to be forced to testify. “93.10 If anyone presumes to put to oath a woman or girl or a woman consecrated to religion--any of whom are in someone else’s *mundium*--he shall pay fifty *solidi* to the treasury.” Visigothic law allowed women to appear in court for particular situations, during the reign of Glorious Flavius Recesvintus in the seventh century. “A wife shall have the right to inquire into the death of her husband, or into any injury he has suffered at the hands of another; and a husband has likewise, the same privilege in the case of a wife, and may demand that the crime be avenged by law.”³⁵

³⁵ *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 210; *Laws of the Alamans*, trans. Rivers, 85; *Laws of the Earliest English Kings*, trans. Attenborough, 55, 57; *Lombards Laws*, trans. Drew, 158, 184; *Visigothic Code*, trans. Scott, 226.

In the ninth through the eleventh centuries, Anglo-Saxon women appeared in court. In the second redaction of the laws created during the reign of Æthelstan in the early tenth century, a law required that a man's family members testify to the value of his character under oath. "11. And we have declared that he who demands redress for a slain thief shall go with three others, two [of the three] belonging to the father's kindred and one to the mother's, and they shall give an oath that they know of no theft committed by their kinsman, for perpetrating which he deserved to be put to death. The homicide shall go with twelve others and charge the dead man with guilt in the manner already ordained. And if the kinsmen of the dead man will not come thither at the appointed day, each of those who have demanded redress shall pay 120 shillings." This law was probably intended for men, but it did not specifically prohibit women from providing testimony, and there are several wills in existence from this era where women left legal wills. Another law of Æthelred's in the early eleventh century stated: "3. And there shall be no interference with purchases of land, or gifts by a lord of what he has a legal right to bestow, or purchases of legal rights, or asseverations (which have been duly made), or testimonies (which have been duly given)." Furthermore, King Canute in the eleventh century allowed women to inherit the property of their spouses and if their husbands had any unresolved court issues about his property at the time of his death then the law allowed her the right to pursue the case in court. "72.1 And if the householder had been cited before his death, then his heirs shall answer the charge, as he himself would have done, had he been alive." By the eleventh century, Anglo-Saxon women had accumulated vast property rights and were able to defend them in court. These women learned a great deal about their legal rights and used their ability to defend their interests in courts and wills whenever necessary.³⁶

³⁶ *Laws of the Earliest English Kings*, trans. Attenborough, 133, 135; *Laws of England: From Edmund to Henry I*, trans. Robertson, 65, 211.

The later Germanic law codes dating from the late seventh to the eleventh century also included the rights of the clergy in their codes. The church could become the women's guardians. The Lombards under King Liutprand in the eighth century prevented people from forcing women to testify in court. "93.10 If anyone presumes to put to oath a woman or a girl or a woman consecrated to religion--any of whom are in someone else's *mundium*--he shall pay fifty *solidi* to the treasury."³⁷

The institution of the *mundium* enabled Germanic parents to provide and protect their children. The Germanic *mundwald* in many ways resembled that of the Roman *Patria Potestas*. A father figure for the family seeking the best interests of the clan. No father wanted his daughter in the hands of an abusive man, nor did he desire to see his family inheritance lost to ill-timed investments. In most cases, the protection of the property was as important as that of the girl.

These men in areas such as Burgundy had the power of life and death over these women. In some areas they had property rights, and in almost all areas the *mundwald* was responsible for suing for any compensation due to his or her ward. The opportunities for abuse of the ward were many in most areas. The power of the guardian is one of the reasons that so many historians have condemned the practice of *mundium* as detrimental to women.

The limitations lawmakers placed on the powers of the *mundwald* enabled Germanic parents to ensure the safety of their daughters and property after marriage. The Lombards, the Visigoths and the Anglo-Saxons all limited the powers of the guardian. These laws were intended to restrict a guardian from abusing the woman or squandering her belongings. The guardian did not have the right to arrange the ward's marriage to someone without her consent, if

³⁷ *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 185; *Lombards Laws*, trans. Drew, 184.

she was not his child. In the case of the Lombards, the division of the *mundium* among several members of the family also served to limit the powers of the guardian.

CHAPTER 5

NON- SEXUAL CRIMES COMMITTED AGAINST WOMEN

One important issue for women in the Germanic era, concerned crimes of a non- sexual nature that men committed against them. How the laws punished these men, and what the law considered to be a crime were very important issues from the fifth to the eleventh centuries and, like other areas in women's lives, the laws changed during the centuries. Lawmakers intended to use compensations as a way to compel their subjects to stop the blood feud. The laws required payment for offenses committed against women, because the protection of women was one way that the feuds began. These compensations were often paid to the woman's guardian, but this did not alter the fact that these fines discouraged the commission of these crimes.

Burgundian law-makers included one non-sexual crime that men committed against women. "92. 1 If any native freeman presumes to cut off the hair of a native freewoman in her courtyard, we order that he pay thirty *solidi* to the woman, and let the fine be twelve *solidi*." The law reduced the compensation and fines for women of lower status. The Salian Franks had a similar law: "24.3. If he cuts the hair of a free girl without the consent of her relatives, and it is proved against him . . . , he shall be liable to pay eighteen hundred *denarii* (i.e., forty-five *solidi*)." The Salians reissued the law against cutting the hair of someone else's child in Capitulary III in which the fine increased to 100 *solidi* if the child was a girl." The length of a person's hair was a symbol of status, shorter hair often symbolized slave status or mature status. Laws protecting the length of a girl's hair were a way of preserving her identity. The *Pactus Legis Alamannorum* in the seventh century said, "18.7 If a man seizes her hair [let him compensate her similarly]."¹

¹ *The Burgundian Code*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1949), 82; *The Laws of the Salian Franks*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press,

In Burgundian law, “92.4 If a slave presumes to do this to a native freewoman, let him be handed over to death and let nothing be sought from the master of the slave.” The owner of the slave was able to “redeem” him with a fine and then the owner could whip the slave instead of killing him. This Burgundian law punishing the slave with death depicted the concern that lawmakers had about the proximity of women and slaves. In the majority of the crimes mentioned, the punishment was much more severe if the offender was a slave and the woman was free.²

The Alamans in the seventh century, in the *Pactus Legis Alamannorum*, also had laws against the physical abuse of women. “2.7 If anyone strikes a freewoman with a blow and blood does not flow, let him pay two *solidi*.” If the woman was from the servant classes, the law reduced the fines. Lawmakers reiterated this law in the later *Lantfridana Manuscripts* a century later. The Anglo- Saxons during the reign of Æthelberht of Kent in the sixth century declared: “compensation [for injury] to be paid to an unmarried woman, shall be on the same scale as that paid to a freeman.”³

The Visigoths had a similar law preventing the abuse of elderly family members; both the victim and the assailant could be either gender:

The grandfather and grandmother, as well as the father and the mother, shall have the right to chastise and restrain their children and grandchildren, as long as they remain members of the family. And if a son or daughters, grandson or granddaughter, should attempt to inflict any serious injury upon their parents or grandparents; that is to say, if he or she should give any of them a blow with the fist; or a kick; or strike them with a stone, or with a scourge, or with a whip; or should insolently seize any of them by the foot, or by the hair, or even by the hand; or be guilty of any shameless assault upon them; or should publicly accuse them of crime; then, any child or grandchild convicted of such an

1991), 86; *The Laws of the Salian and Ripuarian Franks*, trans. Theodore Rivers (New York: AMS Press, 1986), 129; *Laws of the Alamans and Bavarians*, trans. Theodore Rivers (Philadelphia: University of Pennsylvania Press, 1977), 52.

² *Burgundian Code*, trans. Drew, 82.

³ *Laws of the Alamans*, trans. Rivers, 38, 99; *The Laws of the Earliest English Kings*, trans. F. L. Attenborough (New York: Russell and Russell, 1963), 15.

offence, shall receive fifty lashes with the scourge, in the presence of the judge, and shall forfeit all claim to the inheritance of its grandparents or parents, should the latter so desire.⁴

The Alamans, in the seventh century, also protected children from injuries in the *Pactus Legis Alamannorum*. “31. 4. If anyone [injures] the child of a person from the lower class, let him pay a solidus. 5. If [the child] is from the middle class, let him pay six *solidi*. 6. If from the highest class, let him pay twelve *solidi*.”⁵

Alfred the Great, in the late ninth century, included a section in his introduction demanding kindness to widows. “34. Do not harm ... widows and step- children ... neither do them any injury ... If you do otherwise, they will call upon Me and I will listen to them, and then I will slay ... you with my sword and I will ensure that your wives shall be widows and your children orphans.” Likewise, King Æthelred (991- 1015 AD) created laws protecting widows. “39. And if anyone injures a nun or does violence to a widow, he shall make amends to the utmost of his ability both towards church and state.” King Canute in his Code (1020- 1034 AD) changed the penalty of this crime to the cost of the man’s wergeld, instead of the vague fine imposed under King Æthelred. Æthelred also provided instructions to “all our friends,” “45. That they should always protect and honour the servants of God. 46. And that they should comfort and feed the poor of God. 47. And that they should not be constantly oppressing the widow and the orphan, but that they should diligently cheer them.” King Canute also created laws, in the eleventh century, protecting virgins, and unmarried women from physical abuse, but

⁴ *The Visigothic Code*, trans. S. P. Scott (Littleton, CO: Fred B. Rothman & Co., 1982), 183-4.

⁵ *Laws of the Alamans*, trans. Rivers, 55.

whether this was sexual abuse is not clear. “52.1 If anyone does violence to a maiden he shall make amends by the payment of his wergeld”⁶

The Salian Franks code the *Pactus Legis Salicae* of the sixth century had several laws that punished the murder of women according to their ability to bear children:

24.5. He who strikes a pregnant free woman, and it is proved against him . . . , he shall be liable to pay twenty-eight thousand *denarii* (i.e., seven hundred *solidi*). 6. He who kills an infant in its mother’s womb or within nine days of birth before it has a name, and it is proved against him . . . , shall be liable to pay four thousand *denarii* (i.e., one hundred *solidi*). 8. He who kills a free woman after she has begun to bear children, if it is proved against him . . . , shall be liable to pay twenty-four thousand *denarii* (i.e., six hundred *solidi*). 9. He who kills a woman after she is no longer able to bear children, if it is proved against him . . . , shall be liable to pay eight thousand *denarii* (i.e., two hundred *solidi*).⁷

The Salian lawmakers repeatedly included fines for those that killed women, for instance laws numbered: 41.1, .5, .16, .17, .19, .20, and 65 e. 1-4 all deal with homicide. The Salic law of the Franks never valued a free woman at less than the value of a man. In Rothair’s edict of seventh century Lombard law, if a husband was implicated in the death of his wife, he could “clear himself with his legal oathhelpers by swearing that he was not involved in the death of that woman, either through himself or through any personal substitute.” “If a husband kills his innocent wife who had not legally deserved to die [Rothair 202, 211, 212], he must pay 1200 *solidi* as composition, half to the relatives who gave her to her husband and from whom he received her *mundium* and half to the king.” Rothair’s edict #201 stated that 1200 *solidi* was the fine any time a woman was murdered. The Ancient code of the Visigoths also mentioned fines for homicide in passing, but the actual law was not included in the earliest compilation or has not survived. The Bavarians in the eighth century also compensated its women for injuries they

⁶ *Introduction to Early English Laws*, trans. Bill Griffiths (Norfolk: Anglo-Saxon Books, 1955), 51; *The Laws of England: From Edmund to Henry1-Part One, Edmund to Canute*, trans. A. J. Robertson (Cambridge: At the University Press, 1925), 103, 203, 105, 203.

⁷ *Laws of the Salians*, trans. Drew, 86.

suffered. “ 4.29 In any of these acts [killing] happens to the women of those free men, let all be compensated for twofold. Since a woman cannot defend herself with weapons, let her obtain a double compensation.” The eighth-century Alamans also provided double compensation for women. The Ripuarians had laws against homicide that held the same value for women as the Salian Franks, the differences being that the *Lex Ribuaria* defined the form of proof where it had been vague in Salian Laws. “Or if he denies it, let him swear with seventy- two [oath takers].” Another difference was that the law defined the age past which a woman does not bear children anymore as forty, where the Salians had not specified an age.⁸

The Salians in Capitulary I created a new fine for those people that attempted to cover up a homicide. “70.2 If he kills an *antrustin* or a woman in such a manner and plunders them, and [then] cremates them, and it can be proven that he did this, let him compensate 1800 *solidi*.” This fine was double that of the fine for a freeman. The Lombards in Rothair’s edict distinguished between homicide and “murder.” “14. If anyone secretly kills a freeman or a man or woman slave, if one or two persons commit the homicide, he or they shall pay 900 *solidi* as composition.”⁹

The *Pactus Legis Alamannorum* in the seventh century also had laws that distinguished murder from accidental death, thus reflecting the Christian concept of intent. “15. If anyone murders [*mortadus fuerit*] a man [*baro*] or a woman who is [free], let the lawful wergeld be paid ninefold, or let the doer swear with twenty- four men, all chosen, or with eighty, whomever he can find.” The same law code *Lantfridana Manuscripts* repeated the law of its previous code #15 verbatim in law #69; however, the *Lantfridana Manuscripts* had another law, which

⁸ *Laws of the Salians*, trans. Drew, 104, 126, 127; *Lombard Laws*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1976), 80-1, 91; *Laws of the Alamans*, trans. Rivers, 134, 90; *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 175.

⁹ *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 115; *Lombards Laws*, trans. Drew, 55.

decreased the amount of the fine paid for a woman and including a fine for the theft of a woman's apparel. "48. If anyone murders another, which the Alamans call *mortaudo*, let him pay a ninefold wergeld for him and compensate for whatever weapons and clothing he stole from him, as if it were in secret. If, however, this happens to women, let that man compensate twofold. Let him compensate for the clothing she wore as if he stole in secret."¹⁰

The *Pactus Legis Alamannorum* had a law against killing and plundering the belongings of the victim. In the *Lantfridana Manuscripts*, the law penalized grave robbers as well. Like the fine for murder, the compensation for women was less than half that paid for men. "49.1 If anyone exhumes a freeman from the ground, let him restore whatever he stole there with a ninefold wergeld and compensate with forty *solidi*. If, however, he exhumes a woman from the ground, let him compensate with eighty *solidi*. Let him compensate for the property [as if he stole] in secret."¹¹

A Riparian law concerned the husband that committed murder in defense of his wife or property. "If anyone captures a man stealing his property and wishes to tie him up, or [if the man abducts] his wife or daughter or a comparable person and [the former] is unable to tie him up, and strikes him a blow and kills him, he should raise him up in a hurdle at the crossroads in the presence of witnesses and safeguard [the corpse] . . . And then let him swear at the sanctuary [*harhus*] before the judge that the man he killed had forfeited his life. But if he does not do this, let him be held guilty of homicide. Or if he denies it, let him swear with the lawful number that he did not do this."¹²

The authors of the eighth-century Alamannic *Lantfridana Manuscripts* created special punishments for the men who killed their own kin, using the *Bible* as their motivation. "40. If

¹⁰ *Laws of the Alamans*, trans. Rivers, 51, 93, 82-3.

¹¹ *Laws of the Alamans*, trans. Rivers, 1, 5, 83.

any man willingly kills his father, his brother, his uncle, his brother's son, his mother, or his sister, let him know that he acted against God, and, since he was not his brother's keeper according to God's commandment, that he seriously sinned against God. And in the presence of all his relatives, let his property be confiscated and let nothing more descend to his heirs. However, let him receive punishment according to the canons of the Church."¹³

Kidnapping was comparable to homicide for the Visigoths in their Ancient code:

If anyone should kidnap the son or daughter of a freeborn person, of either sex, or should lure them home, and cause them to be taken into other provinces of our kingdom, or into any foreign country; he who is guilty of such an atrocious crime, shall be delivered up to the father or mother of the child; or to its brothers, if there are any; or to its nearest relatives; to be killed or sold into slavery. Should they wish to do so, they may exact from the kidnapper the legal compensation for homicide; that is to say, three hundred *solidi*: because for a child to be sold by its parents, or to be kidnapped, is as serious a crime as the commission of homicide. If, however, the kidnapper should recover the child from the foreign country where it has been sent, and bring it again to its native land, he shall pay a hundred and fifty *solidi*: that is to say half the compensation for homicide; and should he not be possessed of said amount, he shall be condemned to servitude

Lawmakers offered an incentive to the thief in the hope that the child might be returned.¹⁴

The Alamans of the eighth century punished those men that sold Alamans into slavery in other countries. "46. If, however, anyone sells a freewoman outside the borders [*marcha*], let him restore her former freedom to her and compensate with eighty *solidi*. If, however, he cannot bring her back, let him compensate with 400 *solidi*."¹⁵

The Germanic codes also tried to protect the lives of those yet unborn. The Ripuarian Franks had laws against abuse that led to miscarriages and death.

104. 4 If anyone strikes a pregnant free woman in the stomach or kidneys with his fist or his heel and the fetus is not aborted [but] because of this it becomes so ill that it nearly dies, let him be held liable for 200 *solidi*. 5. If anyone strikes [a woman so that] the fetus is killed and is aborted, let him be held liable for 600 *solidi*. 6. But if the woman was

¹² Laws of the Salian and Ripuarian Franks, trans. Rivers, 208-9.

¹³ *Laws of the Alamans*, trans. Rivers, 80.

¹⁴ *Visigothic Code*, trans. Scott, 248.

¹⁵ *Laws of the Alamans*, trans. Rivers, 82.

killed due to this, let him be held liable for 900 *solidi*. 7. But if the woman was under the king's protection for some reason, let him be held liable for 1200 *solidi*. 8. But if the child that was aborted was a girl, let him compensate 2400 *solidi*.

In the case of a servant or freedwoman or a Roman woman, the law reduced the penalties by fifty percent.¹⁶

The death of a pregnant woman was also a concern of the Anglo-Saxons in the eighth and ninth centuries. The compensation for her death was “a full wergeld for the woman, and half the wergeld for the child [which shall be] in accordance with the wergeld of the father's kindred.” The king's court also imposed a fine for such a death. In the introduction to the laws of Alfred the Great, he stated: “18. If anyone in the course of a dispute ... injure ... a pregnant women ... let him make compensation ... for the hurt as judges ... decide in his case ... If she be dead, let him give life for life.”¹⁷

In several of the Germanic codes, lawmakers focus on protecting the life of a pregnant woman and her child. For the Ripuarian Franks, in the eighth century, the value of an unborn or unnamed child only 100 *solidi*. Seventh-century Alamans, in the *Pactus Legis Alamannorum*, also punished those that killed infants. “12. If any woman is pregnant and through the act of another the child is born dead, or born alive but does not live for nine nights, let him who is accused pay forty *solidi* or swear with twelve men, half of whom are chosen.” The *Lantfridana Manuscripts* reiterated this prior Alamanic law #12.¹⁸

Some of the Germanic codes required a larger compensation for the death of female infants. Germanic society valued the reproductive capabilities of women. The eighth-century Alamanic law code also stated: “88.1 If anyone causes an abortion in a pregnant woman so that

¹⁶ *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 133-4.

¹⁷ *Laws of the Earliest English Kings*, trans. Attenborough, 69; *Introduction to Early English Laws*, trans. Griffiths, 47.

¹⁸ *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 185; *Laws of the Alamans*, trans. Rivers, 50, 93.

you can immediately recognize whether [the offspring] would have been a boy or a girl; if it was to be a boy, let him compensate with twelve *solidi*; however, if a girl, [let him compensate] with twenty- four [*solidi*]. 2. If whether [the fetus is male or female] cannot be immediately recognized, and [the fetus] has not changed the shape of the mother's body, let him compensate with twelve *solidi*. If he seeks more, let him clear himself with oath takers." Apparently, the restrictions mentioned in the last line of this law meant to prevent the guardian from seeking a greater settlement for his ward's injury. The Bavarians in the eighth century also punished those that caused abortions. "8.18 If any woman gives a drink [to a woman] so that she causes an abortion, if it is a maidservant, let her receive 200 lashes, and if it is a freewoman, let her lose her freedom and be assigned to slavery to whomever the duke orders. 19. If any one causes an abortion in a woman through any blow, if the woman dies, let it be considered the same as a homicide. However, if the child alone is killed, let him compensate twenty *solidi* if the child does not come forth alive. If, however, it was living [at the time of the abortion], let him pay the wergeld." This law continued:

8. 20 If he causes an abortion, in the first place let him be compelled to pay twelve *solidi*. Then let him and his posterity pay a single solidus each year, that is, in the autumn, until the seventh generation from father to son. 21. Therefore our ancestors have declared an unceasing compensation, and this was decreed after the Christian religion was established in the world, since after a soul receives flesh, if it does not come to light of birth, it suffers unceasing punishment, and without the sacrament of baptism- owing to the abortion- the soul is delivered up to Hell. 22. If, however, a maidservant is weakened by another, in whatever way, so that he causes an abortion, if a child does not come forth alive, let him compensate with four *solidi*. 23. If, however, it was living [at the time of the abortion], let him compensate with ten *solidi*; let the maidservant be returned to her lord.¹⁹

The Ancient law of the Visigoths also considered abortions to be a serious crime that people sometimes committed against women. "If any one should cause a freeborn woman to abort by a blow, or by any other means, and she should die from the injury, he shall be punished

for homicide. But if only an abortion should be produced in consequence, and the woman should be in nowise injured; where a freeman is known to have committed this act upon a freewoman, and the child should be fully formed, he shall pay two hundred *solidi*; otherwise, he shall pay a hundred *solidi*; by way of satisfaction.” Furthermore: “Where a slave produces an abortion upon a freeborn woman, he shall receive two hundred lashes in public, and shall be delivered up as a slave to said woman.” Most of the Germanic codes considered abortion a crime.²⁰

The Lombards in Rothair’s Edict, seventh-century, distinguished between the accidental death of a child, and a purposeful assault. “75. . . . If a child is accidentally killed while still in its mother’s womb, and if the woman is free and lives, then her value shall be measured in accordance with her rank, and composition for the child shall be paid at half the sum at which the mother is valued. But if the mother dies, then composition must be paid for her according to her rank in addition to the payment of composition for the child killed in her womb. But thereafter the feud shall cease since the deed was done unintentionally.”²¹

The majority of the Germanic codes protected their women from homicide, kidnapping and forced abortions. The women or their guardians received compensation for these injuries. These laws reflected a concern for women that went beyond their reproductive capabilities, and portrayed a society that respected its female members. Even women that had passed their procreative abilities were not valued at less than a man of the same status.

Another crime that people committed against women was theft. The Salian *Pactus Legis Salicae* had laws against petty theft. “27.34. If anyone steal’s a woman’s bracelet (known in the Malberg as *subto*) let him be held liable for 120 *denarii*, which make three *solidi*.” Katherine Fischer Drew translated the Malberg Gloss *subto* differently than Theodore Rivers. “27.34. He

¹⁹ *Laws of the Alamans*, trans. Rivers, 98, 141-2.

²⁰ *Visigothic Code*, trans. Scott, 206-7.

who steals a woman's girdle-belt (brachilem) (called *subto* in the Malberg gloss) shall be liable to pay one-hundred twenty *denarii* (i.e., three *solidi*) [in addition to the return of the girdle-belt plus a payment for the time its use was lost]." If this law pertained to the theft of a girdle-belt rather than a bracelet, it may have constituted a sexual crime.²²

Most of the Germanic codes considered false defamation of character a serious crime. Reputation was important both to the individual and the kin group. The Salian lawmakers concerned themselves with insults made against women. "64.2 He who calls a free woman a witch (*striam* or *meretricem*), and is not able to prove it . . . shall be liable to pay three times twenty-five *denarii* (i.e., one hundred and eighty-seven and one-half *solidi*)." Theodore Rivers translated law #64.2 in the following way: "But if anyone calls a freewoman a witch or prostitute . . . , and it cannot be proven, let him be held liable for 2500 *denarii*, which make sixty-two and one-half *solidi*." In Rothair's Edict, Lombard lawmakers also protected the reputation of women. "179. If a man accuses his betrothed of committing adultery after the betrothal, her relatives may legally clear her with the support of their twelve oathhelpers. After she has been cleared, the man shall receive his betrothed as was first provided in the betrothal agreement."

Furthermore:

If anyone accuses the girl or free woman in someone else's *mundium* of being a harlot or witch, and if it is clear that he spoke against her in uncontrolled wrath, he may then offer oath with twelve oathhelpers to the effect that he accused her of the offense of witchcraft in wrath and not with any certain knowledge. For making an unfounded accusation, he shall pay twenty *solidi* as composition and he shall not be held further liable. But if he perseveres in his charge and says that he can prove it, the case shall be determined by the *camfio*, that is, by duel according to the judgment of God. If he proves his charge by combat, then she shall be guilty and punished as provided in this code [Rothair 189 and 376]. But if he who accused her of the offense is not able to prove it, he shall be

²¹ *Lombards Laws*, trans. Drew, 65.

²² *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 71; *Laws of the Salians*, trans. Drew, 91.

compelled to pay as composition an amount equal to the wergeld of that woman as determined by the status to which she was born.²³

King Grimwald of the Lombards issued a similar law in which a husband “maliciously and without legal cause accuses his wife of having committed adultery or of having conspired against the life of her husband, that woman may clear herself by the oath of her relatives by combat. If she clears herself, then the husband shall offer oath together with his legal relatives, twelve with himself, [to the effect] that he accused her of the offense neither with evil intent nor maliciously, and that he ought to leave her only if he has had his suspicions confirmed. . . . But if he does not dare to so swear, he shall pay the wergeld of that woman in composition, such an amount as if he had killed her brother, half to the king and half to the relatives.” Reputation was important in Germanic societies; the false accusation of witchcraft cost the man a relatively high fine.²⁴

These laws protecting the reputation of women were important because this was an accusatorial society. The burden of proof fell on the accused. A man of good standing in the community could gather his oathhelpers to swear to his innocence. A person with a bad reputation and those without oathhelpers faced the ordeal. The ordeal was a physical test that generally involved either boiling water or heated iron rods. “His hand would then be bound for a number of days. If, when the bandage was removed, his wound was clean and healing properly, the verdict was ‘innocent’; if the wound was festered, the verdict was ‘guilty’.” According to Germanic belief in the case of the Ordeal, the Lord pronounced the verdict according to the status of the wound. The same principle applied in the trial by combat, where two men dueled, and society assumed that the Lord sided with the innocent, who won. In most Germanic areas, the accusation of adultery had serious repercussions. Some of the codes punished the women

²³ *Laws of the Salians*, trans. Drew, 125; *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 109; *Lombards Laws*, trans. Drew, 84, 90.

²⁴ *Lombards Laws*, trans. Drew, 134.

with death and some of the codes allowed the torture of slaves, making it virtually impossible to prove a woman innocent. According to the law of the Visigoths, personal slaves were tortured in an effort to uncover an adulterous couple. “But because it is difficult to prove the adultery of a woman by the evidence of persons who are free, as generally this crime is perpetrated in secret; henceforth, whenever the evidence of a freeborn person is not available to prove adultery ... it is granted by the present law to bring an accusation of this kind, to put the slaves of both parties to the torture, that the crime may be proved in court.” Visigothic law punished adultery with the loss of property for both parties and perpetual slavery. Thus accusations had serious implications for the women and their kin.²⁵

The accusation of witchcraft was also a serious crime in most Germanic societies. The *Pactus Legis Alamannorum* in the seventh century illustrated the suffering that people faced when accused of the crime of sorcery:

14.1 If anyone accuses a freewoman of the crime of witchcraft or poisoning and seizes her and puts her in a hurdle, let him compensate eighty *solidi*, and let her be defended by her relatives with twelve men half of whom are chosen, or with drawn sword. . . . 3. If she [a freewoman] is not put in a hurdle [but] is seized and tortured, let him compensate with forty *solidi*. . . 5. And if a man finds her guilty and because of this she is killed, let him pay the same [her] wergeld, since he accused the woman. 6. If it is a man from the lower class [minofludis], let him pay 160 *solidi*. 7. If it is an Alaman from the middle class, let him compensate with 200 *solidi*. 8. If it is an Alaman from the upper class, let him compensate with 240 *solidi* or swear with twenty- four men, half of whom are chosen, or with forty, whomever he can find.

This law continued raising the fines according to the status of the woman he killed.²⁶

Another important issue was the way in which the law dealt with crimes committed against male and female slaves. The Germanic laws protecting the rights of slaves in the earliest codes, generally intended to protect the property of the masters. However, selfish this might

²⁵ Bryce Lyon, Herbert Rowen and Theodore Hamerow, *A History of the Western World* (Chicago: Rand McNally Company, 1969), 124; *Visigothic Code*, trans. Scott, 101.

²⁶ *Laws of the Alamans*, trans. Rivers, 50-1.

seem at first sight, the preoccupation with defending someone's possessions, the end result was still protection of the slaves in question. This provided at least a minimal safety for the slaves.

The Lombards had laws protecting their slaves to a limited degree. Rothair's edict stated: "Anyone who blocks the road to another's man or woman slave or to his aldius or freedman shall pay twenty *solidi* as composition to that one's lord." Though the offenders paid the compensation to the lord, the laws intended to stop these crimes from occurring at all.²⁷

Æthelberht's code of the sixth century punished those who killed someone else's servant or slave, regardless of the gender. "25. If a man slays the dependent of a commoner, he shall pay [the commoner] 6 shillings compensation." Rothair's Edict of the Lombard Law stated: "137. He who accidentally kills the small child of a tenant slave . . . or of another slave shall have it decided by the judge according to the child's age or according to whatever profits he was able to produce: and thus composition is to be paid."²⁸

The Lombards also a law against harming pregnant female slaves. "He who strikes a woman slave large with child and causes a miscarriage shall pay three *solidi* as composition. If, moreover, she dies from the blow, he shall pay composition for her and likewise for the child in her womb." Lawmakers instituted this regulation to protect their pregnant slaves because they were valuable property. The slave status of the mother generally passed to her child. The Ancient law of the Visigoths also protected slaves from forced abortions. "Where a freeborn man produces abortion upon a female slave, he shall be compelled to pay twenty *solidi* to the master of the slave." If a "male slave" committed this crime, "he shall be compelled to pay ten *solidi* to her master, and in addition, shall receive two hundred lashes."²⁹

²⁷ *Lombards Laws*, trans. Drew, 57-8.

²⁸ *Laws of the Earliest English Kings*, trans. Attenborough, 7; *Lombards Laws*, trans. Drew, 73; *Visigothic Code*, trans. Scott, 207.

²⁹ *Lombards Laws*, trans. Drew, 117.

Rothair's edict, for the Lombards, #208- 210 dealt with men who abducted servants belonging to others. These three laws imposed fines on those who attempted to keep the owner away from his stolen slave and her abductor. The Salians in *Pactus pro tenore pacis*, Capitulary II, created a law to prevent the abduction of servants. "If anyone unjustly detains another's *mancipia* and does not return her within forty days, let him be held punishable as kidnapper of *mancipia*." Abduction of servants and freedwomen was a concern of the Salian lawmakers in Capitulary IV. "130.1 If a freedman abducts another's freedwoman, let him be held liable for 800 *denarii*, which make twenty *solidi*. 2. Moreover, let him pay ten *solidi* to the *grafio*, and let the woman be returned to the authority of her master. 3. If he abducts a free woman, let him compensate with his life."³⁰

The Salians ranked the status of their slaves based upon their abilities, when describing crimes committed against slaves:

10.1 He who steals another man's male or female slave, horse or mare, and this is proved against him . . . shall be liable to pay fourteen hundred *denarii* (i.e., thirty-five *solidi*), in addition to returning the chattel stolen (or its value), plus a payment for the time its use was lost. 2. If the male or female slave has carried some property of his or her lord with him or her, the thief shall restore the bondsman and the property . . . and is liable to pay six hundred *denarii* (i.e., fifteen *solidi*) [for the property] (in addition to thirty-five *solidi* for the slave plus a payment for the time his/her use was lost). 4. He who steals a female slave . . . shall be liable to pay twelve hundred *denarii* (i.e., thirty *solidi*) [in addition to return of the slave or her value plus a payment for the time her labor was lost]. . . 6. He who loses [i.e., steals and sells] a female slave worth fifteen or twenty-five *solidi* or a swineherd, vine dresser, metalworker, miller, carpenter, or groom (*strator*), or any other craftsman worth twenty- five *solidi* . . . and it is proved against him, shall be liable to pay twenty-eight hundred *denarii* (i.e., seventy-two *solidi*) in addition to the return of the slave [or his/her value] plus a payment for the time his/her labor was lost. [6. He who steals or kills or sells an overseer (*maiorom*) steward (*infertorem*), butler (*scancionem*), horsekeeper (*mariscalcum*), groom (*stratorum*), a metalworker, gold worker, or carpenter or swineherd or household servant (*ministerialum*) worth twenty-five *solidi* . . . shall be liable to pay fourteen hundred *denarii* (i.e., thirty-five *solidi*), in addition to return of the slave [or his value] plus a payment for the time his labor was lost. If it is a female overseer (*maiorissama*), or female household servant (*ministerialem*), worth twenty-five *solidi*, the above provisions should be observed]. 7. He who steals a young male or

³⁰ Lombards Laws, trans. Drew, 92-3; Laws of the Salian and Ripuarian Franks, trans. Rivers, 122, 143.

female household slave . . . shall return the twenty-five *solidi* value of the slave and in addition shall be liable to pay fourteen hundred *denarii* (i.e., thirty-five *solidi*), and return of the slave [or his/her value] plus a payment for the time his/her labor was lost.³¹

An interesting literary change occurred in the law dealing with the theft of slaves between the sixth-century creation of the law and the ninth-century revision. The *Pactus Legis Salicae*:

10.1. He who steals another man's male or female slave, horse or mare, and this is proved against him . . . in addition to returning the chattel stolen . . .

The *Lex Karolina Salicae* 42.1 read:

If anyone steals another man's male or female slave, he shall be liable to pay fourteen hundred *denarii* (i.e., thirty- five *solidi*), in addition to return of the stolen slave . . .

This change reflected the Catholic Church's influence on the state. The law no longer coupled slaves with animals and did not refer to them as chattel. Though the language portrayed a more sympathetic treatment for the slaves, the fines for theft of the slave remained the same.³²

King Charlemagne's *Lex Salica Karolina* of the ninth century had several laws relating to the treatment of slaves, but the majority of those laws reiterated the laws of the previous codes. One new law dealt with punishing those people who harmed slaves. "66.1 If a slave kills a male or female slave like himself, the lords may divide the killer between themselves. 2. If any free man attacks (*ad sallierit*), and robs another man's slave and is convicted of it, if the value of what he took is more than forty *denarii* (i.e., one solidus), he shall be liable to pay twelve hundred *denarii* (i.e., thirty *solidi*)."³³

The majority of the above laws concerning crimes people committed against male and female servants reflected a similarity in value for each gender. Germanic society was hierarchical and laws often valued the slaves in comparison to their jobs, or their owners, but the law never valued them because of their sex.

³¹ *Laws of the Salians*, trans. Drew, 74-6.

³² *Laws of the Salians*, trans. Drew, 74, 203.

Later Germanic lawmakers included laws pertaining to the rights of clergy.

The Alamans in the *Lantfridana Manuscript* in the eighth century allowed the clergy special compensation in the case of theft. “6. If anyone steals property from a church and is convicted, so that he must pay for whatever property he stole, let him pay thrice ninefold, either for a slave or a maidservant, an ox, horse, or any animal whatever, or other property that belongs to the church.”³⁴

The Ripuarians had special laws concerning the death of religious women. “15. If he kills a [church] girl who is older than forty, let him be held liable for 100 *solidi*, or let him swear with twelve [oath takers].” A woman’s ability to bear children was an important aspect, even to the church. “14. If anyone kills a king’s woman or churchwoman who is capable of having children, let him be held liable for 300 *solidi*, or let him swear with thirty- six [oath takers].”³⁵

These were the non-sexual crimes that the Germanic law codes covered in order to protect their women. The laws implemented fines for physically harming women beginning with the shearing of her hair and culminating in causing her death, accidentally or otherwise. The compensations that lawmakers created were a Germanic institution that continued into the eleventh century. Though the woman’s guardian often received this payment, the laws still intended to protect the women and thus forestall a blood feud. Lawmakers hoped to end the blood feud through provision of monetary compensation for offenses committed against women.

Another point evident from the laws regarding the reputation of women and insults that people made against them is that family members were still important, even for married women. If a woman’s husband accused her of adultery, according to Lombard law, her family had the right to defend her. This was also true in other Germanic codes, when the woman was accused

³³ *Ibid.*, 222.

³⁴ *Laws of the Alamans*, trans. Rivers, 155.

of witchcraft. The importance of family never disintegrated in the Germanic era, regardless of what Wemple believes of daughters being treated as chattel.³⁶

There are some historians, such as Theodore Rivers, who do not believe that the protection of women from abuse in these codes reflected a society that placed a high value on their women. Theodore Rivers, editor of several of the law codes, believes that the codes only implemented a double compensation for women in crimes that were not of a sexual nature, and this fact reflected a society that viewed women as weak, but not important. Rivers oversimplifies the situation. Furthermore, in his depiction of the Germanic code's treatment of women, he downplayed the importance of the woman's guardians. Every woman who lived under the laws of the Germanic codes in most areas had a guardian. A woman's guardian was a male relative or husband who was responsible for representing her interests in court, taking care of her properties and in many cases ensuring her safety. Even slaves were under the protection of their owners, who sued for and received compensation for any injuries she or her children might endure. In general Germanic society viewed women as weaker and under certain codes, such as the Burgundian, women were barred from defending themselves. The role of the guardian is crucial and the government created laws encouraging the *mundwald* to protect these women. These guardians stood to benefit in enforcing the laws both customary and written. The family received monetary gain from protecting the women within its clan. This re-enforced the importance of the family and the women within it.³⁷

³⁵ *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 175-6.

³⁶ Suzanne Wemple, *Women in Frankish Society: Marriage and the Cloister, 500 to 900* (Philadelphia: University of Pennsylvania Press, 1981), 14-5.

³⁷ *Laws of the Alamans and Bavarians*, trans. Rivers, 30; Katherine Fisher Drew, "The Law of the family in the Germanic Barbarians Kingdoms: A Synthesis," in *Studies in Medieval Culture XI*. Ed. John R. Sommerfeldt and Thomas H. Seiler (Michigan: Western Michigan University, 1977 pp 17-26), 23.

CHAPTER 6

SEXUAL CRIMES COMMITTED AGAINST WOMEN

The majority of the crimes on which lawmakers focused that men committed against women were sexual in nature. These ranged from seduction, to sexual assault, to rape. The abduction of women for the purpose of marriage was also penalized in most Germanic areas. Marriage by capture had once been an acceptable procedure, but some chapters of the Germanic codes were clearly attempts to end this practice. A major focus for the Germanic codes was on the preservation of chastity for unmarried women and protection for married women.

In the case of the Salian Franks in the early sixth century, they considered the attempted seduction of a woman to be a crime.

20.1 The freeman who touches the hand or arm or finger of a free woman or of any other woman, and it is proved against him . . . shall be liable to pay six hundred *denarii* (i.e., fifteen *solidi*). 2. If he touches her arm [below the elbow] . . ., he shall be liable to pay twelve hundred *denarii* (i.e., thirty *solidi*). 3. But if he places his hand above her elbow and it is proved against him . . ., he shall be liable to pay fourteen hundred *denarii* (i.e., thirty-five *solidi*). He who touches a woman's breast or cuts it so that the blood flows . . . shall be liable to pay eighteen hundred *denarii* (i.e., forty-five *solidi*).

Obviously, if the man “cuts” her “breast” the man has moved beyond seduction. The Salian Franks intended to protect their women from seduction, rape and murder in the same law. The laws of the late fifth-century Burgundians did not have any similar legislation. In fact, the Burgundians had few laws concerning the abuse of women.¹

In the *Lex Ribuaria*, the code of the seventh century Ripuarians, the laws did not define seduction as explicitly as in the *Pactus Legis Salicae*. “43. If anyone touches a free woman's hand, let him be held liable for fifteen *solidi*. If perhaps he places his hand above her elbow, let him be fined thirty *solidi*.” The Ripuarians in the seventh century had laws against committing

¹ *The Laws of the Salian Franks*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1991), 84.

fornication with young women, but the issue of consent was questionable. There was no penalty for the woman. “39.2 If anyone engages in sex with a free-born girl, let him be held liable for fifty *solidi*.” The eighth-century Bavarians also penalized men for attempting to seduce or assault women. “ 8.3 If anyone lays a hand on a free woman because of lust, or on a virgin or another’s wife, which the Bavarians call *horcrif*, let him compensate with six *solidi*.” The laws required a greater fine if the woman consented to the assault: “If anyone fornicates with a free woman with her consent and does not wish to take her in marriage, let him compensate with twelve *solidi*, since he is not betrothed nor married by his parents, but is defiled by lust.”²

By the later sixth century, modesty had become an issue for Salian Frank lawmakers. This denotes the increasing influence of the Catholic Church and is evident in laws concerning women’s veils. “104. 1. If anyone unties the hair of a woman, so that her veil falls to the ground, let him be held liable for fifteen *solidi*. 2. But if he unties her hair band, so that her hair touches her shoulder, let him be held liable for thirty *solidi*. 3. If a slave strikes a freewoman or unties her hair, either let him lose his hand or let him pay five *solidi*.” These laws compare to the non-sexual crime of cutting a woman’s hair, which was a way of discrediting her reputation.³

The *Lex Salica Karolina* of the ninth-century had several laws similar to their Salian Frankish ancestors about sexual security for women. The laws against seduction were reiterated in the *Pactus Legis Salicae* law #20. 1-3, and nearly matched Charlemagne’s law #22. 1-4, with the exception that the crimes formerly committed against a “free woman or of any other woman” excluded “other women.” Furthermore, the law speaking about a man assaulting a woman’s

² *The Laws of the Salian and Ripuarian Franks*, trans. Theodore Rivers (New York: AMS Press, 1986), 187, 185; *Laws of the Alamans and Bavarians*, trans. Theodore Rivers (Philadelphia: University of Pennsylvania Press, 1977), 139.

³ *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 133.

breast “cuts it so that the blood flows” was not in the more modern version. Why this portion of the law was neglected is unclear. Perhaps physical assaults on women were declining.⁴

The eighth-century Bavarians also protected their women from the deceit of men in the attempt to seduce them. “8.17 If anyone persuades a freewoman as if he meant to marry her and dismisses her on the way, which the Bavarians call *wancstodal*, let him compensate with twelve *solidi*.” The Anglo-Saxons in the ninth century under King Alfred the Great created laws preventing the seduction of single women that were similar to the law of the Bavarians. In this situation, the law required the man to marry her if at all possible. “29. If anyone seduce ... an uncommitted woman ... and sleeps with her, let him pay ... for her and take her then as his wife. But if the woman’s father is unwilling to let her go ... then let the seducer hand over money ... in proportion to her dowry” Another law said, “6. Do not lie in sexual union secretly.” All of these laws portrayed the direct influence of the Catholic Church, which desired to prevent men from promising marriage in order to obtain sexual favors and then refusing to wed the ruined woman.⁵

The seduction of another man’s wife was also a concern of the Germanic invaders in the seventh century. The Lombards under King Liutprand in 731 AD also created laws punishing a man that attempted to seduce another man’s wife, and the woman if she consented:

121.5 He who converses shamefully with someone else’s wife- that is, if he places her hands on her bosom or on some other shameful place and it is proved that the woman consented, he who commits such an evil deed shall pay his wergeld as composition to the woman’s husband. If, however, the case is not proved but some man, suspecting another man of treating his wife, accuses him of doing this, then he who accuses shall have the right to challenge the other man to combat or put him to the oath, as he chooses. If the woman had consented to such an illicit deed, her husband has the right to take vengeance on her or to discipline her in vindication as he wishes; nevertheless, however, she may not be killed nor may any mutilation be inflicted on her body. If perchance the man

⁴ Laws of the Salian and Ripuarian Franks, trans. Rivers, 84, 188, 84;

⁵ *Laws of the Alamans*, trans. Rivers, 141; *Introduction to Early English Laws*, trans. Bill Griffiths (Norfolk: Anglo-Saxon Books, 1955), 50, 45.

proved guilty is a freeman who does not have enough to pay composition, then a public official shall hand him over to the woman's husband, and the husband may inflict vengeance on him or discipline him in vindication, but he may not kill him or inflict any mutilation on his body. If, moreover, someone else's aldius or slave presumes to do this to a freewoman, then his lord shall pay sixty *solidi* as composition to the woman's husband and hand over his person to the husband.⁶

Under Flavius Chintasvintus in the seventh century, the Visigoths had a law relating to the seduction of women. "3. 3.11: Therefore those who solicit wives to commit adultery, or deceive the daughters of others; or widows; or women who are betrothed; whoever they use, as their agents, persons who have been freed, who are born free, or slaves of either sex; as soon as their crime shall be made apparent by positive testimony, they shall be arrested, along with their emissaries, by order of the judge; and shall be delivered up into the power of him, whose wife, daughter, or betrothed relative, they are convicted of having solicited, to be disposed of at his pleasure; as he is the person whom the conjugal condition, or the relationship by blood, designates as the legal avenger of such a crime." The eighth-century Bavarians also punished men who committed adultery with someone else's wife; however, the complicity of the wife is uncertain. "8. 1 If anyone lies with another's free woman, if it is discovered, let him compensate with the *wergeld* of that wife to the husband. And if he is killed in bed with her, let him lie in his crime without further punishment or compensation to her husband. And if he places one foot on the bed and is prevented by the woman and does nothing more, let him compensate with fifteen *solidi*, since he trod unjustly on another man's marriage bed. 2. If a slave does this and is killed with a free woman in another's marriage bed, let the *wergeld* of that wife be diminished by twenty *solidi* for her damages; however, let his master be compelled to pay what remains until the amount of compensation is paid. And if the slave escapes and is not killed, but nevertheless is convicted of the crime, let his master nevertheless return him to the

⁶ *Lombard Laws*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1976), 197-8.

man whose wife he disgraced in place of the twenty *solidi*. However, let him [the master] fulfill all conditions, since he did not impose discipline on his slave.” The majority of the Germanic tribes imposed fines on sexual offenders, with the exception of slaves. In general, if a near relative discovered the adulterous pair and killed them, the law considered this to a legitimate defense of the family’s honor.⁷

The Salians in the early sixth century had a law preventing abuse on the roads. “31.2, He who blocks the road to a free woman or girl or strikes her . . ., shall be liable to pay eighteen hundred *denarii* (i.e., forty-five *solidi*.” Rothair’s Edict for the Lombards in the seventh century states: “Anyone who places himself in the road before a free woman or girl, or inflicts some injury upon her, shall pay 900 *solidi* as compensation, half to the king and half to her who suffered the injury or to him who is her legal guardian.” In a different section of the *Pactus Legis Salicae* of the sixth-century Salian Franks the law stated: “13.14 He who attacks on the road a betrothed girl with her bridal party being led to her husband and forcefully has intercourse with her . . .” Most of the Germanic tribes have similar laws.⁸

The Germanic tribes that codified their laws in the seventh and eighth century were still concerned about men that caused injury on the roadways. The *Pactus Legis Alamannorum* of the seventh century stated: “ 18.1 Concerning waylayers [*wegalaugen*], [if a man blocks the way of a freeman], let him pay six *solidi*. . . 4. If he does this to a free Alamannic woman, let him compensate with twelve *solidi*.” The eighth-century Alamanic *Lantfridana Manuscripts* protected women from injury while traveling. “56.1 If any free virgin woman [maiden] goes on a journey between two estates, and anyone meets her [and] uncovers her head, let him compensate with six *solidi*. And if he raises her clothing to the knee, let him compensate with

⁷ *The Visigothic Code*, trans. S. P. Scott (Littleton, CO: Fred B. Rothman & Co., 1982), 93; *Laws of the Alamans*, trans. Rivers, 138.

six *solidi*. And if he exposes her so that her genitalia or posterior appears, let him compensate with twelve *solidi*. If, however, he fornicates with her against her will, let him compensate with forty *solidi*. 2. If, however, this happens to an adult woman, let him compensate all things twice what we said above concerning the virgin.” The eighth-century Bavarians had a very similar law: “ 8.4 If he lifts her garments above the knees, which they call *himilzarunga*, let him compensate with twelve *solidi*. 5. If, however, he takes off a head covering from her head, which they call *walcuurf*, or lustfully seizes a virgin’s hair, let him compensate with twelve *solidi*.”⁹

The Salian law, in the later sixth century, Capitulary I, punished men who witnessed crimes but did not participate in assaults on women on the road. “And if there are [others] from that armed band who have not committed this crime, and [nevertheless] one knows that they were there [as onlookers], if there are more or fewer than three let [each one of] them be held liable for forty five *solidi*.” This is an example of the Salian state attempting to punish men who did not aid a woman in the defense of her virtue, though they had not actually done her any physical harm.¹⁰

Beyond implementing laws to protect women during their travels, the Lombards also created legislation designed to protect women in other vulnerable situations. The seventh-century Lombard King Liutprand developed a law protecting women from injury when they were in vulnerable positions, which the king based on a situation that had occurred. “125.9 If anyone maliciously or through spite, just as we are aware that it has been done, presumes to hit or stab a freewoman or girl as she crouches to relieve herself or on any other occasion when her needs require her to remove her clothes, he shall pay eighty *solidi* as composition to the

⁸ *Laws of the Salians*, trans. Drew, 95; *Lombards Laws*, trans. Drew, 57; *Laws of the Salians*, trans. Drew, 78.

⁹ *Laws of the Alamans*, trans. Rivers, 52, 85, 139.

mundwald. If it is an *alduis* or slave who presumes to do this, his lord shall pay sixty *solidi* as composition and hand over the person who committed this evil deed to the woman's *mundwald*."

This person clearly intended to cause physical harm to the woman, but she was also in a sexually vulnerable situation. In 733 AD, Liutprand responded to another specific case with new law:

135.6 It has been made known to us that a certain perverse man took all of a woman's clothing while she was bathing in the river; as a result the woman was naked and everyone who walked or passed through that place considered her condition to be the result of her sinful nature. She could not, moreover, remain forever in the river and, blushing with shame, returned naked to her home. Therefore we decree that the man who presumes to do such an illicit act shall pay his wergeld as composition to that woman to whom he did this shameful thing. We say this because if the father or husband or near relatives of the woman had found him, they would have entered into a violent fray (*scandalum*), with him and he who was the stronger would have killed the other man. Therefore it is better that the culprit, living, should pay his wergeld as composition than that a feud develop over a death and produce such deeds that the eventual composition would be greater still.

The Lombards had another similar law, intended to prevent the feud, in 755 AD during the reign of King Aistulf. "15.6 It has been made known to us that when a number of men walked along with a wedding party ... that was taking a bride to her bridegroom certain perverse men threw down polluted and unclean water upon them" the law fined them 900 *solidi* in order to avert the feud. The king was less concerned about the shame and degradation the woman suffered as he was about the possibly ensuing feud. The woman's family could create a blood feud over the chastity, reputation, and shame which a female family member suffered. These laws displayed the importance the family placed on its women, and the state's attempt to provide a modicum of domestic tranquility.¹¹

Gregory of Tours, a famous French historian of the late sixth century, in his book *The History of the Franks* depicted several tales of sexual misconduct. In one episode, he told the story of an attempted rape in the late sixth century. Duke Amalo, having sent his wife away,

¹⁰Laws of the Salian and Ripuarian Franks, trans. Rivers, 116.

became obsessed with a young Frank girl. He ordered his servants to abduct her and place her in his bed. The servants badly beat this poor girl on the way. After arriving at the Duke's bedroom the girl continued to fight desperately and finally, the Duke passed out from the exertion of beating the girl. The girl killed the duke and fled the scene. Gregory of Tours stated: "She went into the church of Saint Marcellus, threw herself at the king's feet and told him all that had occurred. He was filled with compassion. Not only did he grant her her life, but he ordered a royal edict to be drawn up to the effect that she was under his protection and must not be molested by any of the dead man's relations." While not all women were able to approach the king directly, this story is an excellent example of how seriously the law viewed crimes against women. This woman was of no importance to society; Gregory did not even know her name. The duke she killed had a name and a family ready to wreak vengeance on this young girl. Yet, the king considered the duke's attempted rape of the girl as a larger crime than this nameless woman's self-defense that ended in the death of a duke.¹²

Most of the early Germanic codes had laws making rape a punishable offence. The Burgundians' law against the rape of freewomen was very ambiguous. "33.1. If any native freewoman has her hair cut off and is humiliated without cause (when innocent) by any native freeman in her home or on the road, and this can be proven with witnesses, let the doer of the deed pay her twelve *solidi*, and let the amount of the fine be twelve *solidi*." This law continued with the reduction in fines for women of the lower status, and the nature of the humiliation must have been sexual, because the law continued: "33.4. If this injury (shame, disgrace) is inflicted by a slave on a native freewoman, let him receive a hundred blows; if a maidservant let him receive seventy-five blows. 33.5 If indeed the woman whose injury we have ordered to be

¹¹ *Lombards Laws*, trans. Drew, 188.

¹² Gregory of Tours, *The History of the Franks*, trans. Lewis Thorpe (London: Penguin Books, 1974), 513-14.

punished in this manner commits fornication voluntarily (i.e., she yields), let nothing be sought for the injury suffered” (Drew, BC, 45). From the fact that the woman “commits fornication voluntarily,” it is obvious that the previously mentioned humiliation was rape. In a further Burgundian law: “35. 1. If any slave does violence to a native freewoman, and if she complains and is clearly able to prove this, let the slave be killed for the crime committed. 2. If indeed a native girl unites voluntarily with a slave, we order both to be killed. 3. But if the relatives of the girl do not wish to punish their own relative, let the girl be deprived of her free status and delivered into servitude to the king.” The laws have no information about how it expected the woman to be “clearly able to prove” that rape had occurred, but it was probably based on her reputation.¹³

In comparison to the Burgundians, the Salian law-code in the early sixth-century *Pactus Legis Salicae* made the issue of rape much clearer. “15.2. He who rapes a free girl and it is proved against him . . . shall be liable to pay twenty- five hundred *denarii* (i.e., sixty-two and one-half *solidi*.” The Ancient code of the Visigoths has several laws concerning women and rape. “3. 4.14: If anyone should compel a virgin or widow, who is freeborn to commit adultery or fornication; if he shall be freeborn, he shall be scourged with a hundred lashes, and be given forever to serve as a slave her whom he has injured. A slave convicted of such a crime shall be burned. And a freeman who has been proved to be guilty of a crime of this kind, shall never be permitted to marry her whom he has violated. But if the woman herself, after she has received the man as a slave, should marry him, she shall then undergo the penalty of her base action, and shall, along with all her property, be delivered over to her own heirs to serve forever as a slave.” In the Ancient Law of the Visigoths: “3. 3. 6: If any ravisher should be killed, it shall not be

¹³ *The Burgundian Code*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1949), 45-6.

considered criminal homicide, because the act was committed in the defense of chastity.” If the victim was married at the time, the rapist “shall be delivered. . .into the power of the husband, to be disposed of at his pleasure.”¹⁴

In Capitulary VI (595 AD), of the Salian Franks, rape became a capital offense:

whoever attempts to rape [a woman], whereby a dishonorable crime is perpetrated, let him realize that his life is in peril, and let none of our magnates attempt to ask for him, but let each one of them be pursued in such a manner as an enemy of God. But whoever attempts to transgress our edict, in which ever country he is surrendered, that judge by public proclamation may kill the rapist, and no wergeld is required for him. And if he flees to a church, let him be apprehended without any pleading after being surrendered to the bishop, and let him be sent into exile. If perhaps the woman agreed to be seduced, let them both be sent into exile together, and if they flee to a church, let them both be killed together. And let their property be acquired by their lawful relatives and let our public treasury acquire what is owed.¹⁵

Rape was not a capital crime in the seventh-century *Pactus Legis Alamannorum*. “32. 1. If anyone violently abducts another’s girl, let him be held liable for her wergeld. 2. If she is not raped [but is still abducted], let him pay forty *solidi*.” According to Flavius Chintasvintus of the Visigoths, “3. 3. 7: The ravisher of a virgin or a widow can only be prosecuted within thirty years after the commission of the crime. If a marriage contract should be entered into by him with the parents of the girl, or with the girl herself, or with the widow, said contract shall not be illegal. After thirty years have elapsed, as aforesaid, all prosecutions shall be barred.”¹⁶

Alfred the Great issued a law in the ninth century that seemed to intend to punish both those men that would seduce women and those that might rape them. “11. If anyone seizes by the breast a young woman belonging to the commons, he shall pay to the commons, he shall pay her 5 shillings compensation. 1. If he throws her down but does not lie with her, he shall pay [her] 10 shillings compensation. 2. If he lies with her, he shall pay [her] 60 shillings

¹⁴ *Laws of the Salians*, trans. Drew, 80; *Visigothic Code*, trans. Scott, 101, 91, 95.

¹⁵ *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 145-6.

¹⁶ *Laws of the Alamans*, trans. Rivers, 55; *Visigothic Code*, trans. Scott, 91.

compensation. 3. If another man had previously lain with her, then the compensation shall be half this [amount]. 4. If she is accused [of having previously lain with a man], she shall clear herself by [an oath of] 60 hides, or lose half the compensation due to her. 5. If this [outrage] is done to a woman of higher birth, the compensation to be paid shall increase according to the *wergeld*.” Alfred the Great also had one law that dealt specifically with the subject of rape. “29. If anyone rapes a girl who is not of age, the same compensation shall be paid to her as is to be paid to an adult.”¹⁷

Abduction was also a problem throughout the Germanic era. Marriage by capture was a means of obtaining a bride that many of the codes sought to end. In Rothair’s edict for the seventh-century Lombards, a man was required to pay compensation for attempting this type of marriage. “If a man violently seizes a woman and takes her unwillingly to wife, he shall pay 900 *solidi*, half to the king and half to the woman’s relatives. . . .The woman then has the right to choose who shall have in his power her *mundium*, together with all the property legally belonging to her.” According to the next law in this series, he could “then acquire her *mundium*” as long as he had finished paying the compensation to the king and kin.” Presumably, in this situation, the woman had decided to remain with the man who had abducted her.¹⁸

In the fifth-century *Laws of Gundobad*, the Burgundians set forth a law to prevent abduction. “12. 1. If anyone shall steal a girl, let him be compelled to pay the price set for such a girl nine fold and let him pay a fine to the amount of twelve *solidi*. 12. 2. If a girl who has been seized returns uncorrupted to her parents, let the abductor compound six times the *wergeld* of the girl; moreover, let the fine be set at twelve *solidi*. 12. 3. But if the abductor does not have the means to make the above- mentioned payment, let him be given over to the parents of the girl

¹⁷ *The Laws of the Earliest English Kings*, trans. F. L. Attenborough (New York: Russell and Russell, 1963), 71, 77.

¹⁸ *Lombards Laws*, trans. Drew, 86.

that they may have the power of doing to him whatever they choose.” There was no mention of the return of a corrupted girl. A man that abducted and raped a girl paid three times more to her parents than did the man that did not rape the girl, but the law does not require the girl’s return if the man had raped her. In fact, the law does not require her return at all, it simply stated that “if a girl . . . returns.”¹⁹

The Anglo-Saxons under King Æthelberht of the sixth century did not expect that the abductor would return the woman, and in fact, allowed the man to marry her. “82. If a man forcibly carries off a maiden, [he shall pay] 50 shillings to her owner, and afterwards buy from the owner his consent.” In the *Pactus Legis Salicae* of the sixth century Salian Franks a similar law existed in this case concerning theft of women that involved more than one man:

13.1 If three men take a free girl from her house or workroom . . . the three shall be liable to pay twelve hundred *denarii* (i.e., thirty *solidi*). 2. If there are more than three involved, each one of them [over three] shall be liable to pay two hundred *denarii* (i.e., five *solidi*). 3. Each one of those who carried arrows shall [in addition] be liable to pay one hundred *denarii* (i.e., three *solidi*). 4. The abductor shall be liable to pay twenty-five *denarii* (i.e., sixty-two and one-half *solidi*). 5. If the girl was taken from a locked room or workroom . . . the penalty should be imposed as in the previous case. 6. If the girl who was seized had been placed in the king’s protection, the fine (*fredus*), to be exacted is twenty-five hundred *denarii* (i.e., sixty-two and one-half *solidi*). 7. If it was a servant (*puer*), of the king or a half-freeman . . . who abducted the free girl, he shall make composition with his life [i.e., he shall be given as a slave to the family of the girl].

Like the Burgundian law, there is no mention of the abductor returning the woman abducted.²⁰

The Ancient Law of the Visigoths had similar legislation against abduction and rape; however, the abduction did not end in marriage. The woman returned to her kin:

3. 3. 1: If any man should carry off a virgin or widow by violence, and she should be rescued before she has lost her chastity, he who carried her off shall lose half of his property, which shall be given to her. But should such not be the case, and the crime should have been fully committed, under no circumstances shall a marriage contract be entered into with him; but he shall be surrendered with all his possessions, to the injured

¹⁹ *Burgundian Code*, trans. Drew, 31.

²⁰ *Laws of the Earliest English Kings*, trans. Attenborough, 15; *Laws of the Salians*, trans. Drew, 77-8; *Burgundian Code*, trans. Drew, 31.

party; and shall, in addition, receive two hundred lashes in public; and, after having been deprived of his liberty, he shall be delivered up to the parents of her whom he violated, or to the virgin or widow herself, to forever serve as a slave, to the end that there may be no possibility of a future marriage between them. And if it should be proved that she has received anything from the property of the ravisher, on account of her injury, she shall lose it, and it shall be given to her parents, by whose agency this matter should be prosecuted. But if a man who has legitimate children by a former wife should be convicted of this crime, he alone shall be given up into the power of her whom he carried off; and his children shall have the right to inherit his property.²¹

In the seventh century, Visigothic King Flavius Recesvintus stated: “If the parents of the woman or girl who has been carried off should rescue her, the ravisher shall be given up to them, and, under no condition whatever, shall she be permitted to marry him; and should they presume to marry, both shall be put to death.” Visigothic lawmakers intended to stop marriage by capture. The Visigoths also punished a girl’s family members, specifically her brothers, if they arranged for the abduction of their sister. The law states, “they shall receive the penalty to which ravishers are liable, excepting that of death.”²²

Widows also received protection from abduction in some Germanic societies. Under Æthelberht’s laws of the sixth century, “76. If a man takes a widow who does not [of right] belong to him, double the value of the *mund* shall be paid.” The Bavarians in the eighth century had a law that reflected either the Christian value of respect, or the traditional Germanic value of protection of the kin, which protected widows from the mistreatment of strangers. “8.7 If, however, one abducts a widow who is compelled to leave her house because of her children and her poverty, let him compensate with eighty *solidi*, and let him be compelled to pay forty *solidi* to the public treasury, since such recourse is forbidden and [her] protection must depend on God, the duke, and the judges.”²³

²¹ *Visigothic Code*, trans. Scott, 89, 90.

²² *Visigothic Code*, trans. Scott, 89-90.

²³ *Laws of the Earliest English Kings*, trans. Attenborough, 15; *Laws of the Alamans*, trans. Rivers, 139.

Similar to the abduction law was a new law in the sixth century Capitulary III of the Salian Franks. “99.1. If anyone procures another man’s son or daughter for the purpose of marrying him or her off without the consent of the relatives, and if this is proved against him and the relatives suffer loss (*damnati fuerint*) from this, the procurers are indeed robbers or the companions of robbers and shall be condemned to death and the fisc shall acquire their property. 2. But robbers shall not suffer more than what was written in the law above.”²⁴

Like other Germanic tribes, the seventh-century Ripuarian Franks had laws against abducting women. “39.3 If anyone abducts without her parents’ consent a free-born girl who is under guardianship [*mundpurdae*] or [if] a woman is taken or led away who is under the king’s or a church’s protection, let him be held liable for twice thirty *solidi*.” Similar to the Salian Franks, the Ripuarians penalized men for abducting women, increasing the fines with the number of men involved. “38.1. . . If three freemen are with him, let each one of them be held liable for twice thirty *solidi*. And however many more there are to those four above, let each one of them be held liable for thrice five *solidi*.” Slaves that abducted free woman paid with their lives. The eighth-century Bavarians had a law against abducting “a virgin against her or her relative’s will” was similar to other contemporary Germanic laws. The difference in the Bavarian laws was that the abductor also owed the state an equal fine for the commission of this sin. King Liutprand of the Lombards in 727 AD reiterated a prior law of Rothair. “94.11 If anyone presumes to move another man’s ward from the house where she lives without the consent of her *mundwald*, and leads her elsewhere, he who is the leader of the band shall pay eighty *solidi* as composition to her *mundwald* on account of this presumption. If there were freemen with him, each of them shall pay twenty *solidi* in composition; however, slaves shall be computed in the composition of their lord. If it is a freeman who took that ward from her house and he marries her, he shall pay

²⁴ *Laws of the Salians*, trans. Drew, 144.

composition as established in an earlier edict by King Rothair of glorious memory [Rothair 186, 187].” The Visigoths under Glorious Flavius Recesvintus in the seventh century fined men for aiding others in the abduction of women. “Any one who is known to have assisted, or to have been present, at the carrying off of any woman by force, if he is a freeman, shall pay a fine of six ounces of gold, and shall publicly receive fifty lashes with the scourge.”²⁵

Abduction was often a form of marriage by capture, a relic of the barbaric days of the Germanic tribes. Though many of the tribes tried to end this violent tradition, it was always a concern. Some of the Germanic tribes tried harder than others. In some cases, Germanic law allowed an abductor to marry his victim, if her parents approved of the match. The necessity of the girl’s consent was questionable, if the laws mentioned her consent at all. Germanic women were rarely, if ever, autonomous. The Visigoths in the seventh century required the consent of the woman and her family, during the reign of Flavius Chintasvintus. “Any person who shall, by force, compel a freeborn girl or widow, without the royal order, to take a husband, shall be compelled to pay five pounds of gold to him to whom the injury was done; and the marriage shall be declared void, unless the woman shall consent to it of her own free will.”²⁶

The Germanic laws also punished those men who attempted to steal a betrothed woman. For example, in the early sixth century *Pactus Legis Salicae* “13.12 He who takes a woman betrothed to someone else and joins her to himself in marriage . . . shall be liable to pay twenty-five hundred *denarii* (i.e., sixty-two and one-half *solidi*) [to her family or guardian]. 13. He shall be liable to pay fifteen *solidi* to the man to whom she was betrothed.” In Rothair’s edict the offending abductor paid a 900 *solidi* fine, and then paid a hefty fine to the offended fiancée, but the law provided the kin of the woman with the right to let the man gain her *mundium*. The

²⁵ Laws of the Salian and Ripuarian Franks, trans. Rivers, 185, 184; *Laws of the Alamans*, trans. Rivers, 139; *Lombards Laws*, trans. Drew, 184-5; *Visigothic Code*, trans. Scott, 93.

Ancient Laws of the Visigoths also punished those men who abducted someone else's fiancée. "3. 3. 5: If any one should carry off a woman betrothed to another, we hereby decree that half of the property of the ravisher shall be given to the girl, and the other half to her betrothed. But if he should have little or no property, he shall be given up, with all his possessions, to those above mentioned; so that the ravisher having been sold as a slave, they may have an equal share in the price paid for him. The ravisher himself, if the crime shall have been consummated, shall be punished." The Anglo-Saxons under King Æthelberht in the sixth century also had laws against abducting another man's fiancée. "83. If she is betrothed, at a price to another man, 20 shillings shall be paid as compensation. 84. If she is brought back, 35 shillings shall be paid, and 15 shillings to the king."²⁷

The Salians in the sixth century Capitulary IV reiterated their law against abducting someone else's wife. "133. If anyone abducts another's wife in the lifetime of her husband . . . let him be held liable for 8000 *denarii*, which make 200 *solidi*." The seventh-century Ripuarians had the same law as the Salians against a man who abducted another man's wife. Neither of these laws mentioned the return of the woman in question. Alamannic lawmakers confronted this issue in the eighth century *Lantfridana Manuscripts*, "50. If any Alaman abducts another's wife contrary to law, let him return her and compensate with eighty *solidi*. If, however, he does not wish to return her, let him pay for her with 400 *solidi*, if the previous husband agrees to receive this payment. And if she dies before her husband sought her, let him [the abductor] compensate with 400 *solidi*." It seems that in some cases, the husband had the option to receive his wife back, but assuming the abductor had raped her, he may have decided not to have her back. The law also stated that if the woman conceived children before the abductor paid her

²⁶ *Visigothic Code*, trans. Scott, 93.

former spouse, then “they do not belong to him who begot them, but remain under the guardianship [*mundium*] to the former husband.” The same situation applied to a man's fiancée. “51. If anyone takes another’s betrothed contrary to law, let him return her and compensate with 200 *solidi*. If, however, he does not wish to return her, let him pay for her with 400 *solidi*, even if she dies under his [custody].” Either way the consent of the woman in question was never an issue for the lawmakers. The eighth-century Bavarian Code also had a law against abduction of another man’s fiancée. “8.16 If anyone abducts someone else’s betrothed or through persuasion takes her for himself as a wife, let him return her and compensate with eighty *solidi*.” If a woman’s parents allowed someone to abduct their previously engaged daughter, the Visigothic law, under Flavius Recesvintus, punished the parents financially, and made the abductor a slave to the fiancée. The law made no mention of the girl’s fate. “If parents should connive at their daughter being carried away, after she has been betrothed to another, they shall be compelled to pay the latter four times the amount of the dowry agreed upon; and the ravisher shall be delivered up as a slave, absolutely, under the law, to the man who was betrothed to the girl.”²⁸

The Germanic codes often differentiated between those women forcibly abducted and those who sought a relationship with their abductors. The late fifth-century Burgundian law reduced the penalty a man faced if the girl had voluntarily sought the relationship. Further, and very similar to the Burgundians, the Salians in the early sixth century punished the woman if she left willingly with the abductor. “13.8 But if the free girl voluntarily followed one of these she shall lose her freedom.”²⁹

²⁷ *Laws of the Salians*, trans. Drew, 78; *Lombards Laws*, trans. Drew, 88; *Visigothic Code*, trans. Scott, 90-1; *Laws of the Earliest English Kings*, trans. Attenborough, 15.

²⁸ *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 144; *Laws of the Alamans*, trans. Rivers, 83, 141; *Visigothic Code*, trans. Scott, 90.

²⁹ *Burgundian Code*, trans. Drew, 31; *Laws of the Salians*, trans. Drew, 78.

The eighth-century *Lantfridana Manuscripts* of the Alamans also allowed some men to marry the women that they abducted. “53.1 If anyone takes another’s un-betrothed daughter for himself as wife, let him return her and compensate for her with forty *solidi*, if her father demands her back. 2. If, however, this woman dies under his [custody], before he acquired the guardianship [*mundium*] from her father, and if he begets sons and daughters before [he acquires the *mundium*], and all their children die, let him compensate to the woman’s father with the wergeld for each child.” Like the Alamans, the Lombards during the reign of King Liutprand (713- 735 AD) did not separate a secretly married couple, but restricted the woman’s inheritance rights for the purpose of punishing her. “114.11 If a girl secretly marries a husband without the consent of her relatives so that a marriage portion (*meta*),has neither been given nor promised for her, and if the husband then dies before he acquires her *mundium*, then the woman should be content with no portion nor can she afterwards seek a marriage portion from the heirs of her husband since she negligently went to a husband without the consent of her relatives; nor may he who seeks justice for her seek such a portion.” The exact purpose of this law is ambiguous. Possibly, this law was meant to encourage young couples to remain married, even if the marriage occurred without the consent of the families. The Catholic Church strove hard to enforce the validity and permanence of marriage during the seventh and eighth centuries, and this law might represent that interest. Another possibility is that this was not abduction, but simply two people uniting without the consent of the parents, a type of unofficial marriage. In some of the Germanic codes, the laws require that a marriage is only binding after the families of the bride and groom have agreed on property arrangements and the woman’s kin have transferred the *mundium*. The law in question still required that the man gain the *mundium* before he can benefit from the full rights of guardianship over his children and wife. Furthermore, laws #51 and #52

specifically say “takes” and not “abducts” which implies that the man did not use force during the situation.³⁰

In the eighth century, the Bavarians punished slaves that had consensual sexual unions with Bavarian women, “8.9 If a slave fornicates with a free woman, and this fact is discovered, let the slave’s owner return the slave to her relatives for punishment he deserves or to be killed. And let the owner be compelled to pay nothing more, since such crimes incite hostility among the people. 10. If he lies with a freedwoman, whom they call *frilaza*, and she has a husband, let him compensate with forty *solidi* to her relatives or to her husband. 11. If anyone lies with a virgin who is manumitted, let him compensate with eight *solidi* to her relatives or her lord. 12. If anyone lies with another’s married maidservant, let him compensate with twenty *solidi* to her lord. 13. If he lies with a virgin maidservant, let him compensate with four *solidi*.”³¹

Another possibly sexual crime that men committed against women was abandonment after engagement. The reason for this was that most Germanic codes considered a betrothal engagement to be legally binding. According to the early sixth-century *Pactus Legis Salicae* “65.a. He who seeks another man’s daughter in marriage in the presence of his own and of the girl’s relatives and afterwards withdraws himself and is not willing to marry her . . . shall be liable to pay twenty- five hundred *denarii* (i.e., sixty-two *solidi*).” Rothair’s Edict, for the Lombards in the seventh century, had a similar law: “If anyone betroths a free girl or woman and, after the betrothal has been made and the agreement signed [Rothair 362], the husband neglects to claim his betrothed for two years and delays in carrying out the nuptials: after the two year period has passed, the father or brother or whoever has the woman’s guardianship may require that the [groom’s] surety complete that marriage portion (*meta*) which had been promised

³⁰ *Laws of the Alamans*, trans. Rivers, 84; *Lombards Laws*, trans. Drew, 193.

³¹ *Laws of the Alamans*, trans. Rivers, 139-40.

on the day of the betrothal. After this the woman's relatives may give her to another husband, provided he is a freeman. And the marriage portion which had been [demanded and] paid shall be in the control of the woman because the betrothed man neglected to take her to wife within the prescribed period of time, or delayed deliberately, except for some unavoidable cause." If the woman contracted a disfiguring ailment during the interim between her engagement and her marriage, the groom did not have to take her as his bride.³²

Breach of promise was a crime that men sometimes committed against women in the seventh and eighth centuries. The Alamans in the eighth century *Lantfridana Manuscripts* stated: "If anyone dismisses another's betrothed daughter and takes another, let him compensate for her whom he betrothed and dismissed with forty *solidi*, and let him swear with twelve oath takers, five designated and six selected [himself as the twelfth], that he rejects her through no vice or contempt, nor does he find any fault in her, but love of another led him to dismiss her and take another as a wife." In the eighth century Bavarian code, the law about broken betrothals was the same, ending with "and let it be ended between them, and afterwards let him [her father] give his daughter to whom he wishes."³³

The Anglo-Saxons implemented the opposite approach in the laws of King Ine of Wessex. Instead of the groom compensating the forsaken bride, the family of the bride reimburses the groom. The law implies that the bride's family had called off the wedding. "31. If anyone buys a wife and the marriage does not take place, he [the bride's guardian] shall return the bridal price and pay [the bridegroom] as much again, and he shall compensate the trustee of the marriage according to the amount he is entitled to for infraction of his surety." King

³² *Laws of the Salians*, trans. Drew, 126; *Lombards Laws*, trans. Drew, 84-5.

³³ *Laws of the Alamans*, trans. Rivers, 83-4, 140.

Liutprand of the Lombards in 731 AD, implemented a similar law, designed to prevent the guardian of the bride from breaking the betrothal agreement.

119.3 If he presumes to give her to anyone else or wishes to break the betrothal agreement (*spunsalia*), he shall pay such a composition to the man to whom she was betrothed as was set out in the agreement between themselves, as provided in the earlier laws; in addition he shall pay his wergeld as composition to the king's treasury, and the man who presumes to take her shall likewise pay his wergeld as composition to the treasury. If a man presumes to take a woman who is already betrothed to someone else without the consent of her father or brother, he shall pay double the composition to her betrothed, just as the earlier edict contains, and he shall pay his wergeld as composition to the king's treasury. ...As for the girl who presumed to do this voluntarily, if any portion of the inheritance of her relatives is due to her, she shall lose that portion: ... Nor can her father or brother give or transfer any part of the inheritance to her by any means because she sinned against our people in doing this because of her desire for gain. We do this in order that enmity may cease and there may be no feud (*faida*). If, however, God forbid, after such a betrothal agreement has been made, some hostility develops between the relatives of those betrothed and they are in enmity for any reason- such as, for example, the killing of one of their relatives- then he who neglects to give or to take [the bride] shall pay as composition the sum which they [the prospective bridegroom and girl's *mundwald*] had agreed upon between themselves, and he shall then be absolved of further blame: because it is not good that a man should give his daughter or his sister or some other relative where hostility caused by a homicide is proven to exist.³⁴

Unlike the previous Germanic codes, according to Flavius Chintasvintus, King of the Visigoths from 642 to 653 AD, couples could not break their engagements. "3.1 For the reason that there are many who, disregarding the betrothal, fail to complete the nuptial contract; we deem it proper to abolish this abuse, that one may delay a marriage according to his will. Therefore, we decree, from this day, that when the ceremony of betrothal has been performed, either between the parents or relatives of the parties, or in the presence of witnesses, and the ring shall have been given or accepted as a pledge, although nothing may have been committed to writing, the promise shall, under no circumstances, be broken. Nor shall it be lawful for either party to change his or her mind, if the other is unwilling to consent; but if all the provisions relating to the dowry have been carried out according to law, then the marriage shall be

³⁴ *Laws of the Earliest English Kings*, trans. Attenborough, 47; *Lombards Laws*, trans. Drew, 196-7.

celebrated.” Apparently, this law did not have the anticipated effect because Flavius Recesvintus the direct successor of Flavius Chintasvintus created a punishment for women, who previously engaged, married other men. The law begins, stating that if the parents and the groom have consented to the marriage, the law did not allow the girl to break this agreement. “But if the girl, against the will of her father, should have fled to him who was her choice, and should have married him, both shall be delivered into the power of him to whom, with her father’s consent, she had previously been betrothed. And if her mother, or brothers, or other relatives, should grant her wishes and gave her to him whom she has chosen, against the will of her father, those who have plotted this shall pay a pound of gold to whomever the king may direct. Nor shall the act of the parties be valid.” A later law of Flavius Recesvintus in the sixth century altered this law slightly. “And if any person after the dowry has been given, or the marriage contract has been legally drawn up, in violation of his, or her, solemn obligations, should marry anyone else, without the consent of all parties; he, or she, shall be liable to all the penalties of a former law.” According to Visigothic law, the girl had no effectual form of veto. Another law stated: “And we decree that this law shall be observed where the father shall have made arrangements concerning the marriage of his daughter, and the amount of his daughter, and the amount of the dowry has been agreed upon, and her father dies before the marriage has been concluded; in such a case the girl shall be given to him to whom she had been contracted either by her father or her mother.”³⁵

The Germanic codes protected women from sexual assaults in many different ways. They protected them from assaults in their homes, while they were traveling, and in some instances while they were in awkward positions. In general, the laws protected women when they were unable to provide for their own defense. In the later centuries, the Germanic codes

³⁵ *Visigothic Code*, trans. Scott, 77, 76-7, 116, 77.

protected women from men who falsely promised marriage in order to have sex with them. Furthermore, in the later Germanic era, women were allowed to arrange their own marriages, though they often suffered a loss of property rights. Along with the protections that the Germanic codes provided for their free born women, the majority of the codes also protected the chastity of their servants and slaves.

The issue of sexual security for female slaves had an important aspect for free women as well. Most historians agree that the Germans were a polygamous society, and even Tacitus admits that men of the nobility often had more than one wife. There were clearly sexual double standards; however, the question remains with whom did these men have such affairs. The prior laws made it difficult to obtain a free born woman as a mistress or a second wife. A free-born woman, who needed the approval of her guardian for any marriage, would have had to convince her family to allow her to enter such a situation. Gregory of Tours related the story of a Frankish king, Childeric, whose reign was compromised because he tampered with the wrong women. “Childeric, King of the Franks, whose private life was one long debauch, began to seduce the daughters of his subjects. They were so incensed about this that they forced him to give up his throne. He discovered that they intended to assassinate him and he fled to Thuringia.” Childeric later returned and was the father of Clovis the king of the Salian Franks that initially promulgated their laws. The Frankish King Chilperic in the mid-sixth-century agreed to divorce his other wives in exchange for the daughter of King Athanagild of the Visigoths. “Galswinth’s father believed what he said and sent his daughter to him with a large dowry.” The marriage was an unhappy one, and the king never stopped loving his former wife, Fredegund. The important

point was, no father with a choice would have allowed his daughter to join a series of other wives. Servants and slaves in Germanic society were the source of concubines and polygamy.³⁶

Most of the laws concerning crimes that men committed against female slaves were of a sexual nature. Theodore Rivers, translator of the early sixth-century *Pactus Legis Salicae* reads law 10.6 as a sexual crime translating the law “10.6 If anyone seduces a maidservant worth fifteen or twenty-five *solidi*, if [he is] a swineherd, a vinedresser, a blacksmith, a miller, a carpenter, a groom or any overseer worth twenty-five *solidi*. . . let him be held liable, if it can be proven that he did this, . . .” Katherine Fischer Drew translated this law as a non- sexual crime, “10.6 He who loses [i.e., steals and sells]” The *Pactus Legis Salicae* included laws against sexual encounters with slaves:

25.1. The freeman who has intercourse with someone else’s slave girl, and it is proved against him . . . , shall be liable to pay six hundred *denarii* (i.e., fifteen *solidi*) to the slave girl’s lord. 2. The man who has intercourse with a slave girl belonging to the king and it is proved against him . . . , shall be liable to pay twelve hundred *denarii* (i.e., thirty *solidi*). . . 5. If a slave has intercourse with the slave girl of another lord and the girl dies as a result of this crime, the slave himself shall pay two hundred forty *denarii* (i.e., six *solidi*) to the girl’s lord or he shall be castrated; the slave’s lord shall pay the value of the girl to her lord. 6. If the slave girl has not died . . . , the slave shall receive three hundred lashes or, to spare his back, he shall pay one hundred twenty *denarii* (i.e., three *solidi*) to the girl’s lord. 7. If a slave joins another man’s slave girl to himself in marriage without the consent of her lord . . . , he shall be lashed or clear himself by paying one hundred twenty *denarii* (i.e., three *solidi*) to the girl’s lord.³⁷

For Anglo-Saxons, Æthelberht’s sixth-century laws against sexual encounters with servants and slaves distinguished the compensation paid according to the status of the owner.

“14. If a man lies with a nobleman’s serving maid, he shall pay 12 shillings compensation. 16. If a man lies with a commoner’s serving maid, he shall pay 6 shillings.” The law continued lowering the fines with the lowering status of the different types of servants. If the woman

³⁶ Tacitus, *Agricola, Germania, and Dialogue on Orators*, trans. Herbert W. Benario (Norman: University of Oklahoma Press, 1991), 72; Gregory of Tours, *History of the Franks*, 128, 222.

³⁷ Laws of the Salian and Ripuarian Franks, trans. Rivers, 54; *Laws of the Salians*, trans. Drew, 75, 87.

belonged to the king, the fines were higher. “10. If a man lies with a maiden belonging to the king, he shall pay 50 shillings compensation. 11. If she is a grinding slave, he shall pay 25 shillings . . .” Griffiths interpreted “maiden” as “the king’s female slaves;” Dorothy Whitelock agreed with Attenborough’s interpretation of “maiden.” The laws were not clear whether “lies with” was consensual or forced.³⁸

Some of the Germanic codes differentiated the amount of the fine according to the location of the sexual encounter with someone else’s slave. These appear to be consensual relations. The Ancient Law of the Visigoths stated: “If anyone should be convicted of having committed adultery with a female slave outside the house of her master, the latter shall have the power of punishing only the female slave. . . . Where either a freeman or a slave is convicted of the commission of such a crime with a female slave in the house of her master; if he should be freeborn, and the slave of good reputation and of superior rank, he shall receive a hundred lashes, without any imputation of infamy. If the slave is of inferior rank, she shall receive fifty lashes; and a male slave, guilty of such an offence with the female slave of another, shall receive a hundred and fifty lashes.” Of course, the slave was the only one punished, but still it was a crime to have an affair with someone else’s slave outside of the master’s territory, the punishment was much worse if the crime occurred in the owner’s home.³⁹

While the early Anglo-Saxons did not have laws against sexual encounters with personal slaves, they did prohibit it with married servants. “85. If a man lies with the woman of a servant, during the life of a husband, he shall pay a two- fold compensation.” In 734 AD, Lombard King Liutprand issued a law making it illegal to have relations with a servant’s spouse.

³⁸ *Laws of the Earliest English Kings*, trans. Attenborough, 7, 15; *Introduction to Early English Laws*, trans. Bill Griffiths (Norfolk: Anglo-Saxon Books, 1955), 33; Dorothy Whitelock, “From the Laws of Ethelbert, King of Kent (602- 603),” in *English Historical Documents Vol. 1 English Historical Documents, 500-1042*, ed. David Douglas (New York: Oxford University Press, 1955 pp.357-9), 358.

“140.11 If a freeman has a man and woman slave, or *aldius* and *aldaia*, who are married, and, inspired by hatred of the human race, he has intercourse with that woman whose husband is the slave or with the *aldia* whose husband is the *aldius*, he has committed adultery and we decree that he shall lose that slave or *aldius* with whose wife he committed adultery and the woman as well.” The offended couple received their freedom as well.⁴⁰

Liutprand also punished the owners of slaves who freed their females in order to end a marriage. “98.3 If any man’s slave marries a female slave belonging to another man, and if the woman’s lord frees her and makes her *amundis*, or if he sells her and the man who buys her craftily frees her while her slave husband remains in the status of servitude, then the freed maidservant shall lose her freedom and become a servant of the king; and the man who freed her shall hand over another slave like her to the kings as composition or shall pay the price at which she is valued as composition because he entered into collusion [to destroy the marriage since free women could not legally be married to slaves]. The slave shall remain in the power of his lord and the lord shall purchase the maidservant at her value or on such terms as he is able to obtain from the king.”⁴¹

Alfred’s laws for the ninth century Anglo-Saxons, contained several pertaining to the marital chastity of slave. “11. These are the regulations (*domas*) that you should set for them. If anyone buys (*gebegge*) a Christian slave (*peow*), let him serve for six years and on the seventh let him be free without payment (*orcepunga*). With such clothes as he entered into service, let him leave with. If he has a wife of his own providing, let her leave with him. If the master (*hlaford*) provided him with a wife, both she and her children shall belong to the master. If the slave then says, ‘I do not want to leave my master or my wife or my child or my property

³⁹ *Visigothic Code*, trans. Scott, 102.

⁴⁰ *Laws of the Earliest English Kings*, trans. Attenborough, 15; *Lombards Laws*, trans. Drew, 208.

(*jerfe*),’ let his master bring him to the door of the Temple (*temples*) and perforate his ear with an awl as a sign that he shall ever afterwards be a slave.”⁴²

Poverty sometimes forced the poor into slavery. This form of slavery was different from the type where owners captured the slaves during battle. These slaves were not the enemy, but fellow countrymen, and Alfred the Great provided special laws for them. The law did not allow owners to treat these women of this class with the same disdain and lack of respect as they did the others. “12. Though someone sell (*bebycgge*) his daughter into slavery (*peowne*) do not let her be a slave entirely as are other maidservants (*mennenu*). He has not the right to sell her abroad among foreign people. But if he who bought her does not care ... for her, let her be free among a foreign ... people. But if he i.e. the purchaser allows his son to cohabit ... with her, give her the morning- gift and ensure that she has clothing and that she has the value of her maidenhood, that is the dowry ... let him give her that. If he does none of those things for her, then she shall be free.”⁴³

Of the early Germanic codes, only the Lombards did not fine men for having sex with another person’s slave. The only consequence in Rothair’s Edict of the seventh century was that any heir from such a union, as a child of a slave, could not inherit. “156. In the case of a natural son who is born to another man’s woman slave, if the father purchases him and gives him his freedom by the formal procedure (*thingaverit*), he shall remain free. But if the father does not free him, the natural son shall be a slave to him to whom the mother slave belongs.”⁴⁴

In 725 AD, Liutprand punished the children of men that had relations with married slaves or servants. “66.2 In the case of that freeman who takes the wife of a slave or of an *aldius* while

⁴¹ *Lombards Laws*, trans. Drew, 187.

⁴² *Introduction to Early English Laws*, trans. Griffiths, 45.

⁴³ *Ibid.*, 46.

⁴⁴ *Lombards Laws*, trans. Drew, 78.

her husband is still living, if sons or daughters are born as a result of this union, none of them shall succeed him as heirs, even though they are free, and he shall not be able to give them any of his property. For the case is in doubt whose daughter it is when both the lord and the slave, he who had her first and he who took her afterward, are still living.” In 729 AD, he emended this law slightly, stating that while the father could not provide for these children, their brothers could. The reason for this law was; “so that every man who wishes may receive a legitimate wife but may not contract illegal nuptials.” The implication of this is that though concubinage did exist, it was unpopular and the laws were in place to inhibit the practice.⁴⁵

Liutprand made another point on this issue. “106.3 If anyone wishes to marry his own or another man’s *aldia*, he should free her (make her *wider bora*), just as the edict decrees concerning the woman slave [Rothair 222]. But if he marries her without this procedure, her children are not regarded as legitimate but as natural children.”⁴⁶

By 733 AD, the Lombards expected their women to report an adulterous husband’s affair with his own servant woman to the king’s court: “For if a woman’s husband commits adultery with his maidservant or with another woman, the wife herself should proclaim this to the king’s court or to the judges.” The punishment for the adulterous husband was not clear in this law, but the fact that an unfaithful husband’s affair with his servant was a crime meant that concubinage was in a tenuous position. King Canute, for the eleventh century Anglo-Saxons, created penalties for those men who had sexual relations with their slaves. “54. If any married man commits adultery with his own slave, he shall lose her and make amends for himself both to God and to men.”⁴⁷

⁴⁵ Ibid., 172, 190.

⁴⁶ Ibid., 190.

⁴⁷ *Lombards Laws*, trans. Drew, 201-2; *The Laws of England: From Edmund to Henry I-Part One, Edmund to Canute*, trans. A. J. Robertson (Cambridge: At the University Press, 1925), 203.

The Visigoths had concubines. The Visigothic code was one of the only codes that specifically referred to concubines. “ We command, in addition, that no blood relatives of theirs shall ever commit adultery with either the concubine of his father or his brother, nor with any one whom he knew his father or brother had ever sustained intimate relations with, whether she be a freewoman or a slave; nor shall the father commit such adultery with the concubine of his son. And if anyone should knowingly commit such an offence, his heirs, should he have no legitimate children, shall obtain his property; and he himself shall be subjected to penance, and shall undergo the punishment of perpetual exile.”⁴⁸

While these laws dealt with the seduction of slaves and freedwomen belonging to other people, the Germans also protected slaves from rape. The Ancient law of the Visigoths also included a law against raping slaves. “3. 4.16: If anyone should violate the person of a female slave, and should be seized in the house of her master; or if he should be convicted of having committed the crime anywhere else; if a slave, he shall receive two hundred lashes; if a freeman, fifty; and the latter shall be compelled to pay, in addition, thirty *solidi* to the master of the female slave. But if the master should have ordered the slave to commit the act, the latter shall undergo the penalty and scourging prescribed by a former law.” The sixth-century Burgundians also had a law against raping other people’s slaves. “ XXX. 1. Whatever native freeman does violence to a maidservant, and force can be proved, let him pay twelve *solidi* to him to whom the maidservant belongs. 2. If a slave does this, let him receive a hundred fifty blows.” The Lombards, in Rothair’s edict, had laws fining those who raped other people servants. Like the Germanic laws regarding slaves and non-sexual crimes, these laws protecting slaves from sexual

⁴⁸*Visigothic Code*, trans. Scott, 111-2.

abuse were primarily designed to protect the owners property. Regardless of the lawmakers motivation, these laws prevented abuse.⁴⁹

The Alamans in their code, the eighth-century, *Lantfridana Manuscripts* protected a female servant from sexual abuse from someone other than her owner. “75.1 If anyone lies with someone’s chambermaid against her will, let him compensate with six *solidi*. 2. And if anyone lies with the first maid of the textile shop against her will, let him compensate with six *solidi*. 3. If anyone lies with other maids of the textile workshop against their will, let him compensate with three *solidi*.”⁵⁰

To a certain extent, Alfred the Great in the ninth century protected the chastity of female slaves. “25. If anyone rapes the slave of a commoner, he shall pay 5 shillings to the commoner, and a fine of 60 shillings. 1. If a slave rapes a slave, castration shall be required as compensation.”⁵¹

With the exception of the seventh-century Lombards, the laws against raping, seducing or committing adultery with someone else’s slave or servant served as a deterrent to concubinage or polygamy. Unless the man was extremely wealthy, it does not seem that he could have very many women readily available. Tacitus had claimed that polygamy was not common for the Germans. It is possible that the Lombards and the Anglo-Saxons might have practiced concubinage, but lawmakers were attempting to discourage this behavior. These laws also prove that Germanic lawmakers at least made the attempt to protect the chastity of their slaves and freedwomen.⁵²

⁴⁹ *Visigothic Code*, trans. Scott, 102; *Burgundian Code*, trans. Drew, 44; *Lombards Laws*, trans. Drew, 92.

⁵⁰ *Laws of the Alamans*, trans. Rivers, 94.

⁵¹ *Laws of the Earliest English Kings*, trans. Attenborough, 75.

⁵² Tacitus, *Agricola*, 72.

The later Germanic lawmakers of the eighth century and beyond included crimes that the clergy might commit against women. These lawmakers also protected religious women from sexual assaults, with harsh penalties as well. According to the seventh-century Ripuarian code, clerics that committed the crime of abduction paid half of the fine of a member of the laity. “38. 2 If a king’s man or a church man does this, let him be held liable for twice fifty *solidi*. Similarly, for those three who help him [if there are any], let each one of them be held liable for thirty *solidi*. And however many more there are to these above, let each one of them be fined eight and one-half *solidi*.” Clearly, the law allowed these men special privileges but the law did not allow them a free rein.⁵³

The eighth-century Bavarians had laws that helped to prevent the abduction of nuns. “1.11: If anyone abducts a nun from a convent, that is, one dedicated to God, and takes her as a wife for himself against ecclesiastical law, let the bishop of that diocese with the consent of the king or the duke demand her back. Nevertheless, let him give her back to the convent from which he abducted her, whether he wants to or not, and let him compensate two-fold to that convent what is customarily compensated by one who steals another’s betrothed. We know that the abduction of another’s betrothed is a punishable crime; how much more punishable is a crime which usurps the betrothed of Christ. And if he does not wish to compensate and return her, let him be expelled from the province.” The Lombards, under King Liutprand in 723, echoed the sentiments of the Bavarians. While the Bavarians related nuns with the bride of Christ, the Lombards perceived nuns, even those not yet consecrated, as similar to Mary the Mother of God.⁵⁴

⁵³ *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 184.

⁵⁴ *Laws of the Alamans*, trans. Rivers, 122; *Lombards Laws*, trans. Drew, 159-60.

The Lombards punished those women who did not act according to their chosen role, as well as punishing those men that aided in their misconduct:

30.1 . . .the cause of God and of the blessed Mary is so much greater that those who receive the veil or take the habit upon themselves ought to persevere in it. Therefore, if any woman contrary to this provision which our Excellency has established goes out or takes a husband for herself, she shall lose all her property and that property shall fall into [the] possession of our treasury. Moreover, concerning the person of that woman who committed such an evil deed, whoever is king shall judge as is pleasing to him whether it is better to send her to a convent or [to provide for her] in some other manner according to God. Likewise, the prince may ordain as it pleases him concerning her habit of life or vestment. If, moreover, that one in whose guardianship [*mundium*] such a woman is had consented to the abovementioned evil and this is proved, he shall pay his wergeld as composition to the royal treasury and that one who presumed to take her shall pay 600 *solidi* as composition. If, however, the *mundwald* did not consent to such an evil deed, he shall receive half the 600 *solidi* as composition and the king half. He who abducts such a woman shall pay 1000 *solidi* as composition in order that a case involving someone dedicated to God may exceed [the usual payment] to the amount of 100 *solidi* . . .

Even in the case of slave donated to the Church, the compensation was double that of an unconsecrated female slave.⁵⁵

King Æthelred in the tenth century explained the chronic problems within the clerical orders, which continued despite the laws, after reiterating that clergy was not supposed to marry. “5.2 But some are guilty of a worse practice in having two or more [wives], and others, although they forsake their former wives, afterwards take others while these are still alive--a thing which is unfitting for any Christian man to do.” He then repeated the benefits of the clerical man that behaved as he ought to do. He would have the privileges of a royal noble. For “minister of the altar,” the law stated: “30. Let him know, if he will, that he has no concern with a wife or with worldly warfare, if he wishes rightly to obey God and keep God’s laws, as it becomes his orders by right.”⁵⁶

⁵⁵ *Lombards Laws*, trans. Drew, 159-60, 185.

⁵⁶ *Laws of England: From Edmund to Henry I*, trans. Robertson, 93; Dorothy Whitelock, “Extracts from King Ethelred’s 1014 Code (VIII Ethelred),” in *English Historical Documents Vol. 1 English Historical Documents, 500-1042*, ed. David Douglas (New York: Oxford University Press, 1955 pp.411-414), 413.

King Canute in Proclamation I in 1020 AD, admonished men against marrying these religious women. “16. And likewise we enjoin, in the name of God Almighty and of all his Saints, that no man be so presumptuous as to take to wife a professed nun or a woman who has taken religious vows. 17. And if anyone has done so, he shall be an outcast before God and cut off from the whole community of Christians, and he shall forfeit to the king all that he has, unless he desists [from the unhallowed wedlock] as quickly as possible, and makes amends towards God to the utmost.”⁵⁷

It is clear from these examples of law codes dealing with sexual abuse that even the earliest laws protected women from abuse because they were an important part of society. In most of these societies, women were valued highly because of their ability to bear children, but the laws also sought to protect their virtue even in their old age when they could no longer conceive children. In the land of the eighth-century Bavarians, poor widows and nuns were the highest valued women.

Some of the laws reflected the importance of women as representatives of their family’s virtue. Germanic society did not condone promiscuous behavior for women, if they had many of these laws would not exist. Many of the Germanic laws were designed to shield women from the possibilities of seduction, such as those of the Franks, preventing a touch on the arm. Lawmakers in Germanic society believed it was necessary to protect a woman’s virtue and reputation in part because she was a conduit of her family’s property. The laws punishing sexual offenders protected women from ruining their reputations; these laws also protected them from rape and abduction.⁵⁸

⁵⁷ *Laws of England: From Edmund to Henry I*, trans. Robertson, 145.

⁵⁸ *Laws of the Salians*, trans. Drew, 84.

Of course, concubinage remained in practice in certain areas, but the Lombard and the Anglo-Saxon lawmakers strove hard to end this practice, especially within the clergy. The Visigoths, the only other Germanic tribe to specifically mention concubines, lost their independence in the early eighth century. The laws limiting the availability of concubines show that they probably were not a dominant concern for the majority of Germanic women.

CHAPTER 7

NON-SEXUAL CRIMES WOMEN COMMITTED

In comparison to the crimes of a non-sexual nature that men committed against women, the non-sexual crimes that women committed were a minor concern for most Germanic lawmakers. These crimes can be divided into three categories: violent crimes, crimes against the state, and crimes against society. Most Germanic codes had laws punishing violent non-sexual crimes that women committed. The laws reflect societal concerns: Germanic women who fought, attempted to cause abortions, and murdered others.

Germanic lawmakers tried to end the tradition of warrior women as a characteristic. According to a late fifth-century Burgundian law, for women who fought and unlike their male counterparts, women did not receive compensations for battle injuries. “92.2 But if the woman has gone forth from her courtyard to fight, and her hair has been cut off or she has received wounds, let it be her fault because she has gone forth from her home; and let nothing be sought from him who struck her or cut her hair.” The Lombards also attempted to dissuade their women from fighting. The Ancient law of the Visigoths indicated that some of their women were not above violent behavior. “Where a freeborn woman, either by violence or by any other means, causes another freeborn woman to abort, whether, or not, she should be seriously injured as a result of said act, she shall undergo the same penalty provided in the cases of freeborn men.” The Anglo-Saxons under King Æthelberht of Kent in the sixth century had an ambiguous law against female “misconduct.” This may have been a law intended to restrain warrior women, because the majority of the crimes that Anglo-Saxon lawmakers included were aggressive in

nature, but because this law is vague, its purpose is not clear. “73. If a freeborn woman, with long hair, misconducts herself, she shall pay 30 shillings as compensation.”¹

The Bavarians, of the eighth-century, in an attempt to stop the warrior women, sought to prevent their women from fighting. “4.29 If, however, she wishes to fight through boldness of heart, just as a man does, her compensation will not be twofold.” Like their Germanic neighbors, the Lombards tried to keep their women from fighting. “If a free woman participates in a brawl (*scandalum*) where men are struggling, and if she inflicts some blow or injury and perhaps in turn is struck or killed, she shall be valued according to her rank and composition shall be paid for her as if the deed had been done to a brother of that woman. But the penalty for such an injury, for which 900 solidi have been adjudged, shall not be required since she had participated in a struggle in a manner dishonorable for women.” Likewise, the Lombards under King Liutprand in 731 AD did not pay the twofold compensation for injured women either, but he reported that these situations did occur. “123.7 If some man in rage has hit a freeman or a freewoman or a girl who had come to a brawl (*in scandalum*) where men were fighting and if his blows were weighty and ponderous as we have just heard.” The tradition of fighting women continued. King Rothair had made a prior law relating to women and brawls, that Liutprand repealed out of necessity. The earlier Lombard king did not believe Lombard women had the ability to invade the peace of a person’s courtyard:

A woman is not able to commit breach of courtyard, which is hoberos, for it is foolish to think that a woman, free or slave, could commit a forceful act with arms as if she were a man.

Liutprand repealed this law:

¹ *The Burgundian Code*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1949), 82; *Lombard Laws*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1976), 127; *The Visigothic Code*, trans. S. P. Scott (Littleton, CO: Fred B. Rothman & Co., 1982), 207; *The Laws of the Earliest English Kings*, trans. F. L. Attenborough (New York: Russell and Russell, 1963), 15.

141.3 It has been related to us that certain perfidious and evil- minded men, not presuming themselves to enter armed into a village or into the house of another man in a violent manner since they fear the composition which has been set up in an earlier law [Rothair 279, 280], gather together as many women as they have both free and bond, and set them upon weaker men. Seizing these men the women rain blows upon them and commit other evil deeds in a violent manner more cruelly than men might do. Since this has been brought to our attention and these less strong men have entered an accusation on account of this violence, we add to the edict that if, in the future, women presume to do this, if they receive any injury or dishonor, wounds or injuries, or even death there, those who, in defending themselves, inflicted this injury or caused destruction to them shall pay no composition to the women themselves or to their husbands or to their mundwalds. And in addition the public agent who is established in that place shall seize those women and shave (*decalvere*) them and drive (*frustare*) them through the neighborhood villages of that region in order that other women shall not presume to commit such evil deeds. If the women in this situation inflict wounds or cause other injuries to any man, their husbands shall pay composition for the wounds according to the provisions of the code. We have decreed this rather on account of the discipline than for the composition because we cannot equate the collecting of women with a breach of the peace with an armed band (*arschild*) [Rothair 19; Liutprand 35, 134] nor with the sedition of rustics [Rothair 280], because these are things that men do, not women; therefore it shall be done concerning such women as provided above. If a woman rushes into a brawl (*scandalum*) and receives there death or a blow or injury, justice shall be done her as our predecessor King Rothair provided and adjudged [Rothair 378].²

Germanic lawmakers also created legislation designed to prevent women from committing other crimes. The Ancient law of the Visigoths punished women that voluntarily aborted their children. “If anyone should administer a potion to a pregnant women to produce an abortion, and the child should die in consequence, the woman who took such a potion, if she is a slave, shall receive two hundred lashes, and if she is freeborn, she shall lose her rank, and shall be given as a slave to whomever we may select.”³

The later Visigoths under the seventh-century King Flavius Chintasvintus perceived abortion to be a crime. Visigothic lawmakers considered abortion to be primarily a crime that women committed, but one men could also commit:

² *The Laws of the Earliest English Kings*, trans. F. L. Attenborough (New York: Russell and Russell, 1963), 134; *Lombards Laws*, trans. Drew, 124, 198-9, 108, 208-9.

³ *Visigothic Code*, trans. Scott, 206.

No depravity is greater than that which characterizes those who, unmindful of their parental duties, willfully deprive their children of life; and, as this crime is said to be increasing throughout the province of our kingdom and as men as well as women are said to be guilty of it; therefore, by way of correcting such license, we hereby decree that if either a freewoman or a slave should kill her child before, or after its birth; or should take any potion for the purpose of producing abortion; or should use any other means of putting an end to the life of her child; the judge of the province or district, as soon as he is advised of the fact, shall at once condemn the author of the crime to execution in public; or should he desire to spare her life, he shall at once cause her eyesight to be completely destroyed; and if it should be proved that her husband either ordered, or permitted the commission of this crime, he shall suffer the same penalty.

In a footnote about this law, the translator and editor, Scott, stated that the Visigoths punished the crime of abortion more severely than the other Germans because the Visigoths had copied Roman Law: “excepting in the provision of the seventh chapter, where the innate cruelty of barbarian retribution is disclosed by one of the most frightful punishments.”⁴

Murder was also a violent crime that women of the Germanic era were known to commit. For example, in Gregory of Tours’s, *History of the Franks*, he related the tale of Brunhild, daughter of Visigothic King Athanagild and wife of the Frankish King Sigibert, who once at least verbally intended to murder King Guntram, also king of the Franks. “‘It is true enough,’ added Guntram as an afterthought, ‘that his mother Brunhild threatened to murder me, but as far as I am concerned that is a matter of small moment. God, who snatched me from the hands of my other enemies also delivered me from the snares of Brunhild.’” Queen Fredegund, the wife of King Chilperic managed to have her brother-in-law, King Sigibert, assassinated, thus continuing a treacherous battle between Brunhild and Fredegund. These are only two examples of the treachery that Germanic women were capable of committing.⁵

According to Rothair’s edict, of the seventh-century Lombards, “If a woman conspires in the death of her husband, acting either through herself or through a substitute, the husband has

⁴ Ibid., 207-8.

⁵ Gregory of Tours, *History of the Franks*, trans. Lewis Thorpe (London: Penguin Books, 1974), 221, 437, 248.

the right to do with her what he wishes, and he may likewise do what he wishes with her property. If the woman denies the charge, her relatives may clear her either by oath or through the *camfio*, that is, by duel.” If the woman succeeded in murdering her spouse, the law required her death.⁶

Lombard women in the seventh century faced a penalty if they attempted or succeeded in poisoning someone. “139. The free man or free woman who mixes potion intending to give it to someone to drink shall pay twenty solidi as composition, just as in the case of him who plots the death of someone else. 140. If a free man or free woman gives another poison in his drink but that one does not die, he who gave the poison shall pay as composition a sum equal to half the wergeld at which that one would have been valued had he been killed. 141. Whoever gives another poison in his drink and that one dies shall pay as composition a sum equal to the full wergeld of the dead man in accordance with his rank.” If a slave committed this crime, the lord paid all compensations, but the slave faced capital punishment.⁷

Germanic women were also capable of committing crimes against the state, though these were few. Salian women in the early sixth century faced fines if they provided supplies or shelter to their fugitive husbands or kin. Once the courts declared someone a fugitive, they were outlaws. If someone came across any of these people, they could be killed with impunity. Another non-sexual crime against the state that late fifth century Burgundian women might commit was treating the royal servants badly. “76. 3. Also women will likewise be held to the payment of the fine if they treat our servants (*wittiscalci*) with contempt.”⁸

⁶ *Lombards Laws*, trans. Drew, 91-2.

⁷ *Ibid.*, 74.

⁸ *The Laws of the Salian Franks*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1991), 118; *Burgundian Code*, trans. Drew, 73.

Germanic women were sometimes party to or responsible for committing crimes that endangered society in general. These laws included spreading rumors about people, practicing witchcraft, and aiding or committing theft. Of these crimes, the most important were witchcraft and theft.

Insulting people and thus endangering their reputation was a crime dealt with in the seventh-century *Pactus Legis Alamannorum*. “If a woman calls another a witch or a poisoner, whether it is said in a dispute [in the presence of the accused] or in one’s absence, let her pay twelve *solidi*. If a woman calls a man deceitful without due cause, let her pay twelve *solidi* or let her husband swear with twelve men, half of whom are chosen.” Germanic courts were so reliant on fame as an index of legal standing that insults and false accusations were taken very seriously.⁹

In the land of the early sixth-century Salian Franks, the law punished women for practicing magic. “19.4. The woman who casts a magic spell over another woman so that she cannot have children shall be liable to pay twenty-five hundred *denarii* (i.e., sixty-two and one-half *solidi*.” Theodore Rivers’ translation of law 64.3 reads: “If a witch eats a man and it can be proven that she did this . . . , let her be held liable for 8000 *denarii*, which make 200 *solidi*.” The law did not state how this was proven. In the seventh century Rothair’s edict of the Lombards, a man might accuse a woman of being a witch and the law required proof, as previously mentioned; however, the lawmakers in an effort to prevent men from taking the law into their own hands stated: “no one may presume to kill another’s *aldia* or woman slave as if she were a vampire (*striga*), which the people call witch (*masca*), because it is in no wise to be believed by Christian minds that it is possible that a woman can eat a living man from within.” Obviously, even at this early age, the seventh century, the Lombards doubted the power of witches.

Differing Germanic codes viewed witches in different ways, but all of them attempted to keep women from practicing witchcraft.¹⁰

Ripuarian Franks in the seventh century also believed in witchcraft, and this was one of the few crimes that the laws mentioned that women committed. “86.1 If a man [*baro*] or Ripuarian woman kills anyone through a magic potion, let him compensate with his *wergeld*. 2. But if [the victim] does not die but undergoes some change or injury to his body, probably from this influence, let [the perpetrator] be held liable for 100 *solidi*, or let him swear with six [oath takers].” The Anglo-Saxons of Kent under King Wihtred in the seventh century punished the practitioners in cases of witchcraft. “12. If a husband, without his wife’s knowledge, makes offerings to devils, he shall forfeit all his goods or his *healsfang*. If both [of them] make offerings to devils they shall forfeit their *healsfangs* or all their goods.” The Visigoths under Flavius Chintasvintus in the seventh century believed that women used magic to keep their husbands unaware of their wives’ indiscretions, “... and so affect the minds of their husbands, either by the administration of drugs, or by the devices of witchcraft, that they are unable to accuse their wives or to leave them, on account of the affection they bear them;” In the introduction to the ninth-century Laws of Alfred the Great witchcraft was still a concern of the Anglo-Saxons. “30. The women who are in the habit of receiving wizards and sorcerers and magicians, thou shalt not suffer to live.”¹¹

Germanic women were also privy to information pertaining to their kin and spouses. In most areas, the law attempted to compel women to report the thefts of their kin, though few laws

⁹ *Laws of the Alamans*, trans. Rivers, 50.

¹⁰ *Laws of the Salians*, trans. Drew, 84; *The Laws of the Salian and Ripuarian Franks*, trans. Theodore Rivers (New York: AMS Press, 1986), 109; *Lombards Laws*, trans. Drew, 126-7.

¹¹ *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 210-11; *Laws of the Earliest English Kings*, trans. Attenborough, 27; *Visigothic Code*, trans. Scott, 100; Dorothy Whitelock, “The Laws of Alfred (871-899),” in *English Historical Documents Vol. 1 English Historical Documents, 500-1042*, ed. David Douglas (New York: Oxford University Press, 1955 pp. 372-80), 373

believed that women were thieves. In the late fifth-century Burgundian law 47. 1, after a brief explanation about the rampant theft which occurred, it stated: “if any native freeman, barbarian as well as Roman, or a person of any nation dwelling within the provinces of our kingdom, take horses or oxen in theft, and his wife does not immediately reveal the committed crime, let her husband be killed, and let her also be deprived of her liberty and given in servitude without delay to him against whom the deed was committed; because it cannot be doubted, and it is often discovered, that such women are sharers in the crimes of their husbands.” The sixth-century Lombards in Rothair’s edict fined a woman “ninefold” the value of the item and also declared “. . .let shame be reflected on her who did this disgraceful deed.” The Anglo-Saxons under King Ine of Wessex, in the seventh century, like the Burgundians, punished wives if they were aware that their husbands practiced theft. “7. If anyone steals without the cognizance of his wife and children, he shall pay a fine of 60 shillings. 1. If, however, he steals with the cognizance of all his household, they shall all go into slavery. 2. A ten year old child can be [regarded as] accessory to theft.” In situations where the theft involved an animal, which would be difficult not to notice, King Ine’s laws allowed the women a way out. “57. If a husband steals a beast and carries it into his house, and it is seized therein, he shall forfeit his share [of the household property]- his wife only being exempt, since she must obey her lord. If she declare, with an oath, that she had not tasted the stolen [meat], she shall retain her third of the [household] property.”¹²

Theft remained a concern for the Anglo-Saxons in the tenth century. Under the laws of Æthelstan 4.6, this law punished women for theft:

And if there is a thief who has committed theft since the Council was held at Thundersfield, and is still engaged in thieving, he shall in no way be judged worthy of life, neither by claiming the right of protection nor by, making monetary payment, if the charge is truly substantiated against him- whether it is a freeman or a slave, a noble or a

¹² *Burgundian Code*, trans. Drew, 54; *Lombards Laws*, trans. Drew, 103; *Laws of the Earliest English Kings*, trans. Attenborough, 39, 55, 57.

commoner, or, if it is a woman, whether she is a mistress or a maid- whosoever it may be, whether taken in the act, if it is known for certainty- that is, if he shall not make a statement of denial- or if the charge is proved in ordeal, or if his guilt becomes known in any other way. 4. In the case of a freewoman, she shall be thrown from a cliff or drowned. 7. In the case of a female slave who commits an act of theft anywhere except against her master or mistress, sixty and twenty female slaves shall go and bring three logs each and burn that one slave; and they shall pay as many pennies as male slaves would have to pay, or suffer scourging as has been stated above with reference to male slaves.¹³

Other Anglo-Saxon laws in the seventh century had focused on the man as a thief. Later Anglo-Saxon kings realized that women would also commit theft. King Canute, however, reasserted the innocence of women, whose husband's stole property, allowing that there were areas over which the woman was in charge, and areas over which she might have no knowledge. This change reflects a movement from the concept of group liability, a Germanic form based on the protection and policing of society within the clan, and the Christian conception of individual liability based on intent:

76. If anyone carries stolen goods home to his cottage and is detected, the law is that he (the owner) shall have what he has tracked. 1. And unless the goods had been placed under the wife's lock and key, she shall be clear [of any charge of complicity]. 1a. But it is her duty to guard the keep of the following- her storeroom and her chest and her cupboard. If the goods have been put in any of these, she shall be held guilty. 1.b. But no wife can forbid her husband to deposit anything that he desires in his cottage. 2. It has been the custom until now for grasping persons to treat a child which lay in the cradle, even though it had never tasted food, as being guilty as though it were fully intelligent. 3. But I strictly forbid such a thing hence forth, and likewise very many things which are hateful to God.¹⁴

Germanic lawmakers included a few laws concerning the crimes of female slaves, but they were few in number. Though sixth-century Salian lawmakers were not specific in regard to the type of crime a female slave committed, they do state: "40.11 If indeed it is a female slave accused of an offense for which a male slave would be castrated, then she should be liable to pay

¹³ *Laws of the Earliest English Kings*, trans. Attenborough, 149, 151.

¹⁴ *The Laws of England: From Edmund to Henry I-Part One, Edmund to Canute*, trans. A. J. Robertson (Cambridge: At the University Press, 1925), 215.

two hundred forty *denarii* (i.e., six *solidi*) -- if it is agreeable for her lord to pay this- or she should be subjected to two hundred forty lashes.” Several of the fines and laws concerning other women had a section covering slaves and servants.¹⁵

These laws are important in examining the effects of Roman society and the Catholic Church upon Germanic society. The female warrior ethos remained, and this was something that Germanic society tried to stop. The concept of intent, though apparent in the early laws pertaining to theft for the Anglo-Saxons, became even stronger during the eleventh century, when King Canute noted that infants could not be held responsible for thefts their parents carried out. The importance of the laws against abortions denote the value that Germanic society held for children and motherhood. For the most part, however, the laws against crimes that women committed were unimpressive, denoting that for the majority of the Germanic era the state was still too weak to enforce many of its laws. A woman’s guardian was expected to restrain his ward from committing crimes detrimental to society.

¹⁵ *Laws of the Salians*, trans. Drew, 103-4.

CHAPTER 8

SEXUAL CRIMES WOMEN COMMITTED AND DIVORCE RIGHTS

The majority of the Germanic codes concerning crimes that women could be accused of were sexual. These crimes included incest, adultery, and fornication. The extent to which the lawmakers blamed the women for these encounters reflects the influence of the Catholic Church within the laws. In the less Christianized codes, it does not seem as if the lawmakers perceived women as active agents in these sexual crimes, with the exception of adultery. The Catholic Church's conception of the intent of the individual gradually changed the nature of the women's roles from passive to aggressive participation in all of the types of sexual crimes.

The late-fifth-century Burgundians punished women in incestuous relationships harshly. "36. If anyone has been taken in adultery with his relative or with his wife's sister, let him be compelled to pay her *wergeld*, according to her status, to him who is the nearest relative of the woman with whom he committed adultery; and let the amount of the fine be twelve *solidi*. Further, we order the adulteress to be placed in servitude to the king." In Rothair's edict for the seventh-century Lombards, a father could disinherit a son if "he sins with his step-mother." Lombard law required that incestuous couples separate. "If the woman consented, then the man who took her to wife shall pay 100 *solidi* to the king's fisc as composition for his guilt, and he shall be separated from her immediately, having been forced to do so by the king. The woman shall keep half of her property and the other half shall go to the king's fisc." Other than the fine, there was no mention of punishment for the male in the Burgundian code, while the Lombards fined only those women that consented to an incestuous union. Suzanne Wemple was correct that double standards existed, especially in this instance. Of course, as Christianity increasingly

influenced the Germans, lawmakers viewed the crime of incest as particularly heinous. It is interesting that the Burgundians did not consider this relationship to be a marriage, but adultery.¹

According to Katherine Fischer Drew, the *Pactus Legis Salicae* “is free from Christian influences . . .,” yet the Salians did have laws against incestuous marriages. “13.11 He who joins to himself in profane marriage the daughter of his sister or brother, or a cousin of further degree . . . or the wife of his brother, or his mother’s brother, shall be subjected to this punishment: the couple shall be separated from such a union and, if they had children, these will not be legitimate heirs but will be marked with disgrace.”²

The Salians reconfirmed their incest laws, including laws against relationships between an aunt and a nephew, in Capitulary VI (595 AD), showing the influence of the Catholic Church. “1.2 We decree that no individuals infected by incest may unite in marriage, that is, neither one’s brother’s wife nor one’s wife’s sister nor one’s uncle’s wife nor a blood relative. If anyone takes his father’s wife, let him be put to death. And with regard to the previous unions which appear to be incestuous, we command that they be corrected in accordance with the bishop’s decision. But whosoever is unwilling to listen to his bishop [and] becomes excommunicated, let him suffer the everlasting judgment of God and let him be expelled from our court. And let him who is willing lawfully to maintain the care of his soul surrender all his property to his relatives.”

Though the Catholicism of the Salian Franks was unclear in the earlier code, this was no longer the case.³

¹ *The Burgundian Code*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1949), 46; *Lombard Laws*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1976), 81, 86; Suzanne Wemple, “Consent and Dissent to Sexual Intercourse in Germanic Societies from the Fifth to the Tenth Century,” in *Consent and Coercion to sex and Marriage in Ancient and Medieval Societies*, ed. Angeliki E. Laiou (Washington: Dumbarton Oaks, 1993 pp. 227-244), 242.

² *The Laws of the Salian Franks*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1991), 3, 78.

³ *The Laws of the Salian and Ripuarian Franks*, trans. Theodore Rivers (New York: AMS Press, 1986), 145.

King Wihtred of Kent in 695 AD also outlawed incestuous marriages. “3. Men living in illicit unions shall turn to a righteous life repenting of their sins, or they shall be excluded from the communion of the Church. 5. If after this meeting, a nobleman presumes to enter into an illicit union, despite the command of the king and the bishop, and the written law, he shall pay 100 shillings compensation to his lord, in accordance with established custom. 1. If a commoner does so, he shall pay 50 shillings compensation; and in either [case the offender] shall desist from the union with repentance.” The Lombards under King Liutprand in 723 AD disinherited children born of incestuous unions. Furthermore, “If anyone presumes to do this illegal act, he shall lose his property, and the children who are begotten of such a union cannot be legitimate heirs . . .” The Lombard King Aistulf in 750 AD insisted that incestuous couples separate. “8. It is pleasing to us that any illegal marriage prohibited by canon or secular law be ended immediately. Any judge in the present indiction who neglects or delays to adjudicate such a case shall pay his *wergeld* as composition: for it seems to us and to everyone that he who consents to such a marriage acts against God and against his own soul and allows evil to increase.” None of these laws punished the women for her role in the crime. In some ways this protected the women because the issue of her consent is uncertain. In the codes covered to this point, only the Salian Franks in their earliest code even mentioned the consent of the woman. This does not imply that the remainder of the marriages were necessarily forced, but the fact that the women were so secondary in these laws definitely suggests that force was possible, or even likely.⁴

The *Lantfridana Manuscripts* of the Alamans in the eighth century punished both parties involved in incestuous marriages. “If anyone acts against this, let them [the married pair] be separated by the judges in that place, and let them lose all their property, which the public

⁴ *The Laws of the Earliest English Kings*, trans. F. L. Attenborough (New York: Russell and Russell, 1963), 25; *Lombards Laws*, trans. Drew, 160, 229.

treasury shall acquire. If there are lesser persons who pollute themselves through an illicit union, let them lose their freedom; let them be added to the public slaves.” The Bavarian code’s law against incest was identical to the *Lantfridana Manuscripts* law 39. Likewise, Flavius Chintasvintus reissued the decree about incest. “Therefore, it shall not be lawful to defile the blood of such as are related even to the sixth degree, either by marriage or otherwise; those persons only being excepted, who have been married with the permission of the king, before the making of this law, and the said persons shall, in no way, be affected by its provisions. This law shall also apply to women. If any person should violate it, the judge shall immediately order them to be separated, and shall cause them to be placed in monasteries, according to their sex, there to perform perpetual penance. The disposition of the property of these offenders has been provided for by another law.” The Alamans, Visigoths, and Bavarians all punished the women involved in these unions.⁵

Alfred the Great, the ninth-century King of the Anglo- Saxons, also focused on the religious crime of incest in his Treaty with King Guthrum. “4. And in the case of incestuous unions, the councilors have decided that the king shall take possession of the male offender, and the bishop the female offender, unless they make compensation before God and the world as the bishop shall prescribe, in accordance with the gravity of the offence. 1. If two brothers or two near relatives lie with one woman, they shall pay as compensation and with all promptness whatever sum may be approved--whether as fine or as *lahslit*--according to the gravity of the offence.” King Æthelred in the late tenth century simply stated that men ought to avoid incestuous relationships and “observe the laws of the church.” Æthelred and Canute both repeated this law. VI Æthelred law 12 reissued the prohibition against incest and defined the

⁵ *Laws of the Alamans and Bavarians*, trans. Theodore Rivers (Philadelphia: University of Pennsylvania Press, 1977), 79-80, 137; *The Visigothic Code*, trans. S. P. Scott (Littleton, CO: Fred B. Rothman & Co., 1982), 106.

relationships. “12. And it must never happen that a Christian man marries among his own kin within six degrees of relationship, that is, within the fourth generation, or with the widow of a man as nearly related to him as this, or with a near relative of his first wife. 1. And a Christian man must never marry a professed nun or his godmother or a divorced woman, and he shall never have more wives than one, but he who seeks to observe God’s law aright and to save his soul from hell-fire shall remain with the one as long as she lives.” Canute’s Code in the eleventh century also repeated this law, adding “7.2 And he shall never commit adultery anywhere.”

Unlike the other Anglo-Saxon kings, King Canute distinguished types of incest according to the closeness of the relationship in his code. “51. If anyone commits incest, he shall make amends according to the degree of relationship [between them], either by the payment of *wergeld* or of a fine, or by the forfeiture of all his possessions. 1. The cases are not alike if incest is committed with a sister or with a distant relative.” By the eleventh century, the Anglo-Saxons created a differentiation in the seriousness of the incest. The punishment for women was not stated, so probably the women were still made prisoners of the bishop as stated in King Æthelred’s law.⁶

Germanic lawmakers also considered adultery a crime. The late-fifth-century Burgundians had several laws against adultery. “68. 1 If adulterers are discovered; let the man and woman be killed. 68. 2 This must be observed: either let him (the injured party) kill both of them, or if he kills only one of them, let him pay the *wergeld*” The Salian Franks in the early sixth century, *Pactus Legis Salicae*, required compensation comparable to that of murder. The Ancient Law of the Visigoths allowed the husband to deal privately with his adulterous wife and her counterpart, including causing their deaths; however, “3. 4. 3 If the wife of anyone should commit adultery, and not be caught in the act, her husband may accuse her before a judge

⁶ *Laws of the Earliest English Kings*, trans. Attenborough, 105; *The Laws of England: From Edmund to Henry 1 Part One, Edmund to Canute*, trans. Robertson (Cambridge: At the University Press, 1925), 83, 95, 163, 95, 163,

by the introduction of competent evidence. And if the adultery of the woman should be plainly manifest, both adulterer and adulteress, according to the provisions of a former law, shall be given to the husband, to be disposed of in any way he may select. 4 If the husband, or the man who was betrothed to the woman, should kill the adulterer along with the adulteress, it shall not be considered criminal homicide.” Furthermore, so long as neither the adulteress nor adulterer had “legitimate children by a former marriage” the offended husband gained ownership of all of the adulterous couple’s property. This law continued allowing the “legitimate children” to inherit their share of their mother’s property and to require that the husband never have “marital relations” with his wife again, lest he forfeit her properties. Furthermore, the law allowed “parents . . . to kill adulterers caught in their houses . . . But if slaves should discover them, they may keep them in honorable custody, until they can be delivered over to the master of the house . . .” The late sixth-century Anglo-Saxon king, Æthelberht, also prohibited adultery. “31. If [one] freeman lies with the wife of [another] freeman, he shall pay [the husband] his [or her] *wergeld*, and procure a second wife with his own money, and bring her to the other man’s home.” It is uncertain what happened to the adulterous wife. In Rothair’s edict of the seventh-century Lombards, the law punished both parties to adultery with death.⁷

The Ancient Law of the Visigoths gave special privileges to the wife of an adulterous husband: “If any freeborn woman should commit adultery with the husband of another, and should be convicted of it by conclusive evidence, she shall be surrendered to the wife of the husband with whom she was guilty, that the revenge of the woman injured may be fully satisfied.” Furthermore, the law allowed the “torture” of personal slaves in order to prove that “either a master or a mistress” had committed “adultery.” This law only applied to women

201, 203.

whose husbands had affairs with other freeborn women; this did not apply to slaves or women of semi-free status.⁸

In cases of adultery, Flavius Recesvintus in the seventh century reiterated the law punishing adulterers. The law allowed a woman's closest male kin to murder her. "If a father should kill his daughter, while she is in the act of committing adultery in his own house, he shall be liable to no penalty or reproach. But if he should wish to spare her life, he shall have full power to dispose of her and the adulterer, according to his will. Likewise, her brothers or her uncles, after the death of her father, shall have the same power."⁹

The later Germanic codes of the seventh and eighth centuries punished women for committing a variety of sexual indiscretions; however, the newer laws also reflect the importance of the woman's property. Chastity was still important to the Germans and the prior laws of the Lombards, Anglo-Saxons, Salian Franks and the Visigoths all dealt with adultery; lawmakers had not repealed these laws. There is a concentration on the affects of adultery on property in these later laws.

The Visigoths under Flavius Chintasvintus created a law that allowed children and other relatives of the husband to prosecute adultery in situations where the husband was unwilling to do so:

But if there are no sons, or they have not the proper age or experience to conduct this matter lawfully; in order that there may be no delay in punishment of adultery; or for fear that the adulteress may kill her husband; or her children or relatives may, for this reason, be deprived of her property; it is hereby decreed that the relations of the husband shall have the power, under such circumstances of accusing the said adulteress. And if, after accepting this trust, the adultery of the woman should be plainly proved in court, then both parties who have been convicted of this crime shall be at once given up, with all their property, to serve as slaves those who according to the provisions of the law, have

⁷ *Burgundian Code*, trans. Drew, 68; *Laws of the Salians*, trans. Drew, 80; *Visigothic Code*, trans. Scott, 96, 99, 97; *Laws of the Earliest English Kings*, trans. Attenborough, 9; *Lombards Laws*, trans. Drew, 93.

⁸ *Visigothic Code*, trans. Scott, 98.

⁹ *Ibid.*, 96.

proved this accusation. We make, however, an exception in favor of such as have manifested signs of repentance, and seem to be worthy of pity; and we decree that they shall receive the punishment of the scourge. And if the sons of the adulteress were not of sufficient age, at the time the crime was committed, to appear in court, the relatives of the husband, after the death of the latter, if there are no sons, shall be entitled to the property of the woman. If the sons should be unwilling or not of sufficient age or experience to prosecute the adulteress; then the nearest relative of the husband, who produced evidence of the crime, shall have the fifth part of the property of the adulteress for his pains, and the other four-fifths shall belong to the sons aforesaid. If there should be any lukewarmness on the part of the relatives, or negligence on the part of the sons, or if the parties should be corrupted by gifts; the conduct of such matters shall not be committed to persons of this character; and should the cause come to the knowledge of the king, he shall determine, according to his mercy, either by whom the case must be prosecuted, or how much of the property of the woman the prosecutor shall have as a fee for his trouble. But because it is difficult to prove the adultery of a woman by the evidence of persons who are free, as generally this crime is perpetrated in secret; henceforth, whenever the evidence of a freeborn person is not available to prove adultery, it shall be lawful for the person aforesaid, to whom it is granted by the present law to bring an accusation of this torture, that kind, to put the slave of both parties to the torture, that the crime may be proved.¹⁰

This law allowed a widow's in-laws to revoke her claims to her husband's inheritance on the evidence of tortured slaves.

Other Anglo-Saxon laws against adultery also existed. "10. If anyone lies with the wife of a man whose *wergeld* is 1200 shillings, he shall pay 120 shillings compensation to the husband; to a husband whose *wergeld* is 600 shillings, he shall pay 100 shillings compensation; to a commoner he shall pay 40 shillings compensation [for a similar offense]." Alfred the Great had another law which stated: "42.7 A man may fight, without becoming liable to vendetta, if he finds another [man] with his wedded wife, within closed doors or under the same blanket; or [if he finds another man] with his legitimate daughter [or sister]; or with his mother, if she has been given in lawful wedlock to his father." King Canute also reissued laws against adultery, especially for religious men, but it is not clear if he meant men of the clergy. "50.1 It is wicked adultery for a pious man to commit fornication with an unmarried woman, and much worse [for

¹⁰ Ibid., 120-01.

him to do so] with the wife of another man or with any woman who has taken religious vows.” Dorothy Whitelock translated the word “pious” as “married,” “50.1 It is wicked adultery that a married man should commit fornication with a single woman, and much worse if with another’s wife or with a woman consecrated [to God].” If Whitelock is correct, this is evidence that concubinage was on the decline in the Anglo-Saxon England. These later English laws differed from the laws of prior centuries because the woman was no longer replaced.¹¹

The presence of concubines seems implied in some of the previous laws. When speaking of whom a man may kill when he catches a couple in the act of adultery, the law says “with his legitimate daughter [or sister]; or with his mother, if she has been given in lawful wedlock to his father.” This implied that the mother could be a concubine and not a wife. King Canute created a law explicitly stating that concubines did exist and punishing those men that kept them. “54.1 And if anyone has a lawful wife and also a concubine, no priest shall perform for him any of the offices which must be performed for a Christian man, until he desists and makes amends as thoroughly as the bishop shall direct him, and ever afterwards desist from such [evil- doing].” Concubines did exist and the government was trying to eradicate them through the laws, but there were other possibilities as to why King Alfred’s law made a distinction between a mother and a wife.¹²

The other possible reason that the marriage had been a clandestine marriage. Barbara Hanawalt, studied court records in the later Middle Ages and discovered that clandestine marriages were common among the poor in the fourteenth and fifteenth century. Though her

¹¹ *Laws of the Earliest English Kings*, trans. Attenborough, 71, 85; *Laws of England: From Edmund to Henry 1*, trans. Robertson, 201; Dorothy Whitelock, “Extract from the Laws of Cnut (1020- 1023),” in *English Historical Documents Vol. 1 English Historical Documents, 500-1042*, ed. David Douglas (New York: Oxford University Press, 1955 pp. 419-430), 426; *Laws of the Earliest English Kings*, trans. Attenborough, 9.

¹² *Laws of the Earliest English Kings*, trans. Attenborough, 85; *Laws of England: From Edmund to Henry 1*, trans. Robertson, 203.

study covers England several centuries later, there is evidence that these were possible in the earlier centuries. The distinction between lawful wedlock and simply having two parents implies the existence of this type of marriage; spouses that did not have the benefit of a church wedding were not entitled to the same rights. The family would not have given the groom his wife's *mundium*. Furthermore, neither the husband nor the wife in such a marriage would inherit from the other.¹³

Though in the eleventh century Canute reiterated several of the laws concerning adultery that mirrored those of his predecessors, King Canute also implemented a new rather harsh penalty for wives who committed adultery. "55. No woman shall commit adultery. If, while her husband is still alive, a woman commits adultery with another man and it is discovered, she shall bring disgrace upon herself, and her lawful husband shall have all that she possesses, and she shall then lose both her nose and her ears. 1. And if a charge is brought, and the attempt to refute it fails, the decision shall then rest with the bishop, and his judgment shall be strict." Some of the prior Germanic laws have stated that the woman might be killed when a near family member caught her in an adulterous activity, but King Canute's law seems excessively cruel. There is no mention of the punishment for the adulterous male.¹⁴

The Lombards in Rothair's edict of the seventh century punished women who voluntarily participated in the crime of bigamy. "If a freeman or slave takes another man's wife and associates her with himself in marriage, then both shall be killed if both consented." The Lombards, during the reign of King Grimwald, in 668 AD, also provided some protection for the wife of a polygamous man. "If a woman or girl knows that a man has a wife and enters [his house] in spite of her and so takes a husband not her own, we order that that woman lose all her

¹³ Barbara Hanawalt, *The Ties that Bound*, (New York: Oxford University Press, 1986), 198.

¹⁴ *Visigothic Code*, trans. Scott, 99; *Laws of England: From Edmund to Henry 1*, trans. Robertson, 203.

property who knowingly and willingly consented to the husband of another woman, and the court of the king will receive half of her property and the relatives [of the injured wife] half. And the husband shall take back that first woman and live with her, his legal wife, as is proper. The blame shall be imputed to her who presumed to enter in spite of the other wife, and no composition shall be paid by the husband and the feud shall not be required.” The Lombards, under King Liutprand in 731 AD, also punished women who tried to commit bigamy. “122.6 If any poor foolish man dares to betroth a woman who already has a husband, whether her husband is sick or well--as in the case just reported to us--and this is proved, then the man who did this shall pay his *wergeld* as composition to the husband, and the woman shall receive such a treatment as we provided above for her who permits herself to be basely treated.”¹⁵

In most cases, sexual activities were a private matter for the late-fifth-century Burgundians. Burgundian women involved in illicit sexual unions were not punished by the state as long as the relationship was not adultery, incest, or sex with a slave. But if she complained of ill treatment in such unions, she could expect only disgrace:

44. 1 If the daughter of any native Burgundian before she is given in marriage unites herself secretly and disgracefully in adultery with either barbarian or Roman, and if afterward she brings a complaint, and the act is established as charged, let him who has been accused of her corruption, and has been said, is convicted with certain proof, suffer no defamation of character (*calumnia*) upon payment of fifteen *solidi*. She indeed, defeated in her purpose by the vileness of this conduct, shall sustain the disgrace of losing chastity. 44.2 But if a widow who has not been sought, but rather overcome by desire, unites with anyone, and she burst forth in an accusing voice, let her not receive the stated number of *solidi*, and we order that she, demanding marriage thus, be not awarded to him to whom she joined herself in such disgraceful manner, because it is just that she, defeated by her vile conduct, is worthy of neither matrimony nor reward.¹⁶

In the Ancient law of the Visigoths fornication was a crime for women, but not for men.

“If any freeborn woman should be detected in having voluntarily committed adultery with any

¹⁵ *Lombards Laws*, trans. Drew, 93, 134-5, 198.

¹⁶ *Burgundian Code*, trans. Drew, 51-2.

man, and if, afterwards, he should wish to marry her, he shall be permitted to do so. But if he should be unwilling, she shall be considered guilty of having voluntarily committed a crime.” In the event that the woman’s kin agreed to the marriage, she might still be disinherited. The Lombards in Rothair’s edict had a similar law. If the woman’s parents and the man could not agree on a wedding, then the law required compensation from the man and punishment for the woman; “If the relatives neglect this or do not take vengeance on her, then the king’s gastald or schultheis shall take her to the king and he shall render judgment as is pleasing to him.” It is not clear what the Lombards meant by “take vengeance on her.” In the case of both the Visigoths and the Lombards, the woman was only punished if the sexual union did not result in a wedding. These relationships were clearly an attempt to gain the approval of the kin for a clandestine marriage.¹⁷

Late-fifth-century Burgundians did make a distinction between this type of union and a legal marriage. For example: “61. Whatever woman, barbarian by nation, enters into a union willingly and secretly, let her wedding price be paid in fee simple to her relatives; and he to whom she has been joined in an adulterous union may be united afterward in marriage to another if he wishes.” Another law stated: “12.4 If indeed, the girl seeks the man of her own will and comes to his house, and he has intercourse with her, let him pay her marriage price threefold; if, moreover, she returns uncorrupted to her home, let her return with all blame removed from him.” Though the laws are often unclear and unwritten customs still regulated many things, it does seem that in most cases the Burgundians expected the man to marry the woman once they fornicated. The law only mentioned her return when the couple did not fornicate.¹⁸

¹⁷ *Visigothic Code*, trans. Scott, 97; *Lombards Laws*, trans. Drew, 87.

¹⁸ *Burgundian Code*, trans. Drew, 66, 31.

The early sixth-century Salian Franks punished only the man involved in consensual illicit unions, the law did not mention the woman's disgrace. "15.3 He who secretly has intercourse with a free girl with the consent of both and it is proved against him . . . shall be liable to pay eighteen hundred *denarri* (i.e., forty-five *solidi*)."¹⁹

The Lombards under King Liutprand only punished women with shame if they had relations with someone beneath their status, as long as it was not a slave. "60.7 If any man's *aldius* has intercourse with a freewoman or girl, he shall pay fifty *solidi* as composition to him who holds her *mundium*, but the guilt shall be imputed to her on the fact that she consented to an *aldius*." The punishment was the loss of her reputation.²⁰

Most Germanic codes punished women for marrying without parental consent. Roman women living in late fifth-century Burgundy suffered some financial loss for marrying without the consent of their parents if their spouse was not Roman. For instance: "12. 5 If indeed a Roman girl, without the consent or knowledge of her parents unites in marriage with a Burgundian, let her know she will have none of the property of her parents." Burgundian males suffered financial penalties if his bride's parents had not given their consent to the marriage. "101. 1 If any Burgundian of the highest (*optimas*) or middle class (*mediocris*) unites with the daughter of another (probably of the same class) without her father's consent, we order that such a noble make triple payment of one-hundred fifty *solidi* to the father whose daughter he took, if he took her without stating his intentions in advance of or seeking his consent, and let the fine be thirty- six *solidi*." The second part of this law required the same threefold payment for couples in the lower class, only of course, the bridal price was only 15 *solidi* in comparison to fifty *solidi* for the upper classes. The Ancient Law of the Visigoths required parental consent to marriage

¹⁹ *Laws of the Salians*, trans. Drew, 80.

²⁰ *Lombards Laws*, trans. Drew, 80.

and families had the right to disown their willful daughter if she was uncooperative. “If any freeborn girl should marry a freeman before the latter has consulted her parents, and if he then should obtain consent to have her as his wife, he shall pay the legal dowry to her parents; but, if he cannot furnish that sum, the girls shall be again placed under their control. If she should have been voluntarily married without the consent and knowledge of her parents, and they should then be unwilling to receive her, she shall not inherit along with her brothers, for the reason that she married without the permission of her parents. If her parents should give her any of their property, she shall have full liberty to dispose of it at her pleasure.” Like the other Germanic codes, the Lombards fined the groom because he had not gained consent of his wife’s parents. “Then the husband who received her to wife shall pay twenty *solidi* as composition for the illegal intercourse (*anagrip*) and another twenty *solidi* to avert the feud.”²¹

The Burgundians considered betrothed women to be married, and lawmakers punished sexual indiscretion with death for both partners. In an actual case in 517 AD, the king determined the following:

52. 3 And since, Aunegild, after the death of her first husband, retaining her own legal competence, promised herself, not only with the consent of her parents, but also with her own desire and will, to the above mentioned Fredegisil, and since she had received the greater part of the wedding price which her betrothed had paid, she broke her pledged faith, having been aroused by the ardour of her desire for Balthamodus. Furthermore, she not only violated her vows, but repeated her customary shameful union and on account of this, she ought to atone for such a crime and such a violation of her free status not otherwise than with the pouring forth of her own blood. . . . Nor do we remove merited condemnation from Balthamodus who presumed to receive a woman due in marriage to another man for his case deserves death.

Out of respect for the “holy days,” the king commuted Aunegild and Balthamodus’s death penalties and charged them both with the value of their *wergeld* in compensation to the jilted

²¹ *Burgundian Code*, trans. Drew, 31, 85-6; *Visigothic Code*, trans. Scott, 87; *Lombards Laws*, trans. Drew, 87.

fiancée Fredegisil. Balthamodus had the opportunity to prove his own innocence in the affair.

The Ancient Law of the Visigoths had a law similar to the Burgundian case just presented:

If a marriage contract has been entered into between an intended husband and the parents of an intended wife; or with the woman herself, if she has the right to make the contract; the dowry being duly given, and an agreement made in writing, before witnesses, according to custom, and as is prescribed by law; and, afterwards the girl or woman is convicted of having committed adultery, or of having betrothed herself to another man, or of having married; she, along with her unlawful husband, or adulterer, or betrothed to whom she has given herself contrary to her solemn agreement, shall be delivered up as slaves, with all their property, to the person to whom she was first betrothed.

In Rothair's edict of the seventh-century Lombards, the punishment that the law mentioned was less severe than the Visigoths. The woman faced no penalty at all, and the man paid a financial compensation to the parents, the king and "him who had betrothed the woman and whom he has treated disgracefully double the amount of the marriage portion established at the time of betrothal." This fine was the same if the parents had caused the injury to the fiancée. "And if afterwards for some strange reason they enter into a secret agreement with someone else, or consent to another man's taking the woman to wife forcefully or with her consent, then those relatives who gave their consent to the fraudulent agreement shall pay him" ²²

Under Alfred the Great, of the ninth-century Anglo-Saxons, "18.1 If a young woman is betrothed commits fornication, she shall pay compensation to the amount of 60 shillings to the surety [of the marriage], if she is a commoner. This sum shall be [paid] in livestock, cattle being the property tendered, and no slave shall be given in such a payment. 2. If her *wergeld* is 600 shillings, she shall pay 100 shillings to the surety [of the marriage]. 3. If her *wergeld* is 1200 shillings, she shall pay 120 shillings to the surety [of the marriage]." It is interesting that the law fines the woman and not her parents. ²³

²² *Burgundian Code*, trans. Drew, 60; *Visigothic Code*, trans. Scott, 95; *Lombards Laws*, trans. Drew, 88.

²³ *Laws of the Earliest English Kings*, trans. Attenborough, 73.

The Salian Franks placed great emphasis on marrying within your own social class. The law punished men as well as women for not heeding this custom. According to Katherine Fischer Drew, the *Pactus Legis Salicae* stated: “13.9 [9. The freeman who takes another’s female slave in marriage . . . shall remain in servitude with her]. 10. He who associates another man’s half-free woman (*litam*) with himself in marriage . . . shall be liable to pay twelve hundred *denarri* (i.e., thirty *solidi*).” Like the Salian Franks, the Ancient Law of the Visigoths severely punished people for marrying beneath their station:

If a freeborn woman should commit adultery with her own slave, or freedman, or should marry him; as soon as this has been proved, she shall be put to death; and both adulterer and adulteress shall be publicly scourged before the judge, and burned. And whenever any judge shall be convinced of the commission of such a crime, and shall learn that any mistress has married her slave, or her freedman; he shall at once cause them to be separated, in order that the sons of her former husband, or those of his relatives entitled to it by legal succession, may obtain possession of her property. But if heirs, to the third degree, should be wanting, then all her property shall belong to the royal treasury; for it is not proper that the children born of such a marriage should be heirs. And the woman, whether she be a virgin or a widow, shall be liable to the penalty hereinbefore mentioned. But if she should take refuge at the altar, and claim the privilege of sanctuary, she shall be given by the king to whomever he chooses, to serve him forever as a slave. 3. If any freeborn woman should marry or commit adultery with the slave of another, even though he should belong to the king; as soon as this shall come to the knowledge of the judge, he shall order the parties to be separated immediately, that they may suffer the punishment they deserve, to wit: each one a hundred lashes. . . . And if they should be guilty for the third time, they shall receive another hundred lashes, and the woman shall be delivered over into the power of her relatives. And if, at any time afterwards, her relatives should permit her to return to the slave, she shall become the slave of the master to whom the latter belongs. And whatever children shall be born of this union shall follow the condition of the father, and remain in slavery. The relatives of the woman, however, shall inherit her property, according to the rules of inheritance. But if the children who are born of this union shall prove, by a lawful witness, that for thirty years they have been free, they shall be exempt from servitude; provided that their parents, within the thirty years for which time the children have proved themselves to be free, should have rendered no service to their master, by reason of which their children might be subject to slavery. And we direct that this law shall also apply to freeborn men who marry the female slaves of the king, or those of anyone else whomsoever.

The Visigoths were very strict concerning women who married beneath their station. It also seems that occasionally women married slaves and went unpunished, hence the thirty-year premise.²⁴

The Lombards had several laws concerning those men and women that married beneath their station. It does not appear to be as stigmatized as in the other tribes:

If any man's *aldius* takes to wife a free woman (one who is folkfree) and acquires her *mundium*, and if after children are born the husband dies, then if the woman does not wish to remain in that house and her relatives want to bring her back to them, they may return the price which had been paid for the woman's *mundium* by him to whom the *aldius* belonged. She may then return to her relatives without the morning-gift or any of her husband's property, but with any property which she brought with her from her own relatives, if there was any. And if the woman had children and they do not wish to remain in their father's house, they may leave the paternal property by purchasing their own *mundium* at the same rate as was paid for their mother. They may then go freely wherever they wish.

However, the semi-free or freed woman that "marries a slave shall lose her liberty. But if the husband's lord neglects to reduce her to servitude, then when her husband dies she may go forth together with her children and all the property which she brought with her when she came to her husband. But she shall have no more than this as an indication of her mistake in marrying a slave." The Lombards allowed a certain amount of social mobility, but they drew the line at intermarriages between freeborn women and slaves. "The slave who dares to marry a free woman or girl shall lose his life. With regard to the woman who consented to a slave, her relatives have the right to kill her or to sell her outside the country and to do what they wish with her property."²⁵

The Lombards were more lenient when a freeman wished to wed a slave. "If any man wishes to marry his own woman slave, he may do so. Nevertheless, he ought to free her, that is, make her worthy born . . . and he ought to do it legally by the proper formal procedure . . . She

²⁴ *Laws of the Salians*, trans. Drew, 78; *Visigothic Code*, trans. Scott, 83-5.

shall then be known as a free and legal wife and her children may become the legal heirs of their father.” This was a harsh double standard because Lombard law recommended a woman’s death for the same crime.²⁶

The Salian Franks in Capitulary III, lawmakers increased the punishment women faced for marrying their slaves:

If a woman unites in marriage with her slave, let the public treasury acquire all her property and let her be outlawed. 2. If anyone of her relatives kills her, let nothing at all be required from her either her relatives or the public treasury for this death. Let that slave endure the worst death by torture, that is, let him be broken on the wheel. But if anyone of the relatives gives food or shelter to this woman [because she has been outlawed], let him be held liable for fifteen *solidi*.

Capitulary VII changed this law. The new law allowed the couple to remain married, but deprived the woman of her inheritance and her free status. The new law further implemented the same punishment for free men that married slaves.²⁷

The majority of the Germanic codes punished women who married beneath their station in life, and this punishment took a multitude of forms. Some codes required her disinheritance, some that she and her heirs succumb to the lower status, some outlawed the woman. The Lombards, in Rothair’s edict 221, required that the family kill or sell the freewoman that dared to marry a slave. King Liutprand created a law to handle situations where the woman’s family did not fulfill the obligations of the previous law. “24.6 If a freewoman takes a slave [as husband], and her relatives neglect to take vengeance on her within a year, as is provided in an earlier law [Rothair 221], then whenever she is found after the expiration of a year she shall become a palace slave. And the slave [her husband] shall be turned over to a public official and their children shall serve the king’s court in all things. But if the relatives of that woman, or the

²⁵ *Lombards Laws*, trans. Drew, 94-95.

²⁶ *Ibid.*, 95.

²⁷ *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 129; *Laws of the Salians*, trans. Drew, 164.

slave's lord, have carried out within a period of one year that which the earlier edict commands, it shall remain permanently in effect." In a prior law, King Grimwald had established the fact that if the kin had not separated the couple and taken in action within a number of years, the couple should remain free. King Ratchis in 746 AD extended the time to sixty years. "6.11 If in the future any women are found who have married slaves and they have remained at liberty at least sixty years, no one shall presume to return them or their sons or their daughters or any others who have descended from them into servitude, but they shall continue in their liberty as they have been for sixty years." The Visigoths under Flavius Chintasvintus in the seventh century allowed freed women to accept the status of the slave to whom she had married:

If any woman who has been freed should unite herself with the slave of another, or should marry him; the master of the slave shall notify her three times, in the presence of three witnesses, to leave him, and if, after the third notification, she should be unwilling to do so, she shall become the slave of the master of him with whom she is living. But if she should not have been notified before any children are born, then she shall remain free. It is the rule that the blood relations of a slave belong to his master, because those cannot be free who are born in this condition. This likewise shall apply to men who have been set free, who unite with the slaves of others. But if any woman who has been set free should marry the slave of another, after the permission of the master has been granted, through any contract or agreement with the latter, then such a contract shall be valid.²⁸

Flavius Chintasvintus also punished those who tricked women into inadvertently marrying slaves. This was in fact a sexual crime that men committed against women, but the law went to great lengths to protect these women in such a way because of the harsh punishment women faced for marrying slaves. "Many persons, induced by avarice, are accustomed to wickedly deceive free born women or girls by inducing them to accept their slaves as husbands, representing them to be freeborn; in order that any children they have may afterwards be reduced to slavery. Therefore, that this fraud may be abolished, we decree by the present law, that persons guilty of such deception shall be branded with infamy; and these slaves who are found to

have been represented as freemen by the aforesaid evil- minded persons, shall be, along with their children, forever free ... and the woman or girls who married said slaves shall have, as their own, all the property which was either received by, or promised to them at the time of their marriage.” The problem of marriages between the slave class and the freeborn class was on the rise in the seventh century, as the editor Scott pointed out in a footnote. Another Visigothic law written during the reign of Flavius Chintasvintus the law began: “For the reason that fugitive slaves falsely declaring themselves to be freemen, frequently contract marriages with freeborn women.” The law allowed the owner of the slave to reclaim the escaped slave along with any heirs of the marriage and any property the slave possessed. Flavius Recesvintus changed this law dramatically in his release of Visigothic laws. The case involved a slave that managed to trick a woman and her kin into believing that he was a freeman. “The judge should have investigated the matter, in behalf of the woman, and the master of said slave should add his testimony; no reproach shall attach to said woman, nor shall she be liable for any damages, but she shall continue to be free, and any children she may have had by said slave, shall follow the condition of their mother. She shall not be separated from said slave should she desire to remain with him, provided his master gives his consent.”²⁹

Aside from ensuring that women married men of the appropriate social status, the Germanic lawmakers also focused on ensuring that women married older men. Later Lombard law did not allow their women to marry young boys. King Liutprand was shocked to learn that such things occurred:

129.13 A most vain and grasping suasion and perversion has appeared in these times which seems to us, in conjunction with the rest of the judges to be illegal: women, adult and mature in age, have joined themselves in union with small boys who are under the legal age and claim them as their legitimate husbands- [all this seems illegal to us] since

²⁸ *Lombards Laws*, trans. Drew, 95, 155, 220; *Visigothic Code*, trans. Scott, 85.

²⁹ *Visigothic Code*, trans. Scott, 86-7, 314.

at this time the boys are not strong enough to have intercourse with women. Therefore we now decree that in the future no woman shall presume to do this thing unless the boy's father or grandfather has made provision for this with the woman's relatives. But if a boy remains underage after his father's death and a woman presumes to marry him before the boy has completed thirteen years, saying that he ought to be her legal husband, the union shall not be valid and they shall be separated from one another. Indeed the woman shall return empty-handed with reproach and she may not marry any other man until the boy reaches the above age.

When the boy reached the appropriate age, he had the right to decide if he wanted to remain married to the woman or not. If someone else later married the woman, the law required that her marriage gifts be fifty percent less. A later Lombard law allowed men under eighteen to contract engagements. "117.1 ... he shall have the right to provide the marriage portion (*meta*) and to give the morning-gift, as the edict provides [Liutprand 7, 89], and to incur obligations and to offer surety and to sign contracts, if he wishes for this purpose. ... It is true that we have handled the affairs of children under this age in order that they may not destroy or disperse their property; but in the case of a union blessed by God, we agree that it may be done as stated above." It is fairly certain that the woman was younger than he. Like the Lombards, Visigothic law in the seventh century under Flavius Recesvintus did not allow mature women to marry boys. The law stated that such a situation was unnatural. "For though men have received their name from the fact that they control women by their superior strength, some, in violation of the laws of nature, give the priority to women, when they unite females of advanced age with boys who are little more than children; and thus, for the sake of gain, and through unwise delay, encourage the commission of vice by the former."³⁰

Lombard laws of the eighth century allowed women to marry men of Roman origin. When this occurred the woman became subject to Roman law instead of her native Lombard law. The rules and protections that the Lombards provided for women were lost at that time. In

³⁰ *Lombards Laws*, trans. Drew, 200-01, 195; *Visigothic Code*, trans. Scott, 78.

certain situations, it provided her with more freedom, but it also denied her the financial security of guaranteed marital inheritance. King Liutprand explained this law in 731 AD. “127.11 If a Roman man marries a Lombard woman and acquires her *mundium*, and if after his death the widow marries without the consent of the heirs of her first husband, feud and the penalty for illegal intercourse shall not be required; for after she married a Roman man and he acquired her *mundium*, she became a Roman and the children born of such a marriage shall be Roman and shall live according to the law of their Roman father. Therefore the man who marries her after the death of her first husband ought not to pay composition for illegal intercourse just as he would not pay it for another Roman woman.” In the same sense, Lombard men left their right to Lombard law when they became a member of the clergy. “153.11 If a Lombard is married and has sons or daughters, and if afterwards, compelled by divine guidance, he becomes a priest, then the sons or daughters who were born before his consecration shall live by that law as their father lived when he begot them, and they ought to settle their lawsuits according to this law.” Ancient law of the Visigoths had denied their citizens the right to marry Romans, but Flavius Recesvintus changed this law in the seventh century. “For this reason, we hereby sanction a better law; and, declaring the ancient one to be void, we decree that if any Goth wishes to marry a Roman woman, or any Roman a Gothic woman, permission being first requested, they shall be permitted to marry. And any freeman shall have the right to marry any freewoman; permission of the Council and of her family having been previously obtained.”³¹

Beyond marrying within their own social class and culture, lawmakers expected Visigothic widows to wait to remarry for a year. “If any woman, within a year after the death of her husband should marry another, or commit adultery, the children of her first marriage shall receive half of her property; or if there are no children, the nearest heirs of the deceased husband

³¹*Lombards Laws*, trans. Drew, 199-200, 214; *Visigothic Code*, trans. Scott, 76.

shall receive half of her property, by order of the court. We have especially prescribed this penalty lest the woman having been left pregnant by her husband, and desiring to enter into a second marriage, should destroy her unborn offspring. We decree, however, that those only shall be exempt from the operation of this law, who marry within the prohibited time under order of the king.”³²

The Ancient Law of the Visigoths also had laws against prostitution:

If any freeborn girl or woman should publicly practice fornication, be known as a harlot, and be shamelessly given to soliciting men; after having been arrested by the governor of the city, she shall receive in public two hundred lashes, and shall be sent away, under the condition that she shall not, afterwards, be guilty of similar conduct, or ever again enter the city. And if she should return, she shall be sentenced by the governor to receive three hundred lashes more, and shall be given as a slave to some pauper, and never be permitted to go freely about the city again. And if she should admit that she has pursued her evil life with the knowledge of her father and mother, and thus should seem to have acquired her degradation through association with her parents, and her father and mother should be convicted of having had such a guilty knowledge; each of them shall receive a hundred lashes.

This law continued concerning the punishment of slaves who practiced prostitution. The law punished such slaves for prostitution with “three hundred lashes” for the first offence, in addition to “having had her head shaved” at which point the law required that her owner sell her far away from the province where she committed her sins.” The prostitute was not the only one that the law punished. “If she should declare that she had acted with the consent of her master, gaining money for him through her vicious practices, and he should be publicly convicted of this, he shall receive the same number of lashes as she would otherwise have received.” Furthermore, the law penalized public officials for not punishing such crimes. “If any judge should be unwilling to investigate such offences, or prosecute, or correct them, he shall receive a hundred

³² *Visigothic Code*, trans. Scott, 83.

lashes by order of the governor of the city, and shall pay thirty *solidi* to him whom the king shall designate.” The Visigoths were careful to limit the availability of prostitution.³³

The Anglo-Saxons laws in the late ninth-century Treaty of Alfred and Guthrum, classed prostitutes in the same category as witches and ordered them from the land. “11. If wizards or sorcerers, perjurers or they who secretly compass death, or vile, polluted, notorious prostitutes be met with anywhere in the country, they shall be driven from the land and the nation shall be purified; otherwise, they shall be utterly destroyed in the land- unless they cease from their wickedness and make amends to the utmost of their ability.” King Æthelbert reissued this law in the late tenth century, leaving only the descriptive adjectives out. The reputation of being a “vile, polluted, notorious” prostitute was no longer necessary before the English citizens removed her from the land. Being a prostitute in and of itself was enough of a crime. Canute’s Code repeated this law also eliminating the adjectives describing prostitutes. Only the Visigoths and the Anglo- Saxons created laws pertaining to prostitutes. They did exist in other Germanic areas, but were apparently better tolerated.³⁴

The Germanic codes carefully guarded the chastity of their women, and to a certain extent that of their slaves. Concubinage and polygamy did exist within the Germanic nations, but to what extent they were prevalent within the community is questionable. For a faithful loving wife, this adultery within her own home must have been difficult to accept, but adultery was hard to commit. It is difficult to imagine being a concubine in the home and presence of the mistress. Certainly, the servant or the slave had few available options. The laws often limited the number of women with whom a man might have an extra marital affair, thus softening the effects of the double standards within the laws.

³³ *Visigothic Code*, trans. Scott, 103-4.

Another important issue in all of the Germanic codes was a woman's right to obtain a divorce. This is included in the section about sexual crimes that women might commit because in some areas lawmakers considered divorce to be a crime. Many of the later codes denied women this right and some of them do not mention divorce at all. The majority of those codes, which Christianity influenced, were more likely to deny the right of divorce to either party, with the exception of truly heinous crimes. The Anglo-Saxons under sixth-century King Æthelberht allowed women the right to divorce. "79. If she wishes to depart with her children, she shall have half the goods. 80. If the husband wishes to keep [the children], she shall have a share of the goods equal to a child's." According to the seventh-century historian, the Venerable Bede, divorcing one's wife sometimes lead to difficulties. "On the death of Cynegils, his son Cenwalh succeeded to the throne, but refused to accept the faith and sacraments of Christ. Not long afterwards he lost his kingdom, for he put away his wife, who was sister of Penda, King of Mercia, and took another woman. This led to war, and Cenwalh was driven out of his kingdom and took refuge with Anna, king of the East Angles."³⁵

Neither the *Pactus Legis Salicae* in the early sixth century for the Salian Franks nor the Ancient law of the Visigoths mentioned divorce for either spouse. Gregory of Tours related the story of Tetradia who left her husband Eulalius in the late sixth century. She suffered fines and her children lost their inheritance, but Frankish society allowed her to leave her husband and remarry. Gregory of Tours also mentioned a young man, Virus, who had desired to wed Tetradia the wife of his uncle, Eulalius. Virus:

Had lost his own wife and wanted to marry her. He was afraid of what his uncle would do to them both, so he sent Tetradia off to Desiderius, still hoping to marry her later on.

³⁴ *Laws of the Earliest English Kings*, trans. Attenborough, 109; *Laws of England: From Edmund to Henry I*, trans. Robertson, 93, 177.

³⁵ *Laws of the Earliest English Kings*, trans. Attenborough, 15; The Venerable Bede, *A History of the English Church and People*, trans. Leo Shirley-Price (Edinburgh: R & R Clark Ltd., 1955), 148-9.

She took with her all her husband's property, gold, silver, clothing, everything in fact which she could carry. She also took her elder son, leaving her younger boy behind. When Eulalius came back from his journey, he discovered what they had done. For a while he took no action nursing his resentment. Then he attacked his nephew Virus and killed him in one of the narrow defiles of the Auvergne. In the meantime, Desiderius had lost his own wife. When he heard that Virus had been killed, he married Tetrada himself.

This situation occurred around 581 AD. Eulalius was a womanizer, who was abusive to his wife, and had killed his mother. Eulalius deserved the worst. Tetrada was fined for absconding with all of Eulalius's possessions and her children lost their claim to legitimacy presumably because she remarried, but she was not prosecuted for leaving her husband. Virus and Tetrada never married, but it is clear from the story that they were committed to the relationship. Desiderius married her after it became certain that Virus was dead, yet Gregory did not condemn their relationship as being adulterous. Clearly the Franks allowed women to obtain a divorce, though their laws made no mention of it.³⁶

The Venerable Bede related the laws on marriage according to the Catholic Church. These laws do not mention penalties, but they do cover the major concerns of the Church in the seventh century. "Chapter 10: On Marriage: 'That lawful wedlock alone is permissible; incest is forbidden; and no one may leave his lawful wife except, as the gospel provides, for fornication. And if a man puts away his own wife who is joined to him in lawful marriage, he may not take another if he wishes to be a good Christian. He must either remain as he is, or else be reconciled to his wife.'" The sanctity of marriage was highly valued in the Catholic Church, and they strove hard to convince people to remain married.³⁷

³⁶ Gregory of Tours, *The History of the Franks*, trans. Lewis Thorpe (London: Penguin Books, 1974), 555.

³⁷ Venerable Bede, *History of the English Church*, 211.

Some of the codes had separate laws pertaining to women and to men, and these double standards degraded the standard of living for Germanic women. The Burgundians had the worst double standard when it came to the subject of divorce.

34.1 If any woman leaves (puts aside) her husband to whom she is legally married, let her be smothered in mire. 2. If anyone wishes to put away his wife without cause, let him give her another payment such as he gave for her marriage price, and let the amount of the fine be twelve *solidi*. 3. If by chance a man wishes to put away his wife, and is able to prove one of these three crimes against her, that is, adultery, witchcraft, or violation of graves, let him have full right to put her away; and let the judge pronounce the sentence of the law against her, just as should be done against criminals. 4. But if he chooses, he may go away from the home, leaving all household property behind, and his wife with their children may possess the property of her husband.

It is interesting that the law punished women by being “smothered in mire” for requesting a divorce. Tacitus, an ancient Roman historian, when speaking of the Germans and how they punished criminals, stated that “traitors and deserters they hang from trees, cowards and the unwarlike and those who have perverted their persons they plunge in the mire of a swamp, with a basket over them. The distinction in punishment shows their belief that violent crimes should be displayed while they are being punished, but disgraceful acts should be concealed.”³⁸

King Grimwald in 668 AD was the first Lombard king to deal in any way with the issue of divorce in his laws. “If anyone puts aside his wife without legal cause and receives over her another woman into his house, he shall pay 500 *solidi* as composition, half to the king and half to the relatives of the wife; and moreover, he shall lose the *mundium* of the woman whom he put aside. If the wife does not wish to return to her husband, she may return to her relatives together with her property and her *mundium*.” Whether a Lombard woman possessed the ability to initiate a divorce is unclear.³⁹

³⁸ *Burgundian Code*, trans. Drew, 45-6; Tacitus, *Agricola, Germania, and Dialogue on Orators*, trans. Herbert W. Benario (Norman: University of Oklahoma Press, 1991), 69.

³⁹ *Lombards Laws*, trans. Drew, 134.

Some of the later Germanic codes written in the seventh and eighth centuries allowed women the right to divorce. The Alamans in the seventh century *Pactus Legis Alamannorum* provided divorce rights for both parties. “35.1 If a husband dismisses his wife, let him compensate her with forty *solidi*, and have no [more] authority over her guardianship [*mundium*], and return all things to her that she legally obtained. 2. If he keeps anything, let this woman have authority over the property and let him pay twelve *solidi*. 3. Concerning anything as small as a fibula [astula, brooch], which is legally hers, let the husband swear or return it. 34.3 If she wishes to depart freely, let her take what she legally obtained. Let the bedding be equally divided.”⁴⁰

The eighth-century Bavarians allowed men to divorce but insisted that they provide for their former wives. “8.14 If any free man dismisses his wife, a free woman, without any fault except his dislike, let him compensate with forty-eight *solidi* to her relatives. However, let him provide the woman her lawful morning-gift according to her status, and whatever she brings with her from her relatives property, let all these things be returned to the woman.”⁴¹

The Lombards, under King Liutprand in 720 AD, allowed a woman to remarry if her husband had been away for more than three years. “18.3 If the man has a wife and he does not return within the established three-year period, she shall come to the king’s palace, whoever is king at the time, and it shall be done thus: according as the king gives her the privilege of remarrying or as he orders or establishes concerning her affairs, it shall be done. But she shall not presume to take another husband without the king’s permission. If such things occur after the expiration of this time period, the king shall have the power to judge concerning them in whatever manner is pleasing to him.” The specific man in this situation was a merchant. The

⁴⁰ *Laws of the Alamans*, trans. Rivers, 56.

⁴¹ *Ibid.*, 140.

Visigoths likewise were concerned with marriages between the pair when the husband was away. Under Flavius Chintasvintus, 642- 653 AD, “No woman, in the absence of her husband, shall have the liberty to marry another man until she has learned, by certain evidence, that her husband is dead; and he, also, who wishes to marry her must make diligent inquiry for that purpose. But if they should neglect to do this, and should be unlawfully married, and afterwards the former husband should return, they shall both be delivered up into his power, to be disposed of at his will, and he shall have the right to sell them or do whatever he pleases with them.”⁴²

Flavius Recesvintus of the Visigoths added this law to ensure that bigamy did not occur. “No one can legally marry a freewoman who has been repudiated by her husband, unless he knows that they have been divorced, either by written evidence, or in the presence of witnesses.”

In an effort to protect the woman from being repudiated, the law continued:

If, however, the case between the former husband and his wife has not yet been decided; or if her husband has married another woman; or, indeed, if he has left his wife unjustly; he shall lose the dowry which he gave her, and it shall absolutely belong to her, nor shall he be entitled to receive any of her property. If he should have sold, or fraudulently disposed of any of the property of his wife, the judge shall compel him to make restitution. Where the woman, through fear of her husband, or deceived by any of his representations, should have made any written agreement concerning her property for his benefit, her agreement shall be null and void, and all property which it disposed of shall be restored to her.⁴³

Visigothic law allowed women to divorce their husbands, if the men were guilty of the crime of pederasty according to the laws of Flavius Chintasvintus. “And it shall be lawful for their wives, having received back their dowries, and retaining all their possessions, to afterwards marry whomsoever they will.”⁴⁴

The Germanic codes written during the eighth through the eleventh century also focused on the sexual crimes that clerical women committed. Many of these crimes mirrored those of

⁴² *Lombards Laws*, trans. Drew, 152-3; *Visigothic Code*, trans. Scott, 86.

⁴³ *Visigothic Code*, trans. Scott, 113-4.

their secular sisters. In cases where men and women of the clergy married beneath their station, the *Lex Ribuaria* punished them:

61.9. If however, a church freedman marries a king's or a church maidservant or the maidservant of a church freedman, let him be a slave with her. If, however, he merely fornicates with her, let him be held liable for eight and one-half *solidi*, or let him swear with six [oath takers]. If a church freedwoman does this, let her and her descendants fall back into slavery. 10. If, however, a church freedman takes a Ripuarian maidservant [in matrimony], let his descendants, not him, be slaves. Similarly, if a church or king's freedwoman or a Roman woman takes a Ripuarian slave, let her descendants be slaves, not her be slaves. 11. If a churchman, a Roman or a king's man takes a Ripuarian free woman in matrimony, or if a Roman woman or a king's or church's freedwoman takes a Ripuarian free man, let their descendants always descend to the lower status. 12. If anyone removes a king's man, either a man [*baro*] or a woman, from the king's guardianship [*mundeburde*], let him be held liable for sixty *solidi*. 13. Similarly, let that one who removes a church freedwoman or a man [*baro*] from the church's guardianship [*mundeburde*] be held liable for sixty *solidi*. Nevertheless, let their descendants be returned to the guardianship of the king or church. 14. If, however, a Ripuarian marries a king's or ecclesiastical maidservant or a freedman's maidservant, let his descendants, not him, be slaves. 15. If, however, a Ripuarian takes a Ripuarian in matrimony, let him remain with her in slavery. 16. Similarly, if a Ripuarian woman does this, let her and her descendants continue in slavery. 17. If, however, a free man fornicates with a maidservant, let him be held liable for fifteen *solidi*. If a slave does this, let him be held liable for three *solidi*, or let him be castrated. 18. If a freewoman pursues a Ripuarian slave and her parents wish to prevent this, let her be offered a sword and a spindle by the king or the count. If she takes the sword, let her kill the slave. But if [she takes] the spindle, let her follow [him] into slavery.⁴⁵

The Alamans in the seventh century *Lantfridana Manuscript* also had laws that provided the church with slaves, in situations where their slaves marry above their station.

17.1 If a freewoman was manumitted by charter or in a church, and after this she married a slave, let her remain permanently a maidservant of the church. 2. If, however, a free Alamannic woman marries a church slave and refuses the servile work of a maidservant, let her depart. If, however, she gives birth to sons or daughters there, let them remain slaves and maidservants permanently, and let them not have the right of departure. However, the mother of these children, when she wishes to depart has the right for three years. If, however, she performs the work of a maidservant for three years and her relatives have not redeemed her in order that she may become free, either before the duke or a count, or in the public assembly with the passing of three meetings of the Marchfield,

⁴⁴ Ibid., 110-1.

⁴⁵ *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 196-7.

then let her always remain a maidservant, and let those who are born of her be slaves and maidservants.⁴⁶

Another law of Liutprand, dated 726 AD, stated that religious women “if because of their sinful nature they commit adultery voluntarily, then he who committed adultery with such a consecrated woman shall pay 200 *solidi* as composition. ... Moreover, concerning the property of that religious woman who, may God forbid, commits adultery voluntarily, it shall be done just as we have already provided concerning religious women who unite themselves with a man.”

The Visigoths also punished women who betrayed their vows. “She shall undergo the same penalty and loss of property as has been decreed concerning men, to wit: the children and heirs of such a woman shall have her property. The relatives of a husband, however, shall be entitled to any gift previously presented by him to his wife. And, since women are more frequently involved in the fraud of apostasy, we hereby decree that whatever should be given by a man to his betrothed, or to his wife, before or after the nuptials, by way of dowry, shall belong, not to the heirs of the wife, but to the heirs of him who gave the dowry.” The loss of inheritance to both herself and her family did not prove sufficient because Flavius Egica, King of the Visigoths, issued a further law to deter these women:

Certain widows are accustomed to shrewdly mingle fraud with devotion, and, by the union of religious and secular garments, give themselves an opportunity for transgression at their will. Thus, during the time of their mourning, they put on a religious dress; and, afterwards, for purposes of deception, put on other garments under the religious habit; and for this reason, to those who see them, appear other than what they are. Wherefore, that an end may be put to fraud of this kind, we decree, by this law, that hereafter, when any widow wishes to excuse herself for practicing this deception, that within she wears one kind of dress, and outside another; that portion, which is visible, and which she has assumed for the purposes of duplicity, shall be considered as designating her as a member of a religious order; and, thus, not what she has adopted for the commission of sin, but what the eyes of everyone perceive her to be as the sign of her religious profession. Any widow who, hereafter attempts to excuse herself in this way, shall not only be subject to

⁴⁶ *Laws of the Alamans*, trans. Rivers, 72.

the penalties of the law, but shall also undergo the punishment prescribed by the canons of the church, and shall not escape the justice of the king.⁴⁷

Eighth-century Bavarian law tried to prevent higher clergy from sexual behaviors. “1.12

Let no priest or deacon be allowed to have strange [non- familial] woman with him in his house; neither let him be led through that opportunity and offer polluted sacrifice, nor let the people sink through his offense and suffer harm. For this reason, concerning those who are invested with priestly rank, let him know that cohabitation with strange women is forbidden. Only this permission is allowed them: that they may have lodge within the walls of their houses mothers, daughters, and full sisters. Concerning these, in fact, no unfortunate offenses are feared, since agreement with nature is allowed. Love does not jeopardize their chastity.”⁴⁸

Flavius Recesvintus of the Visigoths created laws designed to prevent indiscretions within the clergy. “Therefore, if it should be established by undoubted evidence, that any priest, deacon, or sub- deacon, has married or committed fornication or adultery with a widow doing penance, a virgin, a wife, or any other woman; as soon as the fact shall come to the knowledge of the bishop, or the judge, he shall put an end to such a connection at once. When the offender has been brought back under the power of his ecclesiastical superior, he shall be placed in confinement, and compelled to do penance according to the holy canons of the Church; ...such women as are implicated in the aforesaid enormities, shall be given a hundred lashes by order of the judge, and all access to them shall be prohibited.” In a footnote to this Visigothic law, the editor, Scott pointed to the double standards, here in comparison to the woman, and when compared to the laws when a secular man committed the same crime. “It will be noted also, that, no provision is made for the punishment of the higher clergy; while it was notorious that the bishops and metropolitans were the greatest of all offenders, where women were concerned. As

⁴⁷ *Lombards Laws*, trans. Drew, 176-7; *Visigothic Code*, trans. Scott, 109.

⁴⁸ *Laws of the Alamans*, trans. Rivers, 123.

they framed the laws which governed the people, and were presumed to receive their inspiration from heaven, they naturally came to regard themselves as above their own decrees, and not liable to their penalties and restrictions. . . . No mercy is shown to the women involved, and, what is unusual, no distinction is made where the latter belong to different castes, or stations in society.”⁴⁹

In a similar law made during the reign of Flavius Recesvintus incest and marriage to religious women, through force or otherwise, became an equal crime. “And if any other persons in our kingdom should attempt to commit a crime of this kind, they shall be separated, and condemned to perpetual exile, at the instance of the judge or priest, even if no one should accuse them; nor shall any time which may have elapsed, be pleaded in their defense. The property of such persons which has been seized for the crime, shall belong to the children, to those born of this marriage; and the latter shall not be liable to reproach on this account, for those who are born out of wedlock are purified by the ceremony of baptism.”⁵⁰

The Romans and the Catholic Church had the least influence on the earlier Anglo- Saxon kings, but by the late ninth century, the Catholic Church had become a major component of life in English society. Be that as it may, abduction still occurred. Prior laws which never mentioned the return of an abducted woman, were unaltered in the new preventative legislation. The change, due to the increased influence of the church, between these two centuries was that instead of punishing the abductor alone, the law also blamed the women. The Anglo-Saxons, under Alfred the Great King of Wessex, issued a law punishing women within the monastery that seemingly chose abduction. “8. If anyone takes a nun from a nunnery without the permission of the king or bishop, he shall pay 120 shillings, half to the king, and half to the bishop and the lord

⁴⁹ *Visigothic Code*, trans. Scott, 105.

⁵⁰ *Ibid.*, 107-8.

of the church, under whose charge the nun is. 1. If she lives longer than he who abducted her, she shall inherit nothing of his property. 2. If she bears a child, it shall inherit no more than its mother. 3. If her child is slain, the share of the *wergeld* due to the mother's kindred shall be paid to the king, but the father's kindred shall be paid the share due to them." There is no mention of the return of the woman, the man pays compensation to the ward of the church and the law denied the woman and her heirs the benefit of inheritance.⁵¹

This law clearly implies that the English government had decided that women had been using the prior abduction laws to escape a situation they did not care for, such as the stifling life of the cloister. The Venerable Bede related several instances where kings donated their offspring to the monastery, but he rarely mentions any of these children becoming miscreants in their later life. For instance: "In fulfillment of his vow to the Lord, King Oswy gave thanks to God for his victory, and dedicated his daughter Elfreda, who was scarcely a year old, to his service in perpetual virginity." Elfreda became an important connection between the king and the monastery. "Elfreda was a friend of Saint Cuthbert. Wilfred owed much to her support in his troubles, and Eddius describes her as 'a very wise woman, the best of comforters and councilors in the whole province.'" According to Suzanne Wemple, the monasteries became a place for the women that did not suit secular society. "Increasingly nunneries were used in the ninth century to segregate women considered undesirable, socially dangerous, or unproductive." These undesirable women may explain the tendencies of the lawmakers to blame these women for their abductions and misdemeanors.⁵²

⁵¹ *Laws of the Earliest English Kings*, trans. Attenborough, 69.

⁵² Venerable Bede, *History of the English Church*, 180, 337; Suzanne Wemple, "Women from the Fifth to the Tenth Century," in *A History of Women in the West*, Vol. 2, *Silences of the Middle Ages*, ed. Christiane Klapische-Zuber (Cambridge: Harvard University Press, 1992 pp. 169-201), 191.

A law of King Edmund referred to crimes that either sex in the monastery might commit. “1. This is the first injunction: that those in holy orders whose duty it is to teach God’s people by the example of their life should observe the celibacy befitting their estate, whether they be men or women. If they fail to do so, they shall incur that which is ordained in the cannon, and they shall forfeit their worldly possessions and burial in consecrated ground, unless they make amends.” King Edgar reiterated the same principle in 962- 963 AD. “And that the servants of God who receive the dues which we render to Him shall live a pure life, so that, by virtue of their purity, they may intercede for us with God.” Æthelred reiterated this law requiring that “the servants of God, bishops and abbots, monks and nuns, priest and women under religious vows, shall submit to their duty, and live according to their rule, and zealously intercede for all Christian people.” Æthelred repeated this law in the sixth section of his laws and further specified the instructions for the clergy, stating, “9. They know full well that they have no right to marry. 1. But he who will turn from marriage and observe celibacy shall obtain the favor of God, and in addition, as worldly honour, he shall enjoy the *wergeld* and the privileges of a thegn, both during his life and after his death. 2. And he who will not do [what befits his order] shall impair both his ecclesiastical and his civil status.” Canute repeated this law in his code of laws between 1027 and 1034 AD.⁵³

Lawmakers of the Germanic era conceived of a multitude of sexual crimes that women might commit. The majority of these crimes were detrimental to society such as the commission of adultery or prostitution. Some crimes portrayed a religious element, such as those dealing with incest. Certain crimes concerned the protection of status. Women that married beneath their status had the potential to disperse property outside of the realms of free citizens, therefore lawmakers found it imperative to discourage women from committing this crime. Furthermore,

⁵³ *Laws of England: From Edmund to Henry 1*, trans. Robertson, 7, 31, 81, 103, 91.

these laws maintained a dominant role for the male. If a woman married a man from the lower class, she might use her higher status to rule him. In the earlier codes these women were punished with death, while the later codes simply disinherited her and reduced her to slavery. This reflected the Christian tendency to preserve life. The majority of these codes placed the emphasis for punishing the women on the family. The purpose of the guardian was to restrain women from committing crimes of any sort and this was readily apparent in the laws concerning sexual crimes. Especially the crimes concerning incest in which case the man was often punished were the woman was not.

CHAPTER 9

WOMEN AND PROPERTY

One of the most important considerations in determining the value and equity in anyone's life is the ability to own property. In most of the Germanic codes women inherited from a variety of sources. The most important and most common forms for women were those things that she received at the time of her marriage.

A woman's family might provide her with a dowry at the time of her wedding. The value of the dowry was an important factor in determining how well a husband would be able to provide for his wife. The main purpose of a dowry was to provide an income for the woman in the case of the death of her husband. Widowhood was a common occurrence in the Germanic era.¹

In some of the Germanic tribes, the law required the husband to provide a bridal-price. Instead of, or in addition to, the woman's family providing property for their daughter, the groom donated a specific amount of land or other valuable commodities in exchange for the ability to wed the woman. Historians refer to this type of payment as a bridal-price. In the earlier codes, this amount usually reimbursed the family for the expense of raising their daughter and losing a valuable helper at the home. Historians, such as Suzanne Wemple, have used the existence of the bridal-price in the earlier codes to accuse the Germanic families of selling their daughters. This unfair assessment needs to be eliminated. While originally the bridal-price belonged to the kin of the bride, it soon evolved into insurance for the bride and her children, which in many cases she kept even in the event that she remarried. Even in the beginning when the property belonged to the bride's parents, the purpose was to compensate them for the loss of a worker,

¹ Jack Goody, "Bridewealth and Dowry in Africa and Eurasia," in *Bridewealth and Dowry* (Cambridge: Cambridge University Press, 1973, pp. 1-58), 1.

which the groom's family gained. In the majority of the laws, the family of the bride also provided wedding gifts. The bridal-price was less an effort to purchase a bride than it was to insure the respect and loyalty of future in-laws, who might later remarry their daughter thus destabilizing the future of the groom's heirs. Furthermore under Lombard and Visigothic laws, the purpose of the *mundwald* was in part to protect women from their financially inept spouses. The bridal-price was a Germanic trait that lawmakers slowly diminished to the detriment of their brides. The comparison of women to chattel during the Germanic era because of the bridal-price is misguided.²

Another type of marriage inheritance was the *morgengabe* or morning-gift, which the husband bestowed on his wife the day after the wedding. The morning-gift also provided the wife with income in the case of her husband's death. This gift was often financial in nature, but in the event of extremely wealthy people, the gift might compromise properties. In the majority of Germanic tribes, the women kept this gift even if she decided to remarry.

From time to time, the bride's family gave her other important gifts such as marriage ornaments, jewels and clothing, which became a portion of her inheritance. All of the codes required at least one of these types of marriage settlements.

All of the Germanic codes regulated inheritance in one way or another. In some areas, women held their marriage property in *usufruct*. This meant that the woman used the inheritance to support herself, but she could not sell any of this property. In reality, the gifts belonged to the children of the couple. *Usufruct* was a common practice among most Germanic tribes, as it was with the Romans before them. The purpose of *usufruct* was to protect the inheritance from mismanagement, and to protect the inheritance of children of prior marriages from step-fathers

² Suzanne Wemple, *Women in Frankish Society: Marriage and Cloister, 500 to 900* (Philadelphia: University of Pennsylvania Press, 1981), 14-5.

who might favor their own children. To this end, some of the codes did not allow women to retain their deceased spouse's property if they either remarried or did not have children.³

Under Rothair's edict in the seventh century, the Lombard families provided their daughters with a dowry. "181. If a father gives his daughter to a husband or a brother gives his legitimate sister, the bridegroom must be content with that amount of the father's or mother's property which the father or brother gave him on the day of the carrying out (*traditio*) of the nuptials." The law referred to these gifts as the "father's gift (*faderfio*)."⁴

The eighth-century Alamannic law, *Lantfridana Manuscript*, referred to a dowry. "In addition, a lawful dowry consists of 400 *solidi*, either in gold, silver, slaves, or whatever other property he gave." Alamannic widows were entitled to their dowry even if they remarried. "54.1 If any freeman dies leaving a wife without sons or daughters and she wishes to give up the inheritance to marry another of equal status to her own, let a lawful dowry accompany her, and whatever his relatives lawfully give her and whatever she took with her from her father's inheritance, let her have the right of taking with her all things that she has not consumed or sold." Furthermore, her husband's kin could not refuse her this dowry. "If, however, the nearest relative of the deceased husband wishes to refuse a dowry to that woman, which is illegal, let him [the relative who refused] take an oath with five designated men or with wager of battle between two fighters with drawn sword. If she [the widow] can acquire the property either through an oath or through combat, let that property never revert back after the death of the woman, but let her next husband or his children possess it forever." It seems that otherwise the woman held this dowry in *usufruct* until her death.⁵

³ Antti Arjava, *Women and Law in Late Antiquity* (Oxford: Clarendon Press, 1996), 135, 173.

⁴ *Lombard Laws*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1976), 85, 90-1.

⁵ *Laws of the Alamans and Bavarians*, trans. Theodore Rivers (Philadelphia: University of Pennsylvania Press, 1977), 84.

The Ripuarian law of the seventh century provided its women with *dowers*, which the groom or his kin provided the bride. “If anyone marries a woman, let whatever [the husband] grants to her by means of documents and charters remain permanently hers irrevocably. But if he gives nothing to her through documents, let her receive fifty *solidi* in dower.”⁶

The Salian Franks in their laws allowed either spouse the right to *usufruct* of the dower, until the time that the children came of age. If there were no heirs of the former marriage, the kin of the wife were entitled to a majority of the dower in exchange for “two beds quilts and two tables and chairs made ready. If they do not do this, let them take possession of only one- third of the dower, and only if they have not agreed previously by contract.” In Capitulary IV, the law stipulated that if the couple did not produce heirs before the death of a spouse, the living spouse retained fifty percent of the dower while the relatives of the deceased obtained the rest.”⁷

The Franks, the Lombards, and the Alamans were the only Germanic tribes that regulated the dowry through their laws. This does not mean that other German states did not have dowries, but this gift was far less important than other property exchanges at the time of the wedding. The dowry as a counter gift to something which the groom or his kin provided was beneficial to the woman and her children. The dowry when it stood alone as the major source of income exchanged at the time of the wedding was harmful to the woman in question. Roman Law re-emerged during the twelfth and thirteenth century and placed a greater emphasis on dowry. In conjunction with primogeniture, (the bequest of the estate to the eldest son) the rising costs of the dowry limited the ability of women to marry. According to James Brundage, Italian city-states during the Renaissance limited the amount of income that the family provided for the dowry because the price of the gift could “disadvantage other family members. For this reason several

⁶ *The Laws of the Salian and Ripuarian Franks*, trans. Theodore Rivers (New York: AMS Press, 1986), 186.

⁷ *Ibid.*, 131, 135-6.

of them incorporated in their statutes what had long been a common practice, namely that a woman who received a dowry at the time of marriage was excluded from any further share in her family's estate." According to Christiane Klapisch-Zuber, the pressure to re-acquire a valuable dowry often forced young widows to abandon children and return to their familial home in order that her kin might marry her off again. "By the remarriage of a widow of their blood, Florentines affirmed that they had never totally relinquished control over the dowries that they had given to their daughters or sisters. At the same time, they claimed a perpetual right to the women's bodies and their fertility." The increased importance and value of the dowry also limited the number of daughters that a family could afford to marry off. The dowry in effect denied many women the ability to marry, one of the few occupations that pre-modern society approved of for women. Second daughters and second sons often turned to the Catholic Church as an acceptable refuge for those that could not marry, but there was also an increase in pre-marital sex and illegitimate children. According to Guido Ruggiero, in the fifteenth century, "The hospitals of Venice that served as foundling homes complained regularly to Venetian authorities about the large number of children abandoned to them and the high mortality rates of their young charges." Ruggiero attributes the rise in abandoned children to illegitimacy, but it is also likely that inability of a family to provide for excess children in conjunction with the Catholic Church's strong disapproval of birth control practices also contributed to the rise of orphaned children.⁸

Other Germanic tribes used the custom of the bridal-price. Some of them allowed the woman to inherit at least a portion of the property in the absence of her parents. In the Ancient Law of the Visigoths, the groom paid the bride's parents a "dowry," which in reality was a

⁸ James Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: The University of Chicago Press, 1987), 541; Christiane Klapische-Zuber, "Maternity, Widowhood, and Dowry in Florence," in *Major Problems in the History of the Italian Renaissance*, ed. Benjamin Kohl and Alison Andrews Smith (Lexington: D. C. Heath and Company, 1995 pp. 319-326), 320; Guido Ruggiero, *The Boundaries of Eros: Sex Crime and Sexuality in Renaissance Venice* (New York: Oxford University Press, 1985), 29.

bridal-price. The parents had the right to retain the dowry for themselves, but no one else had that right. “The father shall have the right to demand and keep the dowry of his daughter. If the father or mother should not be present, then the brothers, or the nearest relatives, shall receive the dowry, and deliver it untouched to their sister.” It is uncertain whether the parents of the bride generally kept the bridal-price or gave it to their child, but the wording of the law implies that it was not unheard of for the woman to receive the payment, and furthermore no one other than her parents were allowed to keep the gift.⁹

The late-fifth-century Burgundians referred to their bridal-payment as the *wittimon*. The *wittimon* for the first marriage went to the woman’s father. It seems that the woman inherited a third of the payment for herself, if she had no surviving father or brothers. “66. 1 If a girl is given in marriage and has neither father nor brothers, but only an uncle and sisters, let the uncle receive a third part of the *wittimon*, and let the sisters know they may claim another third. 2. If indeed she is without fathers or brothers, and she receives a husband, it is pleasing that the mother receive a third part of the *wittimon*, and the nearest relatives another third. 3. If she does not have a mother, let the sisters receive that third.” This is certainly not definite proof that the women received a portion of the *wittimon*, but in this particular law, there is a missing third. For her second husband, “let her *wittimon* be claimed by the nearest relatives of the first husband.” For any woman that entered a third marriage, she retained the *wittimon*.¹⁰

The Lombards referred to their bridal-price as a “marriage portion (*meta*)” which was taken from the groom’s familial inheritance and appears to belong to the wife and not her family. “If one of the brothers takes a wife and gives her a marriage portion (*meta*) from the common property, then when another of the brothers also takes a wife, or when [the common property] is

⁹ *The Visigothic Code*, trans. S. P. Scott (Littleton, CO: Fred B. Rothman & Co., 1982), 80.

¹⁰ *The Burgundian Code*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1949), 67-8.

divided, something shall be given to him [or to the other brothers] in the same quantity as that which the [first] brother took for his wife's marriage portion."¹¹

The early Germanic codes which mentioned the bridal-price later limited the amount of property or money that this payment might compromise. Evidently the gift had grown to substantial portions of familial property alienated from the groom's family. Germanic lawmakers soon attempted to limit this gift, and by the twelfth century had eliminated it in most areas. The reduction of the bridal-price was part of a larger trend towards favoring one heir in order to stop the diminishment of the familial property. Over the centuries, Germanic families divided their lands among their children and eventually the property decreased in size, so that the land was not large enough to sustain more than one family unit. The reduction of the bridal-price was matched by the reduction in other valuable wedding gifts and familial inheritance.

Liutprand in 727 AD limited the amount of the marriage portion. "89.6 If anyone wishes to give his wife a marriage portion (*meta*), it thus seems just to us, that if the man is a judge he may give 400 *solidi* if he wishes, no more; [he may give] less if desirable. Other noble men may give 300 *solidi*, not more. If any of these other men wish [to give] less, [let them give] whatever they desire. And the marriage portion to be given shall be appraised according to value in order that at no future time may contention or disagreement proceed them." King Liutprand in 728 AD further restricted the amount of property a man gave his bride to a marriage portion and a morning-gift. "Whatever he gives more than this amount shall not be valid." King Liutprand's law in 731 AD stated that widows were to receive a smaller marriage portion than virgins." Liutprand's focus on limiting the property which the woman inherited at the time of her marriage implies that prior to these laws the women were receiving too much land and other valuables.¹²

¹¹ *Lombards Laws*, trans. Drew, 81.

¹² *Lombards Laws*, trans. Drew, 183, 189, 200-1.

The seventh-century Visigoths under Flavius Chintasvintus required that the dowry, or bridal-price, which came from the groom or his kin, could not equal more than ten percent of the groom's property. "No person shall pay, or bind himself, as the dowry of the girl or woman, more than the tenth part of his property. But if it should happen that a parent should wish to give the dowry for the benefit of his daughter-in-law, he can then give as said dowry, the tenth part of the property which his son would inherit from him in the case of his death; and, in addition, he must give ten young men and ten young girls, and twenty horses: or, in ornaments, as much as would amount in value to a thousand *solidi*." This was the dowry of the women marrying the top echelons of society; not every woman received such a substantial amount. The law states: "the nobles of our palace, or of the principal personages of the Gothic nation ... should choose for himself a wife, of the aforesaid rank." A Visigothic woman had "absolute liberty to dispose of this property if she should not leave any sons, and if she should die intestate, this donation shall go to the nearest heirs of the husband." She had full ownership of this estate if she had no male children, the land reverted to the groom's kin only if she left no formal bequest stating otherwise. This law was later limited to allow women to alienate no more than twenty-five percent of their bridal-price. Visigothic law did not allow men to provide more than the regulated amount for a dowry. If the man insisted that the bride receive more than ten percent of his belongings, "he is hereby fully authorized to take possession of all and above said sum, whenever he chooses. But if it should happen that through reverence for his oath, or, as is often the case, through negligence, he should be unwilling to revoke or appropriate the surplus amount ... the parents of the bridegroom, or his relations, shall become aware of the facts, they may deprive the bride of all over and above the sum abovementioned as legal; and this they may do as a matter of right, and without prejudice." Furthermore, this same Visigothic law stated that "not within the space

of a year shall the husband give to the wife, or the wife to the husband, any present whatever, except the dowry herein before mentioned; unless either of them should be attacked by grievous illness, and be in imminent danger of death.” Glorious Flavius Recesvintus recommended that all spouses, even the poorest, provide a dowry for their wives, but the dowry could not be greater than ten percent of the groom’s total belongings.¹³

Flavius Chintasvintus, in seventh-century Visigothic law, limited the freedom that women of the prior centuries had over their dowries:

For the reason that many women to whom the privilege was granted of disposing of their dowries as they pleased, have been found to have bestowed them upon persons with whom they were living illegally, to the injury of their children or grandchildren; therefore, we declare it to be both necessary and proper that those for the rearing of whom the marriage was celebrated, should receive some benefit from said property. In pursuance whereof we decree that, if any woman has children or grandchildren, and should wish to bestow a gift upon the church, or upon freedmen, or upon any other person or persons; she shall not have the right to dispose of more than the fourth part of her dowry in this manner. Three fourths of it shall be left, without question, to her children or grandchildren, whether there be one, or many of them. On the other hand, a wife shall have full power to dispose of her entire dowry in any way she pleases, when she leaves no legitimate children or grandchildren. Nevertheless, it shall not be lawful for any woman who has married two husbands, or more, to give the dowry she has received from one husband, to the children and grandchildren of another; but the children or grandchildren born in a certain line of descent shall, after the death of their mother, have the entire dowry given by their father or grandfather.¹⁴

In Æthelberht’s laws, the Anglo-Saxons had a bridal-price. “77. If a man buys a maiden, the bargain shall stand, if there is no dishonesty. 1. If however there is dishonesty, she shall be taken back to her home, and the money shall be returned to him.” The laws of King Ine of Wessex also mentioned a bridal- price for Anglo-Saxon women. The early Anglo-Saxon bridal-price was paid to the parents or family of the woman in question. Later Anglo-Saxon laws referred to the bridal-price as a dowry, but its purpose had not really changed. The law referred to the dowry as “the value of her maidenhead.” A man that fornicated with a woman paid

¹³ *Visigothic Code*, trans. Scott, 79-80.

¹⁴ *Ibid.*, 139-40.

“money ... in proportion to her dowry.” All of this implied that the dowry was the price of a woman’s virginity, thus the Anglo-Saxon dowry functioned much like the bridal- price and not a true dowry. King Canute in the eleventh century put an end to the concept that women were bought, and thus might have inadvertently ended her family’s receipt of the dowry: “nor shall she be given for money, except the suitor desires of his own free will to give something.” Like the laws concerning the bridal-price, the majority of Anglo-Saxon property laws were vague in comparison to other Germanic states. The diminishment of the bridal-price as a source of income for the bride and her kin occurred during the eleventh century.¹⁵

Some historians have disparaged the Germans because of their use of the bridal- price and they were not alone. King Canute ended the bridal- price because he felt this was an attempt to purchase a bride, but whether this was the original intention is still disputed. The bridal-price originated as a way to reimburse a woman’s parents for the expense of raising her and the loss of her as member of the working family. No one else was able to retain the entire bridal-price but the parents or the parents-in-law who also stood to lose a working participant in the household. While this was similar to the purchase of a slave and historians have remarked that it was, this clearly was not the case. Slaves did not have the ability to own property. Lombard women kept their bridal-price as did orphaned Visigothic women, and any Burgundian woman entering her third marriage. In the second place, while the groom or his family did make a bridal-payment, this was only one of several gifts exchanged at the time of the wedding. A Germanic bride did not arrive at the home of her new spouse empty handed, according to her tribal tradition, she brought bedding, ornaments, furniture, and even property. The bridal-price was a benefit and

¹⁵ *The Laws of the Earliest English Kings*, trans. F. L. Attenborough (New York: Russell and Russell, 1963), 15; *Introduction to Early English Laws*, trans. Bill Griffiths (Norfolk: Anglo-Saxon Books, 1955), 46, 50; *The Laws of England: From Edmund to Henry I-Part One, Edmund to Canute*, trans. A. J. Robertson (Cambridge: At the University Press, 1925), 213.

increased the value of the woman in question. Women had a higher value in society when groom's sought to gain their affection rather than her parents attempting to attract the cheapest suitor, which the dowry implies.

According to the Burgundian law codes, the bride's family provided her with what historians believe to have been jewelry and clothing of value. The Burgundians were one of few Germanic tribes that mentioned this source of inheritance, and the code mentioned these in two different and contradictory laws. The first law declared:

51. 3. The mother's ornaments and vestments belong to the daughters without any right to share on the part of the brothers; further let this legal principle be observed concerning those ornaments and vestments in the case of girl's whose mother's die intestate. But if the mother shall have made any disposal of her own ornaments and vestments, there shall be no cause for action thereafter. 4. But if an unmarried girl who has sisters dies, and she has not declared her wish in writing or in the presence of witnesses, let her portion after her death belong to her sisters and, as has been stated, let her brother's have no share therein. 5. However if the girl dies and does not have a blood sister, and no clear disposition has been made concerning her property, let her brothers become her heirs.

Another law implied that the father obtained the possession of the marriage ornaments because it stated: "85.1 If a father leaves daughters, and while living, wishes to give the marriage ornaments (*malahereda*), let him give to whom he pleases, with the consequence that no one may seek their return to his daughters. 2. If the father shall have asked that the marriage portion (*wittimon*) not be sought, let his wish be disregarded; but, as a former law has stated, let the nearest relative receive it; with the further provision that the girl will obtain a third part of the ornaments (of the marriage portion) which the relative has received." In view of these seemingly contradictory statements, it is probable that in the second law, the mother predeceased the father. Regardless, the marriage ornaments provided women with a valuable inheritance, which they could then pass on to their daughters. Furthermore, the Burgundian bride and her kin also paid a sum to the groom and his kin at the time of the marriage. "Likewise, let neither the woman nor

the relatives of the woman seek back that which a woman pays when she comes to her husband if the husband dies without children.”¹⁶

Other Germanic codes created legislation to monitor gifts from the bride and her kin to the groom. Lombard fathers also provided their daughters with financial gifts at the time of their wedding. The laws were unclear during the reign of Liutprand, but several of them mentioned these gifts in passing. “102.7 If a Lombard has one legitimate son and one or more daughters and the father dies before he has given his daughter(s) in marriage, he has the right to give a fourth of his property by charter or gift to his daughter(s), if he wishes. ... If the father has given them [the daughters] in marriage before his death, he shall provide for them as he chooses, according to law.” Visigothic law, under Flavius Chintasvintus 642-653 AD, allowed women to provide property to her husband at the time of the marriage. “As was permitted by the Roman laws, the girl, or the woman, may give to the groom as much out of her own property as she herself has demanded of him, should she desire to do so.” These financial gifts were reciprocal. Like her husband, a woman might wish to gain the loyalty of her future in-laws and also to provide well for any heirs the couple might have.¹⁷

The *Law of Gundobad* required that husbands in legal marriages provide their wives with morning-gifts. The size of the morning-gift for the Burgundians is not clear, but the purpose was certainly to provide for the widow and her heirs. A Burgundian woman who remarried after the death of her husband and had prior children was entitled to hold her morning-gift in *usufruct* until her death. In fact, even if the marriage produced no heirs, the woman retained the use of her morning-gift until her death.” In a later law, the king upheld this decision stating: “Let that remain in effect which has been established previously concerning the morning-gift

¹⁶ *Burgundian Code*, trans. Drew, 59, 79, 32.

¹⁷ *Lombards Laws*, trans. Drew, 188-9; *Visigothic Code*, trans. Scott, 79.

(*morgengeba, morgingiva*).” The Anglo-Saxons, under King Æthelberht of Kent, and the Lombards, under Rothair’s edict, had morning-gifts. Ripuarian and Alamanic men in the eighth century gave their bride’s a morning-gift. The Anglo-Saxons during the tenth and eleventh centuries restricted women from retaining their morning-gifts if they did not wait at least a year before their next marriage, but otherwise the gift belonged solely to her.¹⁸

The Lombards under King Liutprand in 717 AD created an extensive law that regulated a woman’s morning-gift, in an effort to both ensure that she receives it, and limit the amount which gift might be because this gift had become so important to the inheritance of the woman. “If a Lombard wishes to give his wife a morning-gift (*morgincap*) at the time he marries her, we decree that before the marriage in the presence of friends and relatives he announce the gift by means of a written instrument confirmed by witnesses which states, ‘Observe that which I give as a morning-gift to my wife,’ so that in the future she may not lose the gift by any perjury. The morning-gift may not be more than a fourth part of the property of him who makes the gift. If a man prefers to give his wife less than this fourth part, he may give whatever amount pleases him; but more than a fourth part he may not.” Barbara Kreutz states about this law, “Plainly, the intent here was restrictive, but the 717 maximum came to be the standard award and *quarta* became a synonym for *morgengabe*.” From this point on, a Lombard woman stood to inherit a full fourth of her husband’s property as her morning-gift, which Lombard law would later restrictive even he from selling without her consent.¹⁹

¹⁸ *Burgundian Code*, trans. Drew, 40, 50-1; *Laws of the Earliest English Kings*, trans. Attenborough, 15; *Lombards Laws*, trans. Drew, 901; *The Laws of the Salian and Ripuarian Franks*, trans. Theodore Rivers (New York: AMS Press, 1986), 186; *Laws of the Alamans*, trans. Rivers, 85; *Introduction to Early English Laws*, trans. Griffiths, 46; *Laws of England: From Edmund to Henry I*, trans. Robertson, 211, 213.

¹⁹ *Lombards Laws*, trans. Drew, 147; Barbara Kreutz, “Twilight of Morgengabe,” in *Portraits of Medieval and Renaissance Living: Essays in Memory of David Herlihy* ed. Samuel K. Cohn, Jr. and Stephen A. Epstein (Ann Arbor: University of Michigan Press, 1996 pp. 131-147), 135.

The Burgundians provided widows with a *dos*. “62.2. Nevertheless, let her use her wedding gift (*dos*) which she received from her husband as long as she lives, and let the ownership be reserved for the son.” The law allowed the widow to retain her morning-gift and the *dos* in *usufruct*, even if she remarried.²⁰

The Alamans, in the *Pactus Legis Alamannorum*, brought bedding to the marriage. If there were no heirs of the marriage, neither surviving spouse was entitled to any portion of the other’s property. “34.1 If any woman is killed, leaving no descendants by her husband, let all her property, whatever was legally obtained be returned to the relatives. 2. And if she survives her husband, let all the bedding be removed by her.”²¹

King of the Visigoths, Flavius Chintasvintus’s law listed some of the presents that parents provided to the newly wedded couple. The law’s intention was to prevent the couple from alienating property that ought to pass to the heirs of the couple, but the law is interesting in providing historians with a better concept of what the Germanic tribes considered appropriate marriage gifts. “That if any property should be transferred to any person, either by writing, or in the presence of witnesses at the time of his marriage, excepting such as is usually given in the way of ornaments or clothes, as a marriage gift, whether said property consists of slaves, lands, vineyards, buildings, clothing, or jewels, presented by the parents to the children at the time of the marriage, or after it, the said children shall have full power to dispose of such property as they wish.” The law continued stating that the inheritance at the time of the death of the parents would be divided less the amount provided at the wedding or after. Young Visigothic couples

²⁰ *Burgundian Code*, trans. Drew, 66.

²¹ *Laws of the Alamans*, trans. Rivers, 56.

were acquiring a vast amount of goods from their families at the time of their marriage which they did not hold in *usufruct* but possessed outright.²²

The bride's wedding gifts generally passed to her kin. The Visigoths allowed mothers to claim their wedded daughters' dowry. The Anglo-Saxons under King Æthelberht of Kent allowed a woman's paternal kin to retain ownership of her property, probably after her death.

"81. If she does not bear a child, [her] father's relatives shall have her goods, and the 'morning-gift.'" It seems clear from existing wills and charters, that the daughter kept this property until the time of her death.²³

There were no further laws concerning presents that the couple received at the wedding that differed from those mentioned above. Dorothy Whitelock in her *English Historical Documents* translated a formula for engagement dated between 975 and 1030 AD:

Concerning the betrothal of A Woman

How a man shall betroth a maiden and what agreement there ought to be. 1. If a man wishes to betroth a maiden or a widow, and it so pleases her and her kinsmen, then it is right that the bridegroom first according to God's laws and proper secular custom should promise to pledge to those who are her advocates, that he desires her in such a way that he will maintain her according to god's law as a man should maintain his wife; and his friends are to stand surety for it. 2. Next, it must be known to whom she belongs the remuneration for rearing her. The bridegroom is then to pledge this, and his friends are to stand surety for it. 3. Then afterwards the bridegroom is to announce what he grants her if she should live longer than he. 4. If it is thus contracted, then it is right that she should be entitled to half the goods- and to all, if they have a child together- unless she marries again. 5. He is to strengthen what he promises with a pledge, and his friends are to stand surety for it. 6. If they then reach an agreement about everything, then the kinsmen are to set about betrothing their kinswoman, as wife and in lawful matrimony to him who has asked for her, and he who is leader of the betrothal is to receive the security. 7. If, however, one wishes to take her away from that district into that of another thegn, then it is to her interest that her friends have the assurance that no wrong will be done to her, and that if she commits an offense, they may be allowed to stand next in paying compensation, if she has not possessions with which she can pay. 8. At the marriage there should be a priest, who shall unite them together with God's blessing in all

²² *Visigothic Code*, trans. Scott, 140.

²³ *Visigothic Code*, trans. Scott, 80; *Laws of the Earliest English Kings*, trans. Attenborough, 15.

prosperity. 9. It is also well to take care that one knows that they are not too closely related, lest one afterwards put asunder what was previously wrongly joined together.

From this document it is clear that custom still required parental consent, a bridal- payment, and furthermore, if the woman no longer lived in the area she remained tied to her kin, and not to the kin of her spouse. This was important because her kin faced the penalties for crimes she committed instead of her husband, thus providing the spouse with no reason to abuse this woman. It also denotes a large inheritance for a widow with children who chose to remain in widowhood for life. Furthermore, the groom provides the woman with a dowry over and above the possession of his property at the time of his death. The contract also reflects the growing influence of the Catholic Church because Germanic tribes had previously married within their kin.²⁴

Beyond the inheritances that families provided to the wedded couple at the time of the wedding, many of the Germanic codes also furnished widows with a portion of their husband's property on which to live in the event that she had children and did not remarry after his death. In general, this did not include the property the bride received at the time of the wedding for her support in the event of his death. In most cases a widow retained a morning-gift and a dowry whether she remarried or not. The property she received at the time of her husband's death was different than the prior gifts and often more restricted than the prior gifts. Usually she held these properties in *usufruct* and they were for the support of the deceased husband's heirs.

Several of the Germanic codes provided additional property for widows. For the Burgundians, a widowed wife and mother, who did not remarry, was also entitled to a third of her deceased husband's property. In an earlier law, dated 501 AD, concerning women whose marriages did not produce children: "42.1 Therefore we decree in the present constitution that if

²⁴ Dorothy Whitelock, "Concerning the Betrothal of a Woman," in *English Historical Documents* Vol. 1 *English Historical Documents, 500-1042*, ed. David Douglas (New York: Oxford University Press, 1955 p. 431), 431.

a woman whose husband has died without children has not taken her vows a second time, let her possess securely a third of all the property of her husband to the day of her death; with the further provision that after her death, all will revert to the legitimate heirs of her husband.” This same law continued stating that women who married lost this portion of their inheritance and that the deceased’s relative collected the *wittimon*. “24.2 If by chance the woman has no children, after her death let her relatives receive half of whatever has come to her by way of marriage gift, and let the relatives of the dead husband who was the donor receive half.” Under King Æthelberht in the sixth century, widows with children had extensive property rights. “78. If she bears a living child, she shall have half the goods left by her husband, if he dies first.” In the Ancient Law of the Visigoths, a widow who did not remarry and had children held limited inheritance rights to her husband’s estate because she was not a part of his kin group:

A mother, during her lifetime, or so long as she remains a widow, shall share equally with her children in the income derived from the estate of her deceased husband. But she cannot give away, or sell, or bestow upon any of her children her share of the aforesaid property. And if the children should become aware that their mother, either through negligence, or through hatred of them, was about to dispose of any of said property, they may, at once, make application to the governor of the city, or to the judge, in order that the latter may warn their mother not to alienate such property, and only to use the income of it. She, however, shall have the right to give to her children any or all of said income, and she can unquestionably dispose of any profits derived from the same. And if it should be proved that she has alienated any of her portion, full restitution must be made therefore after her death . . . If the mother should marry again, from that very day the children can claim as their own that portion of their father’s property which their mother received at his death.²⁵

The majority of the Germanic codes did not consider a spouse to be a relative. Visigothic law stated: “Husband and wife shall inherit from each other, respectively, when they leave no

²⁵ *Burgundian Code*, trans. Drew, 50-1, 40; *Laws of the Earliest English Kings*, trans. Attenborough, 15; *Visigothic Code*, trans. Scott, 125.

relatives nearer than the seventh degree.” The reasons for this was that property should be inherited through the familial lines, and unless there are heirs, spouses break those lines.²⁶

The Ancient Law of the Visigoths gave the husband the same right of *usufruct* to a deceased wife’s property as long as he did not remarry. In the event that the father remarried, the law required that he inventoried the estate for the children of the first marriage. The law allowed the father to retain guardianship of his children if he wished:

But he must at once draw up an inventory of their property in his own hand, in the presence of a judge, or of the heirs of his deceased wife, and he must also bind himself by a written obligation, that those relatives who are legally entitled to it shall have the guardianship of the children in case of his death; in order that none of the property of the latter may be lost but may be protected by him, in every way, from injury or diminution in value. If the father, after having married a second time, should refuse to act as guardian of his children, then the judge shall appoint the nearest relative of the mother to take charge of them as guardian. And if either his son or daughter should marry, they shall at once receive their portion of their mother’s estate; excepting the third part, which he may reserve for himself, as authorized by law. The father, as soon as a son or daughter has reached the age of twenty years, shall give to them half of what they are entitled to from their mother’s estate, provided that they should not have already married. The remaining half the father shall reserve for himself during his lifetime, and, after his death, it shall descend to his children. This same regulation shall apply also to grandchildren. When the father has alienated any of the aforesaid property, or has retained it beyond the time prescribed by law, everything belonging to his children by right of inheritance from their mother, shall be given to them, at once, by way of complete restitution.²⁷

An Anglo-Saxon woman received property from her husband at the time of his death. In the laws of King Ine of Wessex widows were entitled to a “third of the [household] property.” Under the laws of King Canute, in the eleventh century, women inherited from their spouses, at the time of their widowhood. “70.1 But, according to his direction, the property shall be very

²⁶ *Visigothic Code*, trans. Scott, 123.

²⁷ *Ibid.*, 123-4.

strictly divided among his wife and children and near kinsmen, each according to the share which belongs to him.”²⁸

A seventh-century Ripuarian woman also inherited a large part of her spouse’s property at the time of his death. The law made no mention of remarriage for the widow. “If the wife outlives her husband, and let her demand for herself a third of all their property which they acquired together.” The Alamans, in the *Lantfridana Manuscripts* of the eighth century, allowed widows to inherit if they decided to remain widows. Bavarian widows inherited property from their husbands as long as they did not remarry.²⁹

Lombard widows of the eighth century also had extensive inheritance rights in *usufruct*, if they remained chaste. King Aistulf, in 755 AD, stated : “14.5 That Lombard who on dying wishes to grant to his wife *usufruct* from his property, if he leaves sons or daughters by her, cannot grant more to her for her *usufruct* than a half of his property since he has already given her a morning gift (*morgincap*) and a marriage portion (*meta*) ... And if he leaves one or two sons or daughters from a previous wife, he can leave only a third portion of his property for the *usufruct* of his surviving wife ...if there are more children, her share shall be determined according to this progression. But she shall have the complete morning-gift and marriage portion which her husband gave her according to law. If she marries again or if she dies, the *usufruct* [of her portion] shall revert in entirety to the heirs, and concerning the marriage portion and the morning-gift, let it be observed as provided in the earlier law [Rothair 182].”³⁰

Beyond the gifts that women acquired at the time of their marriage, women also inherited from their families. The majority of the Germanic tribes worked hard to ensure that the

²⁸ *Laws of the Earliest English Kings*, trans. Attenborough, 55, 57; *Laws of England: From Edmund to Henry 1*, trans. Robertson, 209.

²⁹ *The Laws of the Salian and Ripuarian Franks*, trans. Theodore Rivers (New York: AMS Press, 1986), 186; *Laws of the Alamans*, trans. Rivers, 84, 159-60.

³⁰ *Lombards Laws*, trans. Drew, 234.

property of the family stayed within the kin-group. Many of the Germanic codes did not allow women to inherit the *terra salica* lands because they did not want the woman to pass ancient familial lands into the hands of another kin; furthermore, ownership of these lands was often tied to military duties, which the women could not perform. In many of the codes, the woman stayed within her own kin, and was not joining a new family. The property that belonged to her passed to her children or reverted to her brothers and uncles, sisters and nieces, whatever the case might have been. The separate ownership of property, which reverted to the woman's kin, must have provided her with a bit of autonomy. In most cases, the laws specify that the husband could not alienate the property of his wife. A few of the codes, the Burgundians in particular, mentioned that husbands had power over their wives, especially in regards to property; however, lawmakers placed careful limits on the husband's power over her property. Thus the codes protected the property rights of the women and their kin, while providing only minimum actual benefits to the husband through such property. The Germanic era was not a time of unlimited civil rights for women, and it does seem to be superficial to state that while a husband might control her body, he did not control her property. Yet, the property allowances when taken in conjunction with the Germanic law's provision of, and limitations on, the *mundwald* certainly aided women. Their life was not one of lonely, segregated, desperation.³¹

Germanic women often owned large amounts of property which they inherited from their families, the Ancient Law of the Visigoths stated:

If the husband should acquire any property through the labor of his wife's slaves, or in any foreign enterprise, his wife shall have no right to such property, either during his lifetime, or after his death for a husband who has control of his wife, as stated in the law of the Holy Scriptures, shall also have full authority over her slaves; and everything which he has gained by the services of the latter, or by those of his own slaves, in any undertaking shall belong to him absolutely. And if the said slaves, while they are engaged with their master in any expedition or enterprise, should commit any wrong, or

³¹ *Burgundian Code*, trans. Drew, 85.

do any injury, he who brought them with him shall be responsible for their conduct, and shall make restitution, should they be found guilty.

Though this law does limit the wife's ability to control her property during the lifetime of her husband, it also denotes that some women brought a large amount of moveable property to the marriage, such as slaves. Furthermore, the Visigoths also put several restraints on the husband in regards to the property belonging to his wife, because, in reality, her property belonged to her heirs and not her husband. Lawmakers did not allow the husband to alienate the property belonging to his wife without her permission and the permission of her kin. Thus, he may acquire some monetary gain through the use of her slaves, but the land held no real value beyond that, and he could not keep the land in the event of her death.³²

In Visigothic society, under Flavius Chintasvintus, spouses could provide each other with gifts equaling no more than a fifth of their possessions, if there were no direct heirs to the marriage. "Where the husband and wife before they have children, enter into a written agreement, mutually bestowing their property upon one another, and afterwards, should have children; such a disposition of property, if their children are living, shall be void; and the children may take and hold the entire property of their parents, with the exception of the fifth part, which the parents shall have the right to dispose of otherwise. But if one of them, that is to say, either the husband or the wife, before the marriage was consummated, should be proved to have made for the benefit of the other a written agreement disposing of property, it shall remain in full force; and such donation cannot, in any way, be overthrown by children subsequently born of their marriage." The Ripuarian Franks, in the seventh century, allowed men and women to bequeath their property to their spouses, in the absence of direct heirs:

If anyone has no children, neither sons nor daughters, let him have the right according to Ripuarian law in the presence of the king to adopt an heir of all his property: if he is a

³² *Visigothic Code*, trans. Scott, 126.

husband, his wife, or if she is a wife, her husband, or whoever, either related or not related. Or let him transfer property [*adfatimire*] through charters or let him hand over [his property when] witnesses are summoned. If a man and his wife transfer property [*adfatimus*], let the inheritance revert to the lawful heir who survives them after the death of both, except in so far as [the deceased husband] may have spent on alms or on his own needs.³³

Glorious Flavius Recesvintus, of the Visigoths, in the seventh century was also concerned that differing amounts of prosperity within the marriage might cause instability and therefore stated: "If the value of their possessions is the same, neither has a right to assume superiority over the other. For it is not unusual, where such property is equal in amount, for one party, in some way, to take advantage of the other. And if it should be evident that the possessions of one exceed those of the other in value, as above stated, there shall be an apportionment of it made, showing what either may claim after the death of the other, and what either shall have a right to dispose of to his or her children, or to heirs, or in any other way that may be desired."³⁴

In most of the Germanic codes, lawmakers distinguished between familial property that was largely inalienable, meaning it customarily passed to the next of kin, and gifts from other sources that were less restrictive. Land that was inalienable was so, for either sex. This was land designated for the heirs of the blood which had always held that land; however, gifts of land also existed. Women sometimes acquired alienable gifts. The Ancient Law of the Visigoths provided an excellent example of these alienable gifts:

We especially decree that a wife shall be entitled to no part of any property presented by the king to her husband, unless the latter should bestow a portion of it upon her by way of dowry. And, likewise, should the gift be made to a wife, her husband shall have no right to any of it, nor can he lay claim to it after her death, unless his wife should give or bequeath it to him. If a wife should, at any time, in addition to her dowry, accept from her husband any property acquired by him as a gift, or by profligate conduct, or the proceeds of claims collected by him, she shall have absolute disposal of said property until the day of her death, according to the terms of the will of her husband, even though there be children born of that marriage. She shall have the power to expend or use the

³³ *Visigothic Code*, trans. Scott, 129-30; *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 190.

³⁴ *Visigothic Code*, trans. Scott, 126-7.

income of such property, just as the testator has designated by will; and, during her lifetime, she shall enjoy unhampered possession of all such property, the income of which shall be used for her expenses.

This property was separate and distinct from the dowry, which the husband provided. The wife was allowed ownership of this property, even if the marriage had not produced any heirs, and even if she chose another husband, provided she was not guilty of “adultery or other meretricious conduct.”³⁵

Visigothic wives did not become the kin of their husbands. The wife maintained her property separately and divided her estates among the children separately. “Where a man leaves only brothers and sisters, they shall inherit his property, share and share alike, provided they are all children of the same father and mother. But if some should be descended from a different father or mother from the others, the inheritance shall go to the brothers and sisters having the same father and mother as the descendent. Such children as are born of different parents, but of the same mother, shall inherit the property of the mother, share and share alike. Those also who are descended from different mothers, but the same father, shall share in a like manner.” The Ancient Law also stated: “A woman shall inherit, equally with her brothers, the property of her father or mother; of their grandparents, on the paternal and the maternal side, as well as their brothers and sisters; and also any property which may be left by a paternal uncle, or a cousin, or a nephew, or a niece. For it is only just that those who are nearly related by blood, should enjoy the benefits of hereditary succession.” Visigothic women stood to inherit a large amount of property from their families, which they maintained separately from that of their husbands.³⁶

³⁵ Ibid., 153.

³⁶ Ibid., 122-3.

In Rothair's edict, daughters inherited portions equal to that of any illegitimate sons.

“158. If anyone leaves one legitimate daughter and one or more natural sons and the other near relatives or heirs, the substance of the dead man shall be divided equally into three parts.”³⁷

Germanic women in most areas inherited from their children. Most places restricted this ownership to *usufruct* until the time of her death, at which point the land reverted to its rightful heirs. One Burgundian law concerning the death of both the husband and the son provided the woman with the property belonging to both. This particular law made no mention of whether the woman might remarry. “24.3 But if perchance children shall have been born and they shall have died after the death of their father, we command that the inheritance of the husband or children belong wholly to the mother. Moreover, after the death of the mother, we decree that what she holds in *usufruct* by inheritance shall belong to the legal heirs of her children. Also we command that she protect the property of her children dying intestate.” A chronologically later law mentioned the woman's inheritance if she did not remarry and limited the amount that she could inherit:

74.1 Indeed it has been established in general in a law stated in earlier times that if a woman whose husband has died childless does not enter into a second marriage, she may claim a third of his inheritance for her own use throughout her lifetime; but now after considering more carefully with the nobles (*obtimates*) of our people all these matters set forth under this same title; it pleases us to limit the general application of the above-mentioned law. Wherefore we order that any such widow, concerning whom we speak, may receive a portion of the inheritance of her husband if she has not already obtained property from her father or her mother, or if her husband has not given her any portion of his property by means of which she can live. 2. If any woman whose husband has died does not take vows to a second husband, or does not wish her sons, now grown, to live with her, she may accordingly divide the property of the dead husband with them. If she has one son only, let her obtain the above-mentioned third; if there are two or three or four or more sons, let her receive a fourth part; nevertheless after her death, let the property return to the sons. 3. If anyone enters a second marriage after the death of his first wife by whom he had children, and has children by his second wife, and if he then dies, the rule should be observed that his widow shall not hold that anything must be

³⁷ *Lombards Laws*, trans. Drew, 78-9.

given to her from the portion of her step-children, but let her receive the portion designated above from the property inherited by her own children.

As stated in the law above 74.2, the woman could inherit from the husband's lands in conjunction with her sons, but in law 24.4 the law allowed a son to gift his mother whatever he wished, to which she held more than *usufruct*. "24.4 If any son has given his mother something by will or by gift, let the mother have the power of doing whatever she wishes therewith; if she dies intestate, let the relatives of the woman claim the inheritance as their possession." Though Burgundian women did inherit from their sons, the lawmakers altered this law slightly in the face of difficulties with distribution:

53.1 It has been permitted now for a long time as set forth and established in previous law, that if, a father being dead, his son dies without a will and the mother still lives, she shall possess the substance (*usufruct*) of the son's property during the rest of her life, and after her death the nearest relatives of the son coming from the father's side shall receive all those properties of which we speak. However, discussing this case more thoroughly, with the nobles of our people (*optimates populi nostri*), we direct attention to the fact that the nature of the aforementioned law causes no less of loss and discord than of advantage to the heirs since they disagree among themselves over the various contradictions involved in the contest. As a result, on the one hand, the slowness of acquiring inheritance gives offense, and on the other the loss of property causes anxiety. Therefore it seems more just that the bonds of the above-mentioned condition should be relaxed under circumstances whereby the case will not be delayed, but ended. 2. Therefore, we order, that, just as a similar case was concluded by our decision, since the contrary decrees of the fates often shift under these circumstances, a legal division of the remaining property shall be made on an equal basis immediately between the mother of the deceased son, if there be no daughter, and his nearest relatives as we mentioned above, with the further provision that each of them may have the power according to law of doing what he pleases with the half received. For surely, it is more desirable that the cases should terminate immediately to the welfare of the parties concerned rather than that anyone should gain an advantage because of any delay in point of time.

The limitations in property that a woman might inherit from her children portray the growing concerns that the availability of new land was becoming limited. In the *Pactus Legis Salicae*, for

the sixth-century Franks, a woman inherited from her deceased childless son, if the father was also dead.”³⁸

Burgundian fathers had the legal right to give their daughters whatever they chose. In the law quoted above 53.1, the deceased son’s daughter inherited everything in the place of the mother, but there was no mention of a son. This must have been a case where the lawmakers made the assumption that everyone knew the son would inherit everything. Specifically stated in the law, was that daughters inherited in the absence of sons. “14.1 Among Burgundians we wish it to be observed that if anyone does not leave a son, let a daughter succeed to the inheritance of the father and mother in place of the son.” The law allowed fathers to provide their daughters with gifts of land if they wished. “1.1 Because nothing concerning the privilege of bestowing gifts which is permitted to fathers, or concerning the gifts (and *gratuities*) of rulers, has been provided in the laws, we have decreed in the present statute, with the common consent and will of all, that it be permitted to a father to give to anyone from the common property or from the produce of his labor before he makes a division, excepting that land acquired by allotment (title of lot, *sors*), concerning which the arrangement of previous laws will stand.”³⁹

Other Germanic laws provided property between aunts and nieces. The Burgundian law stated: “75.4 If indeed as has been said, the father has died, and the son leaves no male heirs, but a daughter only, and the sisters of her father (i.e., the above son) are still living, the law establishes the rule for claiming the title of inheritance as follows: the amount of the father’s portion must be set aside (for the daughter), while the other half (i.e., her grandfather’s portion) shall legally belong to the aunts mentioned above, nor let it be thought that any of their half may be claimed by the daughter (the only heir of the son).” According to the *Pactus Legis Salicae*,

³⁸ *Burgundian Code*, trans. Drew, 41, 70-1, 40, 61; *The Laws of the Salian Franks*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1991), 122.

³⁹ *Burgundian Code*, trans. Drew, 61, 32, 22.

Salian women, also stood to inherit from their kin in the absence of male counterparts. A sister inherited if there was no brother. “59.1 If a man dies and leaves no children, and if his father or mother survives him, this person shall succeed to the inheritance. 2. If there is no father or mother but he leaves a brother or sister, they shall succeed to the inheritance. 3. If none of these is living, then the sister of the mother shall succeed to the inheritance.” This law continued naming distant relatives; the important point is that women were in line to inherit familial lands, though occasionally barred from inheriting the *terra Salica* lands. Even in the event that Frankish women did not inherit ancestral lands, they still often maintained the estates for their minor sons. According to Paul the Deacon, in the sixth century, Sigispert’s son Childebert, “still a little boy, with Brunhilde his mother, took up the management of his kingdom.” Brunhilde was ruling during her son’s minority.⁴⁰

The Salian Franks required that their daughters inherit equally with their brothers. “If a father or [a relative of] the kindred, when he gave his daughter to a husband, gave some property to her on that [wedding] night, let her, as much as he gave, make claim to everything of her share against her brothers. Similarly, if [a father] decides to cut his son’s hair, whatever he gave him, let [his son] retain this with the exception of [his] share, and let the others divide what remains among themselves in an equitable fashion.” Furthermore, the Salians, in Capitulary IV, allowed women to inherit the *terra salica* lands, which the law previously barred women from owning. “108. In a similar manner, it is agreed and resolved that whoever has neighbors and has either sons or daughters alive after his death, so long as the sons survive, they should possess the [ancestral] land as the Salic law specifies. And if the sons have died, let the daughter in a similar manner receive this land, just as the sons would have possessed it if they were living. And if she

⁴⁰ *Burgundian Code*, trans. Drew, 72-3; *Laws of the Salians*, trans. Drew, 122; Paul the Deacon, *History of the Lombards*, trans. William Foulke (Philadelphia: Harvard University Press, 1907), 103.

died, let another brother [to the deceased father], who is living receive the land of his brother, [and] not the neighbors. And [if] the brother died, [and] no other brothers are living, then let the sister [to the deceased father] take possession of this land.” Furthermore, in Capitulary IV, the Salian lawmakers included “recent acquisitions and especially land when acquired, that the persons who have a living father should honor the custom among themselves which they have over their property.”⁴¹

Germanic women inherited lands from their kin, usually in the absence of nearer males heirs to the deceased. Lombard King Liutprand allowed daughters to inherit in the absence of sons. Another law of Liutprand in the same year, 713 AD, stated: “#2.11 If a Lombard while living has handed over some of his daughters in marriage and other daughters remain at home unmarried (in *capillo*), then all of the daughters shall equally succeed as heirs to his substance as if they were sons.” In 725 AD, King Liutprand reconfigured a prior law requiring that a man could not disinherit his only heir, thus forcing the man into *usufruct* of his property. “65.1 In the case of a man who has an unmarried daughter at home and who does not have a legitimate son, he may not alienate more than two parts [two thirds] of his property in any fashion as a gift or for the sake of his soul. The third part [of his property] he must leave to his daughter, as King Rothair of glorious memory has already established [Rothair 158]. If a man does make a gift (*thinx*) [of his whole property] and afterwards a daughter is born, he shall modify the gift so as to retain a third part.” This law further stipulated that if the father conceived daughters the percentage of the gift decreased.⁴²

⁴¹ *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 114, 135.

⁴² *Lombards Laws*, trans. Drew, 145, 172.

For the Lombards, in situations where sons did not exist, daughters inherited the family lands, and in a case where a sole son had only sisters and daughters, the law showed a preference for daughters:

3.3 If a Lombard leaves sisters, and while he was still alive they had gone to husbands, and if this man also leaves daughters, then the sisters shall have from the property of their brother [only] such an amount as they received on the day of their vows when they went to husbands [and the daughters shall have the rest of the inheritance]. If the brother leaves neither sons nor daughters, or if the sons and/ or daughters die before him without leaving sons or daughters of their own, then the sisters- those who remained unmarried as well as those who have gone to husbands- shall succeed as heirs to all his property.

King Aistulf changed this law in 755 AD.

10.1 We note that it is provided in an earlier law [Liutprand 3] that if a brother dies without sons or daughters and leaves sisters, the sisters shall succeed him as his heirs, but any aunts may have none of the property of their nephew: only sisters or near [male] relatives may succeed. We also note that since the aunts remain at home unmarried and unprovided for, suffering need, they marry slaves. Therefore, with God inspiring us, we now provide that if a Lombard dies leaving one or more sisters at home unmarried and one or more sons, his sons ought to consider in what manner their aunts can live according to the quality of their status that they will not suffer need from lack of food, or clothing, or even service. And if one of the aunts wishes to live in a holy convent under an established rule, let it be arranged by the nephews as desired by her or is suitable. If a nephew dies without sons or daughters or intestate and leaves sisters, the aunts who remain at home unmarried together with their nieces [the sisters of the deceased] shall succeed equally to the entire property of their nephew and brother.⁴³

The Visigoths also believed in linear inheritance. Flavius Chintasvintus restricted the rights of parents to alienate their property, even if their children predeceased them:

But they shall not have the power to give to each grandchild more than the third part of the aforesaid property. And if they should wish to give any to the church, or to the freedmen, or to any one else, they shall have the right to dispose of only the fifth part of it in this manner, as prescribed by a former law. But where neither children nor grandchildren, nor great- grandchildren should be living, they shall have the right to make such disposition of their property as they desire. ... But if a son having a wife and children should die during the life of his father, before his father has given him all that he was entitled to from his estate, and his sons should also die during the life of their grandfather, the daughter- in- law shall receive only so much as the father had formerly set aside for her husband. Nor can the widow claim any more than this from her father- in- law or any of his relatives. But if the son had been living with the father, and had not

⁴³ Ibid., 145, 213-2.

yet received anything from him; the son's widow shall then only be entitled to what she obtained as a dowry at the time of her marriage. Where the son, in obedience to his father's wishes, permitted the latter to retain what he was entitled to from his mother's estate, and should bequeath it at his death to his wife, or to anyone else; such bequest for the benefit of the wife or of the others, if made in writing, shall be valid: provided his mother did not have other sons by the same husband. If, however, other sons should be living, the provisions of the former law must be carried out.

The law providing the direct heir with a third of the property was reiterated during the reign of Glorious Flavius Recesvintus demanding that no child could be disinherited in favor of a stranger unless the child committed a physical assault on the person.” If a man passed away while his wife was pregnant and had no other heirs, the child was entitled to three-quarters of the deceased's property. The laws created during the reign of Glorious Flavius Recesvintus stated that if there were no heirs to the fourth degree of consanguinity, then that person owned the property with full liberties. “Every freeborn man and woman, whether belonging to the nobility, or of inferior rank, who has no children, grandchildren, or great-grandchildren, has the unquestionable right to dispose of his or her estate at will.”⁴⁴

The rise of primogeniture through the Germanic era is a phenomenon that proved harmful to both men and women. As land became increasingly smaller in size through successive divisions of estates among the kin, the need to retain a live-able tract of land grew. It is for this reason that primogeniture came to be practiced in particular among the poorer strata of society. This meant in effect that only one son inherited the land, and effectually only one son might marry. According to George Homans, “In any society where husbandry is nearly the only means of subsistence, a man's status as a landholder or a landless man is in close relation with his status as married or single.” Gavel-kind is another form of inheritance which the English practiced in areas where productive land was more plentiful. “According to the custom of gavel-kind, ... a tenement might be divided equally among the sons of the last holder. In default of sons, then

⁴⁴ Ibid., 128-30.

among the daughters.” In either case, during the Germanic era, daughters inherited in the absence of brothers, and wives inherited at the death of their spouse. In most cases she held *usufruct* because the land reverted to the blood heirs if she had no children. In either case, women had better property rights during the Germanic era, than in the era following. During the Renaissance, in part due to the rediscovery of Roman law and in part due to the decreasing availability of land, the law denied women the right of inheritance from their kin. Families saved the inheritance for the eldest son, and their financial income for the dowry of the eldest sister, who in effect became a pawn and might be remarried if she was widowed at a young age. Women were even excluded from partible inheritance on the continent in the later centuries.⁴⁵

The early Lombards did not practice any form of primogeniture and in the event that a man left more than one female child, he was initially not allowed to favor one of them over the others. “4.4 If a Lombard leaves sisters or daughters at home unmarried, then they ought to succeed to his inheritance in the same and equally, however many there are, as if he had left legitimate sons.” In 755 AD, however, King Aistulf allowed a father to favor one child with more property than the others. “13.4 ... Therefore we now decree that if a man has two daughters, and does not leave a son, he may reward one of the daughters if he wishes with a third part of his property. If he has three daughters he may reward one of them with a fourth part of his property; if there are more the portion shall be determined according to this principle.”⁴⁶

The Ripuarian Franks, in the eighth century, had inheritance laws similar to the Salian Franks; the first to inherit were the children of the deceased, then the parents of the deceased, then the siblings of the deceased. The Ripuarians stipulated: “while a man lives, a woman may not succeed to the ancestral landed inheritance [*hereditas aviatica*].” The *Lantfridana*

⁴⁵ George Homans, *English Villagers of the Thirteenth Century* (New York: Russell and Russell, 1960), 136, 123, 110.

⁴⁶ *Lombards Laws*, trans. Drew, 154-6, 234.

Manuscripts of the eighth-century Alamans allowed daughters to inherit in the absence of sons, as long as the women married within their social class. “55. If, moreover, two sisters are left after the death of their father without a brother, and the paternal inheritance belongs to them, and one marries a free man of equal status to herself, where as the other marries a *colonus* of the king or a *colonus* of a church, let her who marries a free man of equal status to herself inherit the land of her father; however, let them divide other property equally. Let her who marries the *colonus* not receive a portion of the land, since she did not marry [a man] of equal status to herself.”⁴⁷

The Alamans allowed female heirs to pass their inheritance to their children, and created laws to handle the death of both. The *Lantfridana Manuscripts* law concerning women and their familial inheritance states: “89.1 If a woman who has a paternal inheritance becomes pregnant after marriage and gives birth to a boy, and she dies in that hour, and the child is alive for awhile or for one hour, so that he can open his eyes and see the roof of the house and the four walls, and afterwards dies, let the maternal inheritance remain with the baby’s father. 2. Moreover, if his father has witnesses who saw that the child opened his eyes and saw the roof of the house and the four walls, then let the father have permission under the law to hold that property. Whoever the owner is, let him hold his property.” For the Bavarians, the law allowed the children of men in the king’s service to inherit, if the father died in battle. “2.7 And if he dies, let him be assured that his sons and daughters will possess his inheritance without difficulty; then let him fulfill the order faithfully and promptly.” Visigothic children inherited regardless of gender in the laws of Flavius Chintasvintus and their mothers and fathers inherited their estates in the case of their death. “Where the father is dead and the son or daughter should have lived ten days or longer, should have been baptized, and then should die; whatever either would have inherited from the

⁴⁷ *Laws of the Salian and Ripuarian Franks*, trans. Rivers, 192, 202-3; *Laws of the Alamans*, trans. Rivers, 85.

estate of his or her father, may be claimed by his or her mother. And, in like manner if the mother should die”⁴⁸

The later-eighth-century *Lex Salica Karolina* allowed women to inherit in the absence of nearer male kin, but specifically stated: “34.6. Indeed concerning Salic land (*terra salica*), no part of the inheritance may pass to a woman but all the inheritance of land goes to the male sex.” Lawmakers excluded this specific denial of women’s property rights in Capitulary IV, thus it seems that for approximately 225 years, women legally had the right to inherit the *terra salica* lands.⁴⁹

Despite the exclusion of women from ancestral lands, according to the literature, among the wealthy women did inherit large amounts of property. According to a companion of King Charles the Bald, Nithard, Louis the Pious divided the “treasures” of his father Charlemagne in the ninth century, a third for the burial, a third for his sisters and a third for himself. Louis also allowed his nephew to become the King of Italy. In later years, Louis dispersed his empire among his sons, but made no mention of lands that his daughters were to inherit. Louis was the Holy Roman Emperor and had vast territories to govern; these lands were more than likely what the Franks considered *terra salica* lands and was probably why Nithard did not mention the lands the daughters received. According to *Nithard’s Histories*, though Louis the Pious had not bequeathed any territories to his daughters, there was some indication that Hildegard, Louis’s daughter and Charles’s sister, had a large amount of control within the city of Laon. She actively participated in a feud against her brother, Charles the Bald. She possessed the ability to open and close the gates. Charles later spared the inhabitants of the city in honor of his sister and the

⁴⁸ *Laws of the Alamans*, trans. Rivers, 98, 126; *Visigothic Code*, trans. Scott, 128.

⁴⁹ *Laws of the Salians*, trans. Drew, 198.

truce the two had made. Of course, Charles took possession of the city at the same time. It seems that ownership was fleeting within the ruling family.⁵⁰

The Visigoths also wanted the families to retain ownership of familial lands, but they did not distinguish between the genders in inheritance. If the person in question had children, then the law expected ownership of all properties to pass to the child; however, if there were no direct heirs, then the property belonged to the other heirs of the parents. The Ancient Law stated: “If anyone should leave a paternal grandfather and grandmother, his entire property shall descend to them. So also if he should leave a maternal grandfather and grandmother, they shall inherit his estate equally; and the same disposition of it shall be made, if he should leave both a paternal and maternal grandmother. This equitable division of his estate shall apply only to such portions of it as he has acquired by his own efforts; and whatever he may have inherited from his ancestors, or his parents, shall descend to the heirs of the latter in the direct line of succession.” The gender did not matter, but the heirs had to be of the same kin group.⁵¹

Like the Visigoths, the Lombards also required that property remain in the hands of legitimate kin whenever possible and in Germanic society women were considered legitimate kin. “171. If anyone, either because of age or other infirmity, despairs of ever having children and therefore transfers his property to someone else, and if afterwards it happens that he begets legitimate children, then the whole *thinx*, that is the gift which was made before the children were born, is broken and the one or more legitimate sons who were born afterwards shall be heirs of their father in all things. If, moreover, there were one or more legitimate daughters or one or more natural sons born after the gift had been made, they shall have their rights, just as provided above, as if nothing had been given to anyone else. And he who was given the property shall

⁵⁰ *Laws of the Salians*, 185, 198; *Carolingian Chronicles: Royal Frankish Annals and Nithard's Histories*, trans. Bernhard Scholz (Ann Arbor: The University of Michigan Press, 1970), 130, 160.

⁵¹ *Visigothic Code*, trans. Scott, 145.

have only such an amount as the near relatives or the king's fisc would have received if the property had not been transferred." Lombard women inherited from their families, one law stating that a widow who "... returned to the home of her father or brother shall keep her morning-gift and marriage portion as before. The father's gift (*faderfio*)--the other gifts which the father or brother gave her when she went to her husband--shall be held in common with the other sisters. And the one or more sisters may take [from the father's or brother's property] an amount equal to that which the father or brother gave to the relatives of the dead husband in return for releasing the widow's *mundwald*."⁵²

Germanic leaders treated the government as if it were private property. This was the reason why Charlemagne divided his estate among his sons. Prior Frankish kings had done the same. Like the woman's ability to inherit private property, she was also able to inherit the ability to govern. Furthermore, the right to kingship occasionally passed through the female line. According to Paul the Deacon, the early Lombards allowed daughters to become queens, at least in the absence of sons. In the third century AD, attacking Bulgarians slaughtered King Agelmund and his troops and captured his child. "Then King Lamissio seeing these things, began in a loud voice to cry out to the whole army, that they should remember the infamies they had suffered and recall to view their disgrace; how their enemies had murdered their king and had carried off in lamentation as a captive, his daughter whom they had desired for their Queen." A later Lombard King Waccho had three wives before he had a son who became heir to the throne, though his daughters married kings. "And Waccho had for his third wife the daughter of the king of the Heroli, by name Salinga. From her a son was born to him, whom he called Waltari, and who upon the death of Waccho reigned as the eight king over the Langobards."

⁵² *Lombards Laws*, trans. Drew, 82, 90-1.

Presumably, if Waccho had not eventually acquired a son, one of his daughters would have inherited the throne.⁵³

Another form of inheritance was the payment of compensation that belonged to the victim's family. Under Capitulary I, of the Salian Franks's laws, a mother received a portion of the compensation if her son was a victim of homicide:

One-half the compensation belongs to the son. One-half belongs to the mother [in so far that it comes from a quarter of the *wergeld* [leude]. The other quarter [of the *wergeld*] belongs to the nearest relatives, that is, three [relatives] from the father's kindred and three from the mother's. If the mother is not living, let the relatives divide one-half the *wergeld* [leude] among themselves.

In Katherine Fischer Drew's version of this law, it is clear that the mother mentioned in the law is actually the wife of the spouse. It is difficult to determine whether the mother mentioned was the mother of the deceased or the wife of the deceased.⁵⁴

The *Lex Salica Karolina*, in the late eighth century, changed the Salian law for dispersing compensation among the heirs, by providing no mention of the mother at all.

14.1 If the father of someone is killed, let his children collect half of the composition for him and the nearest relatives from his father's kin as well as from his mother's kin shall divide the other half. 2. But if there is no near kin on either the paternal or on the maternal side, that portion [of the composition] shall go to the fisc or him to whom the fisc grants it shall have it.⁵⁵

In 717 AD, Liutprand barred women from inheriting the compensation due a murdered man.

“13.7 Although we have [earlier] established that daughters could be heirs, just as if they were boys, to all the property of their father or mother [Liutprand 1], nevertheless we decree here [in this case] that the nearest [male] relatives of him who was killed- those who can succeed him within the proper degree of relationship- shall receive that composition. For daughters, since

⁵³ Paul the Deacon, *History of the Lombards*, trans. William Foulke (Philadelphia: Harvard University Press, 1907), 29, 40-1.

⁵⁴ *Laws of the Salian and Riparian Franks*, trans. Rivers, 114; *Laws of the Salians*, trans. Drew, 130.

⁵⁵ *Laws of the Salians*, trans. Drew, 182-3.

they are of the feminine sex, are unable to raise the feud. Therefore we provide that daughters not receive the composition, but, as we have said, the abovementioned [male] relatives [ought to have it]. If there are no near [male] relatives, then the daughters themselves shall receive half of that composition, whether there is one or more of them, and half [shall be received] by the king's treasury."⁵⁶

Between the marriage gifts, and those lands that passed to women from their children or their kin, in conjunction with the property derived from their husbands' estates, women inherited vast amounts of property. The majority of these Germanic laws were attempts to limit such properties from belonging to the women because they stood to inherit so much land. It is true that some Germans, such as the Franks, and the Burgundians, and even the Lombards allowed women to inherit only in the absence of males, this does not diminish the relative importance of the inheritance. In these cases the women were inheriting the familial estate in its entirety, with the understanding that such lands would pass to her sons, or daughters in their absence. Furthermore, even though the women generally held only *usufruct* to these lands, this was generally the same for any male that held them. Even parents were limited in the amount of property that they might bestow outside of the family.

Another important issue that Germans dealt with in the area of property and women was the amount that religious women could inherit. Unlike their secular sisters, the Burgundian law codes defined exactly what these women of the convents could inherit because property that belonged to religious women often remained with the monastery with which they were affiliated.

14.5 Concerning those women who are vowed to God and remain in chastity, we order that if they have two brothers they receive a third portion of the inheritance of the father, that is, of that land which the father, possessing by the right of *sors* (allotment), left at the time of his death. Likewise, if she has four or five brothers, let her receive the portion due her. 14.6. If moreover she has but one brother, let not a half, but a third part go to her

⁵⁶ *Lombard Laws*, trans. Drew, 149.

on the condition that, after the death of her who is a woman and a nun, whatever she possesses in *usufruct* from her father's property shall go to the nearest relatives, and she will have no power of transferring anything, there from, unless perhaps from her mother's goods, that is, from her clothing or things of the cell (*rescellube*), or what she has acquired by her own labor. 7. We decree that this should be observed only by those whose fathers have not given them portions; but if they shall have received from their father a place where they can live, let them have full freedom of disposing of it at their will.⁵⁷

There were no laws in the *Salic Legis Pactus* concerning women, property, and the convent. The Ancient Law of the Visigoths, however, viewed the church in the same manner as a spouse. "The church to which they are attached shall inherit the property of all clerks, monks, and other persons in orders, who have left no heirs under the seventh degree, and who have made no disposition of their estate." The Visigothic law further states: "The widows of priests or of other ecclesiastics, who have devoted their sons to the service of the church, solely through gratitude to the latter, shall not be deprived of any property possessed by the fathers, which was originally derived from the church."⁵⁸

The later Lombard codes allowed women to bring a portion of their property into the religious house with them. "101.6 If a woman takes the religious veil or enters a nunnery, the conditions of the preceding law having been observed, if she has sons or daughters who possess her *mundwald*, she may enter the nunnery with a third part of her own property and after her death this property shall remain in the possession of that monastery which she entered. If she does not have sons or daughters, she may enter the nunnery with half her property and after her death, if she wishes, that half of her property will remain in the possession of the nunnery. If she remains at home, she may have the right to dispose of a third of her property either for the

⁵⁷ *Burgundian Code*, trans. Drew, 32-2.

⁵⁸ *Visigothic Code*, trans. Scott, 123, 145.

benefit of her souls or to anyone whom she wishes. Two-thirds of her property will pass to the possession of him who holds her *mundwald*.”⁵⁹

The Anglo-Saxons made few mentions of property that clerical women possessed, but it is clear from the writings of the Venerable Bede that women were important in donating the lands to the newly founded monasteries in the sixth and seventh centuries. Often times the land was provided in conjunction with a man, or in honor of a female family member. For instance “Before he became bishop, Earconwald had built two well known monasteries, one for himself and the other for his sister Ethelberga.” Another example was “In the province of Lindsey there is a noble monastery called Beardeneu which was greatly loved, favored, and enriched by the Queen (Osthryda) and her husband Ethelred, who wished that the honored bones of her uncle should be re-interred there.” Some women founded their own monasteries without the mention of any male. “After this, Hilda was made abbess of the monastery of Heruteu, founded not long previously by Heiu, a devout servant of Christ who is said to have been the first woman in the province of Northumbria to take vows and be clothed as a nun, which she did with the blessing of Bishop Aidan.” Anglo-Saxon women often donated lands to the church.⁶⁰

It is obvious that women contributed whenever possible to the growth of the Catholic religion through the use of their property. According to Gregory of Tours, Queen Clotild, the wife of King Clovis, provided property for the sustenance of a priest and his family. “There was at that time in Clermont-Ferrand a priest called Anastasius, a man of free birth, who owned a certain property which had been granted to him by Queen Clotild of glorious memory.” King

⁵⁹ *Lombard Laws*, trans. Drew, 188.

⁶⁰ Venerable Bede, *History of the English*, 213, 155, 241.

Lothar later upheld this gift, but only because a greedy bishop in the area was attempting to deprive the priest of this land.⁶¹

Aside from the laws and other contemporary literary sources, the later centuries also provided written legal documents concerning women and their lands. There is an abundance of wills and charters for the Anglo-Saxons dating from the tenth century, though there are a few earlier surviving documents. In many cases these testaments uphold the previously examined laws, but on occasion they depict customary traditions that ran contrary to the laws.

Dorothy Whitelock translated thirty- nine wills ranging in date from the 950's to around 1066. Through these wills, the historian can determine a great deal about the custom of the time concerning property and women, at least among the extremely wealthy families of the late Anglo-Saxon era. Probably the most enlightening of the wills are the wills of Ælfgar and his two daughters Æthelflæd and Ælflæd. These wills explained a great deal about the customs of the time.

The father spoke his will somewhere between 946 and 951 AD. Ælfgar bequeathed to his eldest daughter, Æthelflæd, several estates: Cockfield, Ditton, Lavenham, and Baythorn. The inheritance was conditional, when she died Cockfield should be granted to St Edmund's foundation at Bedericesworth, and the father's will allowed the daughter to determine the other religious house for Ditton. Baythorn should be granted to her younger sister, and Lavenham should be granted to Æthelflæd's child, the will did not specify gender and she apparently had not had any children yet. Æthelflæd also held *usufruct* on the estates of Peldon, Mersea and Greenstead. This meant that she could use the products of these lands, but she could not sell them. At the time of her death, these lands were supposed to go to Stoke, a religious foundation that the family favored, which historians have limited knowledge about. Ælfgar's younger

⁶¹ Gregory of Tours, *The History of the Franks*, trans. Lewis Thorpe (London: Penguin Books, 1974), 205-7.

daughter, Ælflæd inherited Eleigh, Colne, Tey and Totham. These grants were also conditional, Colne and Tey could be granted to her direct heirs, and in the absence of those to her husband, and after his death to specified churches. At the time of Ælflæd's death, if there were no direct heirs from the marriage Eleigh went to the elder sister and Totham went to Æthelflæd regardless of any heirs her sister might have left. Ælflæd was also to inherit Baythorn at the time of her elder sister's death, and if she died without an heir, the land went to St Mary's foundation at Barking. Ælfgar also left an estate, Heybridge, to one of his men on the condition that this man would pay rent to St Paul's community.⁶²

Æthelflæd, Ælfgar's eldest daughter, had more than doubled the amount of land that her father had given her at the time of her will, which she spoke between 975 and 991 AD. She had been married to King Edmund who died in 946 AD. She later remarried and widowed again. She had no surviving children. Did she follow the conditions of her father's will? She left three estates to her "lord" as her heriot. A testator paid the heriot to the feudal lord so that he would allow a person's family to inherit. She left four estates Withermash, Damerham, Ham and Ditton, which her father had given her to leave to the church of her choice, to various churches. Of her father's estates, she granted Cockfield to her sister and spouse for the duration of Ælflæd's life instead of to the church her father had chosen. Æthelflæd bequeathed Lavenham, Peldon, Mersea, and Greenstead to the younger sister and her husband and the young couple would leave these lands to Stoke upon their deaths. Æthelflæd also left her sister and brother-in-law four other estates "for her life" and three other estates, including Woodham; that the couple could keep "for their lifetime." After their deaths, the land would go to specified churches. One of the estates, Elmsett, was supposed to go to someone named Edmund at the time of the

⁶²*Anglo-Saxon Wills*, trans. Dorothy Whitelock (Cambridge: At the University Press, 1930), 104, 7,9.

younger couple's death. She left several other estates to important people in her life, such as her priests and a "kinswoman Craue" who inherited Waldingfield unconditionally.⁶³

There were several discrepancies between the will of the father and that of the elder daughter. Several estates did not go directly to the church of her father's choice at the time of Æthelflæd's death. According to her father's will, Aethelflaed was not entitled to bequeath Cockfield, Lavenham, Mersea, Peldon and Greenstead to anyone past the lifetime of Æthelflæd because she did not have any direct heirs. Furthermore, she held only *usufruct* on Mersea, Peldon and Greenstead and yet she had the power to pervert the will of her father with these lands. The younger sister's will contained even more discrepancies.

Ælflæd spoke her will around 1002, and like her sister, she had become extremely wealthy at the time of her death. Did she follow the conditions of her sister's will? One of the eight lands she left, as her heriot to King Aethelred was Elmsett, which she should have granted to Edmund, according to her sister's will. The only information in that will was his name, it is difficult to determine who Edmund was and he may have died. Woodham was supposed to be granted to a church, but instead was bequeathed to the King's mother Ælfthryth for her lifetime before passing to St Mary's foundation at Barking. Withermash and Ditton, which Æthelflæd had left to churches, were in the younger sister's possession at the time of her will. Ælflæd was also in possession of Heybridge, which her father had granted to one of his men. Furthermore, Ælflæd included Waldingfield among her possessions, which her sister Æthelflæd had willed to Craue. She granted the land to her kin, but stipulated "After Craue's death the estate at Waldingfield to St Gregory's at Sudbury according to the agreement my sister made about it."

⁶³ *Anglo-Saxon Wills*, trans. Whitelock, 138; *Anglo-Saxon Wills*, trans. Whitelock, 138, 35, 7, 35, 37.

With these exceptions, Ælflæd did leave the lands of her ancestors to their chosen churches, along with several other estates that she herself had inherited from other sources.⁶⁴

There were several important points that these three wills provide. In the first place, these girls both inherited an incredible amount of land. Their father bequeathed thirteen estates, Æthelflæd granted twenty-three estates, and the younger child left thirty-six. The women both left land in their heriot where their father had left only swords and gold. This was an extremely wealthy family and Ælflæd must have been the last of the line, with the exception of Craue. Neither of the daughters ever had children that survived.⁶⁵

The second important point that these wills illuminated was the fact that Ælflæd acquired so much land that she should not have received. She inherited Cockfield, Lavenham, Ditton, Mersea, Peldon, and Greenstead all of which should have gone directly to the church after Æthelflæd's death. Furthermore, she inherited Ditton and Withermash, which was contrary even to the elder sister's will. Clearly, this society believed that certain lands must remain in the family. The custom of the time also dictated that these wills were spoken in front of witnesses, people did not consider property to be a private matter. It is unlikely that there were not witnesses' attending at least two of the three wills when the testators spoke their wills and not notice the discrepancies. All of these wills included a request to the lord to uphold their content, and Ælfgar's will included a wish that anyone who did pervert his will should burn in "Hell." Yet, both of his daughters did just that. Ælflæd stated in her will, "Then these are the estates which my ancestors bequeathed to it [Stoke] after my sister's lifetime and after mine." According to her sister's will, this was clearly not the case with Ditton and Withermash. It would be interesting to find Craue's will, the implication from these findings is that all of these

⁶⁴ *Anglo-Saxon Wills*, trans. Whitelock, 141, 39, 37, 9, 41.

⁶⁵ *Ibid.*, 7,9, 35,37, 39, 41.

lands according to custom should go to Crape and not the church to which they were willed.

According to Ms. Whitelock, a religious foundation did not hold any of the lands the family had bequeathed to Stoke in the Domesday Book compiled in 1086 AD. There is at least a chance that Crape inherited the lands the family had granted to Stoke.⁶⁶

A further point about women and the extent of property that they could obtain throughout their lives which the wills demonstrate is the issue of the marriage gift. It was common custom that the groom give the bride a present on the day after their wedding and in the Germanic world it was called a *morgengabe* or morning –gift. The woman retained this land for the support of herself and her children in the case of her husband’s death. King Edmund had given Æthelflæd Damerham presumably as a marriage gift, which she left to Glastonbury, a religious foundation, for his soul. Ælflæd’s husband Brihtnoth had given her the estate at Rettendon as her marriage gift, which she granted to St Etheldreda’s at Ely because they had buried her husband there. Ælflæd and Brihtnoth had been married for several years; Ælfgar had mentioned the younger daughter’s spouse in his will. Brihtnoth died a hero’s death in 991 and Ælflæd probably did not re-marry, she spoke her own will just ten years later. She had no heirs, yet she clearly kept what must have been several other properties belonging to her husband. It is apparent that there were some discrepancies between both the law on inheritance in the absence of heirs. Neither of these women had children of their own, and Æthelflæd remarried, yet both of these women retained a massive amount of property from their husbands. As a further example; Wulfric, who married Wulfstan’s sister, “. . . promised her the estate at Orleton and Ribbesford for her lifetime, and he promised her that he would obtain the estate at Knightwick for her for three lives from the community at Winchcombe, and gave her the estate at Alton . . . and promised her fifty *mancuses* of gold and thirty men and thirty horses.” This was a quite large marriage settlement,

⁶⁶ *Anglo-Saxon Wills*, trans. Whitelock, 7, 9, 35, 37, 39, xii, 41, 105.

which Wulfric guaranteed to his prospective bride around 1015 AD. Certainly, the span of lifetimes limited her ownership in some ways, but not all of the estates were limited in this way.⁶⁷

It is also clear that the sisters, Æthelflæd and Ælflæd, did obey the father's will about the lands he left to each of them. The will only changed at the point where familial lands would have passed out of the hands of the family and to the church. In his will, Ælfgar had granted some land directly to the church and other important people in his life. His children never mentioned these lands in their wills, with the exception of Heybridge; which Ælflæd bequeathed in her will to St Paul's community. The interesting point about this was that the father had disinherited some of his lands from the family and some of them he could not, regardless of the father's wishes. Historians have deemed this concept alienation. As early as 777 AD, men bequeathed lands to their female kin, as proven in a charter where a cleric named Ealdred left some property "to Æthelburgh, his kinswoman, for life, with reversion to the bishopric of Worcester." In 804 AD, a young man, Æthelric, granted two separate properties to his mother, Ceolburh, for her life if she should survive him.⁶⁸

English women inherited from their families even if they had living brothers. Wynflæd spoke her will around 950 AD. She had one daughter and one son. Her daughter Æthelflæd had apparently not married and had no heirs. Her son Eadmær had a son, Eadwold, and a daughter. To her daughter, Wynflæd, left Ebbesborne "as a perpetual inheritance to dispose of as she pleases" and Charlton from which the daughter was required to pay a specified amount for the benefit of "her soul." It was not clear whether "her" referred to the mother or the daughter. She

⁶⁷ Whitelock, *Anglo-Saxon Wills*, 138, 142; *Worcestershire: Anglo-Saxon Charter Bounds*, ed. Della Hooke (Rochester: The Boydell Press, 1990), 330.

⁶⁸ *Anglo-Saxon Wills*, trans. Whitelock, 7,9, 39; Homans, *English Villagers*, 195; *Worcestershire: Anglo-Saxon Charter Bounds*, trans. Hooke, 34, 93.

also granted the family home and all of her unbequeathed possessions to her daughter. To her son, Eadmær, she left three estates, including her morning-gift Faccombe. In the case of Eadmær's death, Æthelflæd would hold this land for her lifetime and then bequeath the land to Eadwold, Eadmær's son. Wynflæd also asked her son, Eadmær to allow Eadwold to hold some of the aforementioned estates she had bequeathed, if he reached the age of maturity before the death of his father. This was not a case where the daughter inherited in the absence of sons. It is certain that families intended to provide for all of their children to the best of their ability in the tenth century.

Perhaps the best example is the will of King Alfred, which historians have dated between 873 and 899, "My grandfather bequeathed his land in the male line and not in the female line. If, then, I have given to any woman what he acquired, and my kinsmen wish to have it in the lifetime [of the holders], they are to buy it back. If not, let it be dealt with after their time as we have already arranged. It is for this reason that I say that they must pay for it, because they are succeeding to property of mine which I may give to the male or female whichever I please"

Anglo-Saxon mothers also occasionally received gifts of property from their children. King Edward the Confessor donated an estate to his mother Queen Ælfgifu Emma for her lifetime; she later willed this land to St. Edmund's.⁶⁹

Other wills indicated sources of land for women besides that of their families. As the law codes stated, women were entitled to receive a morning-gift from their husband at the time of their marriage and retained a large portion of his property in the event of his death, if she had born heirs and did not remarry. She still had the legal right to retain a smaller portion of his land

⁶⁹ *Anglo-Saxon Wills*, trans. Whitelock, 108, 11, 15; There are other wills where daughters inherited vast estates alongside their brothers, see *Anglo-Saxon Wills*, #xvii Pp 46-51, #xxi Pp 62-65, #xxxii Pp 84-87; *Select English Historical Documents of the Ninth and Tenth Centuries*, trans. F. E. Harmer (Cambridge: At the University Press, 1914), 92, 53; *The Ward Bequest: Anglo-Saxon Writs*, trans. F. E. Harmer (Manchester: Manchester University Press, 1952), 159.

and her morning-gift even if she did remarry. According to Ms. Whitelock Æthelflæd's first husband King Edmund granted the estate at Damerham to her as a morning-gift. At the time of her death, she left this land to a church for the souls of her first husband and herself. Brihtnoth gave Ælflæd the estate at Rettendon as her morning-gift, which she left to a church along with two other estates because the church had provided his burial site.⁷⁰

According to the wills, many husbands left women land in order to repay the church for burials. These lands were often in addition to morning-gifts. For example, in Whitelock's book, wills number V and VI dealt with land bestowed upon the church in exchange for proper burials and for the needs of their souls. In the first instance, Ordnoth and his wife seemed to have already given the land to the church. It is will number VI that states, "I, Æthelgeard, grant the estate at Sotwell after my death to my wife for her lifetime, and then for the need of the souls of both of us to the New Minister in Winchester, for them to use and never alienate." Further evidence of the popularity of these burial properties are located in *The Ward Bequest Anglo-Saxon Writs*, edited by F E Harmer. King Edward the Confessor issued the majority of these writs in the middle of the eleventh century. The King used these writs to notify communities of his support for the wills of his citizens. Several of these writs dealt with couples leaving land to religious houses "for (the benefit of) their souls." In two of the several examples, the writs specifically stated that the widow possessed the land until her death at which time the ownership of the property transferred to the chosen religious foundation. King Edward granted land to Westminster, but insisted that Queen Edith retained ownership until her death. The other writs involving married couples and properties they wished to donate to the church simply defined the location and its rights, named the couple and contained the king's approval of the bequest. It is obvious that men of means left their wives additional land for the welfare of their souls. A

⁷⁰ *Anglo-Saxon Wills*, trans. Whitelock, 139, 144.

further point in these situations was that many of these couples left lands to the churches jointly. For example, a charter, dating approximately 790 AD, reads: “Grant of land at Knighton- on Teme. Newnham and Eardiston in Lindridge, Worcs., by Wiferd and Alta, his wife, to the Church of St. Peter.” In 896 AD, Eared and his wife also donated land to the Church. These charters and wills imply that the woman consented to the grant of land. It was more than simply a gift in her name for her soul.⁷¹

A further point about women and property that the wills elucidated was the matter of remarriage. The Anglo-Saxon years were a violent time. There were tribal wars among the Anglo-Saxons and the later centuries brought devastating attacks from the Danes. Women often outlived their husbands. In some of the written wills husbands stipulated that the properties left to their wives was in accordance with a prior agreement that she not remarry. Most of the wills in Ms. Whitelock’s translation simply mention an agreement that the couple made, the majority of these written wills were from the later tenth century. In F E Harmer’s book *Select Historical Documents of the Ninth and Tenth Centuries*, the editor provided examples of more explicit agreements that the wife would not remarry. Wills numbered II and X, dated 835 AD and 889 AD respectively, specified that the wife not remarry. The stipulations about the remarriage of the woman in question, though mentioned in the law codes, seemed to be a matter of preference. Occasionally the wills stated that the woman owned these lands in perpetuity with no mention of remarriage.⁷²

⁷¹ *Laws of the Earliest English Kings*, trans. Attenborough, 55-57; *Anglo-Saxon Wills*, trans. Whitlock 138, 142, 41, 17, 19, there are other instances of lands husbands and wives bequeathed to the church for their souls and their burial, xi Pp 27, 29 xii P 41, xvi P43; *The Ward Bequest: Anglo-Saxon Writs*, Harmer, the two writs that left the land to the widow for her lifetime are Pp 121, 359, other examples of couples gifting religious houses for the benefit of their souls are Pp 189-90, 221, 340, 341, 342, 356, 358-9; *Worcestershire: Anglo-Saxon Charter Bounds*, trans. Hooke, 93, 103.

⁷² *Anglo-Saxon Wills*, trans. Whitelock, 69, 89; *Select English Historical Documents of the Ninth and Tenth Centuries*, ed. Harmer, 41, 47, 75, 88; *Anglo-Saxon Wills*, trans. Whitelock, 71.

These wills are an enlightening source for historians about the life of late Anglo-Saxon women. Despite the lack of specific laws within the Anglo-Saxon codes about women and inheritance and even counter to the existing laws, women were in possession of lands whether they married or not, they had the ability to retain their morning-gift even if they remarried, and even if they had no heirs. Another important point was the nature of the language used in their wills. The people of this era spoke their wills in public; these women were sophisticated and knowledgeable enough to know the form and the language for making wills. Furthermore, regardless of the wills of Ælfgar and Æthelflæd, Ælflæd understood that they could not grant familial lands away from her possession. She knew the customs of the land would not allow it.

Aside from the wills, historians can also gain insightful information through the writs of the king. The king used these writs to uphold the testaments of his citizens. Women appeared frequently in these writs as testators bequeathing their properties to monasteries. In one instance, Ælfwynn donated her own properties to the monastery where she had been a nun. There was also a writ where King Cnut bequeathed the St. Mildred's body and property to St. Augustine's church. It is abundantly clear that women received many gifts of property from their husbands and parents. There are a few instances where women received gifts from their sons. King Edward the Confessor provided his mother with property, which she then bequeathed to a monastery.⁷³

The writs denoted that the women owned these lands. There was no mention of *usufruct*. The clause "for her lifetime," which symbolizes *usufruct* rarely occurred in the writs. Occasionally, words to that effect were in the writs pertaining to the lands couples donated to the churches. Several of the writs stated "as fully and completely" as the female testator in question "possessed" the property. Some of the writs mentioned a caretaker of these properties. In one

⁷³ *The Ward Bequest*, trans. Harmer, 159, 347.

instance, King Edward mentioned land his mother owned, but in a later writ concerning the same property claimed “Ælfric, Witgar’s son, administered it on my mother’s behalf.” Ælfgifu Emma, Edward’s mother, appears in these writs in conjunction with several pieces of property, it is certainly possible that she needed a caretaker for some of her properties. The administrator of the queen’s property was not her guardian. Certainly, her sons, King Harthacnut and later King Edward the Confessor would have been more suitable for the guardian role. By this time, Ælfgifu Emma had been wife to two kings, and the mother of two kings, she may have served as her own guardian. Ælfgifu Emma held one property jointly with her son King Harthacnut and together they left the land to “the church of Ramsey.” This queen held numerous properties during her lifetime and this one piece of joint property should not symbolize *usufruct* or guardian-ship. The number of writs that dealt with women and full ownership that did not mention male caretakers were more numerous than those that did. Guardians were important for young wives in Anglo-Saxon England, but more mature women had a larger role in society and lesser need for a guardian. These women were well versed in the law and understood their property rights. This was apparent in the wills, but it was also apparent in the writs.⁷⁴

Women appear frequently in the writs as testators, but occasionally they appeared as witnesses. The Lady Edith, wife of King Edward the Confessor, was one of several that witnessed a sale of land to Bishop Giso. Between the years of 995 and 1002, a woman named Ælfthryth provided testimony in a disputed property case. She had been instrumental in persuading Bishop Æthelwold to allow her kin to retain property, which belonged to the bishop, for the lifetime of the couple. The couple seemingly had since passed away but their

⁷⁴ *The Ward Bequest*, trans. Harmer, 155, 165, 257.

descendants had not yet remitted the property to the bishop. Ælfthryth testified to the terms of the agreement and she was offended that her kin had not upheld this arrangement.⁷⁵

Queens also occasionally issued writs. The Lady Edith sent at least two. In one instance, she donated her own lands to Bishop Giso. She stated that Bishop Giso had ownership “as fully and completely as I myself possessed it, on the terms that we have agreed on.” She further sent a writ addressed to the hundred court bequeathing additional land to Bishop Giso for the benefit of her’s and her husband’s souls, and requesting that they resolve an issue about rent and dues that her tenant had not paid the past six years.⁷⁶

Through the laws and the wills it is abundantly clear that women inherited large amounts of property from their spouses and their families during the Germanic era. The majority of this land was limited through the practice of *usufruct*, but even *usufruct* allowed the women substantial financial security in the event that they were widowed. The loss of the practice of the bridal- price and the reintroduction of the Roman concept of dowry, in which the bride’s family provided the wedding inheritance was the main reason that women in the later middle-ages and early modern era were so bereft of property. The practice of primogeniture in which only one son might inherit that most of the Germans adopted as the availability of land declined also deprived women of their property rights. Germanic women from the fifth to the eleventh century were certainly in a better financial situation than their Roman predecessors and their Germanic granddaughters.

⁷⁵ Ibid 283, 396-7.

⁷⁶ *The Ward Bequest*, trans. Harmer, 284, 286.

CHAPTER 10

CONCLUSION

The Germanic law codes provided several safeguards to ensure that the Germanic qualities they valued remained intact for their women. These Germanic values which the laws reinforced were the protection of chastity, the importance of the kin group as a protective and policing force within the state, and the value of women within the family structure. Women were conduits of property, participated in raising the children, and as widows often became the *mundwald* of their daughters and daughters-in-laws. The laws provided women with property and limited the powers of her *mundwald*, while at the same time requiring that he ensure her safety, and these two issues were by far the most important in supplying women with at least a minimal amount of security and independence.

The laws protected the chastity of the women, punishing those that might rape them and discouraging their abduction. In many cases, the laws attempted to protect the honor of the family, but the underlying motivation does not change the fact that these laws helped ensure the safety of Germanic women. The laws attempted to provide at least a minimal amount of protection for those women of slave status. These laws often reflected the value of the slave or servant to her master, but, whatever the reason, the law dissuaded many from sexually abusing these women. Some of the compensations that these laws imposed went to the guardian of the victim. Many of these laws also protected women from seduction. The implication that women were susceptible to the amorous attention of men is evident in the law, but it is not unique to Germanic culture.

Most of the Germanic laws also protected women from general abuses. Men were fined for making false accusations. Reputation was an important source for determining guilt in

Germanic society and false accusations of witchcraft and prostitution might have harmful repercussions for both the woman and her kin. Some of the laws punished a man for cutting a woman's hair, because this might cause shame for her and her family. There were also Germanic laws protecting women from general violence.

The Germanic guardian is an important issue in studying the rights of these women, because the *mundwald* had a large amount of control over the women around them. Certainly, the potential for abuse did exist in certain areas, in particular the land of the Franks, in which the powers of the guardian were rarely even mentioned, and the lands of the Burgundians which were always very vague in regard to female issues. In most areas, however, one of two things occurred. Either the woman was released from the power of the guardian after her first widowhood or the laws restricted the powers of her guardian. Lombard law did not allow guardians to inflict physical or sexual harm upon their wards, nor were they permitted in any way to compromise their virtue. The law prevented Visigothic brothers from forcing their sister into behavior that might compromise her inheritance rights. Furthermore, the law expected these guardians to file charges and collect compensation for abuses their wards suffered. In a way, guardians were advocates for the women, ensuring that the laws created were followed.

The Lombards and the Visigoths regulated the amount of property that the *mundwald* might gain from his ward. Generally, if the *mundwald* was not a member of the woman's immediate kin group or her husband, he received only the value of her *mundium*. This protected women from in-laws who refused to release her to another marriage in order to keep her property. The motivation behind the guardianship laws are questionable in many instances, the protection of the wards which the laws instituted are suspect. Lawmakers might have been more concerned about the property the women possessed than the women themselves, but the laws of

the Lombards requiring that these women be dressed appropriately to their status, and providing the women with the right to select their own guardians, in cases of abuse, help improve the situation for women during the Germanic era.

Beyond protection from abuse, the Germanic lawmakers also provided their women with a number of inheritance rights. Women received morning-gifts, dowers, marriage ornaments, and other important forms of property at the time of their marriage from their families and their groom. The morning-gift provided the women with financial security in the event that her husband predeceased her and in many cases, the widow retained this gift even if she re-married. The dower served the same purpose, though in many cases, she was expected to remain a widow in order to keep her dower. Marriage ornaments were a unique family heirlooms that passed through the women from generation to generation. Furthermore, the majority of the codes allowed women to inherit a portion of their deceased husband's property at the time of his death, if she chose not to re-marry. All of these gifts provided the woman with a certain amount of independence and security for her old age.

Women also received property from their families. Though some of the Germanic codes such as that of the Salian Franks restricted their women from inheriting the familial lands (*terra Salica*), and most specified that women inherited in the absence of sons, this does not mean that the women did not acquire a large amounts of land. In fact, as long as the Germans possessed an excess of land and a miniscule population, women inherited from a variety of sources. It was not until property became scarce that the laws regulating women's inheritances began to be restricted. In France, primogeniture was eventually adopted. The practice of the morning-gift and the bridal-price disappeared. Soon instead of obtaining valuable property for their family

through the marriage of a daughter, father's were forced to part with some of their lands in order to obtain a spouse for their children.

Most of the property that women possessed either through marriage, or their families, was held in *usufruct*. The woman had the right to enjoy the income and profits derived from the land, but she was not allowed to sell, or dispose of it in any other way. *Usufruct* was common for most familial lands, regardless of the gender of the person possessing it. In situations where a childless widow held lands from her spouse, ownership reverted to his kin at the time of her death. The laws and custom both limited the places in which people might alienate their lands. While most of the laws allowed people to donate property and other wealth to the Church, it was a very limited amount.

Christianity affected women in a minimal way. In incest laws, the Catholic Church expanded incest to the seventh degree of the kin. In marriage, the Catholic Church placed a greater emphasis on the pair remaining married. Perhaps, the Church also encouraged the family to gain the consent of the woman in question, but even this issue is unclear. The Visigoths, whose laws the clergy often wrote, made the consent of the woman seem unnecessary. Once the parents of the bride and groom had contracted the marriage the woman was not allowed out of the contract regardless of her feelings. Hopefully, her parents obtained her consent prior to making the arrangements, but the Visigoths created several laws implying that she could not get out of such an arrangement. Eighth-century Lombard law did require the woman's consent to marriage and tenth-century Anglo-Saxons did the same. In the face of these conflicting examples, it is difficult to determine how much influence the Catholic Church had over the institution of marriage in the Germanic era. Lawmakers focused on the concerns of the state and

followed the desires of the Catholic Church when it did not directly conflict with those concerns.¹

Other than these changes, the majority of the influence the Catholic Church possessed was verbal and not real. For instance, the Franks ceased to refer to the theft of a slave in the same sentence as the theft of a mare, but the fine for the crime remained unchanged. The punishment that women faced for committing the crime of incest did not really change with the increasing prominence of the Church, though the number of people with whom she might commit such a crime did.²

To be fair there were many things that the Catholic Church might have improved in the lives of women. The monastery allowed women an option outside of marriage. Church laws frowned on the concept of polygamy and concubinage. Concubinage and polygamy however were never probable options among the majority of Germans anyway. The availability of such women was generally restricted to the wealthy few.

Of the Germanic codes, the one that provided the most widespread rights for its women were the Lombards. Lombard laws were the most specific in the crimes committed against women and the most restrictive in the guardians treatment. The woman's consent to marriage was always required unless, her immediate kin planned the marriage. No one could alienate her property or force her into a sale. The Lombard laws were also the most sophisticated. The majority of the areas in which they settled were urban and their conception of the laws reflected the views of the city. The tremendous number of laws were awe inspiring. King Rothair had

¹ *The Visigothic Code*, trans. S. P. Scott (Littleton, CO: Fred B. Rothman & Co., 1982), 95; *Lombard Laws*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1976), 148-9; Dorothy Whitelock, "Concerning the Betrothal of a Woman," in *English Historical Documents Vol. 1 English Historical Documents, 500-1042*, ed. David Douglas (New York: Oxford University Press, 1955 p. 431), 431.

² *The Laws of the Salian Franks*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1991), 203.

over 300 laws created during his reign, and Liutprand reviewed and reissued many of these. This was the reason these laws were so specific. Furthermore, though women lost some of their compensation for fighting, warrior women could still exist in Lombard Italy. The law treated these women as responsible beings that committed crimes, and accepted compensations for crimes that they suffered. There seems to be more independence within Lombard territory than in other Germanic areas.

The Burgundians had the most repressive provisions concerning women of all of the Germanic codes. They were the least explicit in defining their crimes. Furthermore, the law that prevented women from obtaining compensation if she left her courtyard in order to fight, this is too constrictive. How hard might it be for a man to simply say that she had come to fight? It seems that the guardian might keep her safest by restricting her to her home. The Burgundians punished their women for requesting a divorce, and the law explicitly stated that her husband “has power over her.” The Burgundian laws are quite ominous and unfriendly toward women.³

Life for women during the Germanic era varied from area to area, but there were several similarities. All of the Germanic codes provided a woman with a *mundwald* at least until she reached a certain age of maturity. For instance, if she entered her third marriage, she was no longer reliant on her *mundwald* for support and approval. The Germanic codes also ensured that women received property, and other valuables necessary to support them in the event that they were widowed. All of the Germanic codes created a series of compensations as punishment for those that harmed women. There were fines for rape, abduction, physical abuses, and others. These compensations also provided incentives for guardians to substitute monetary, instead of physical, vengeance, thus creating a more stable environment for women to live in. All of these

³ *The Burgundian Code*, trans. Katherine Fischer Drew (Philadelphia: University of Pennsylvania Press, 1949), 85, 45-6.

combined awarded women a life of minimal financial and physical safety. The environment these laws created also provided women with stability. Life in Germanic society in the fifth century did not drastically differ from that of the ninth and tenth.

Many of the safety features of the Germanic laws disappeared with re-emergence of Roman Laws. Women were disinherited from familial lands in exchange for cash settlements which did not ensure the same amount of stability that property did. The system of compensations were exchanged for state inflicted physical punishment, which also deprived women of the satisfaction of vengeance. Crimes against women became crimes against the state. They were less personally involved in the trial and punishment phase, though they still suffered the same affects from the crime. These are merely a few of the reasons why women were materially and emotionally better off during the Germanic era from 400-1000 AD.

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