

13: Law and Gender



Key Questions

- ▶ What are the roots of, and principles underlying, Anglo-Saxon law?
- ▶ What function did the royal law codes serve?
- ▶ What can other legal documents tell us about Anglo-Saxon England?
- ▶ What do legal texts tell us about the role of women in society?
- ▶ How are women typecast in heroic and elegiac literature?
- ▶ What do literary texts tell us about Anglo-Saxon notions of gender?

Part I: Law

Part II: Gendered Law

Part III: Gendered Literature

The Roots of Anglo-Saxon Law

Feud

A legal principle hinging on kinship and the compensation of injured parties, as opposed to fines payable to the authorities

Njáls saga (s. XIII)

“ There was a man named Þórðr. He was called *leysingjason* (“freedmansson”). His father was called Sigtryggr; he had been Ásgerðr’s freedman, and he had drowned in the river Markarfljót. That’s why Þórðr had been with Njáll since. [...]

Bergþóra came to speak with Þórðr *leysingjason*: ‘You will go and kill Hallgerðr’s kinsman Brynjólfr.’ [...]

Brynjólfr rode at Þórðr and struck at him. Þórðr struck back with his axe and cleft the handle in two just above Brynjólfr’s hand, and immediately struck a second time and it hit him right in the sternum and went right in. Then Brynjólfr fell off his horse and was dead right away. Þórðr looked up Hallgerðr’s shepherd and announced the death by his hand and said where the body was and asked him to tell Hallgerðr of the killing.

(Ch. 43) ”

Njáls saga (s. XIII)

“ Now news of this came to the Assembly, and Njáll had them tell it to him three times and then said, ‘More men have now become killers than I expected.’

[...]

Then they went to see Gunnarr and told him of the killing. Gunnarr said that it was little loss, ‘but nevertheless he was a free man.’

Njáll offered to settle right away. Gunnarr agreed and asked that he himself set the terms. He determined the price immediately and set it at a hundred silver-pieces. Njáll paid the money at once and with that it was settled. (Ch. 40) ”

Wergeld

(also spelled *wergild*): the compensation owed the victim's relatives in case of an unlawful killing. The amount depended on the victim's social rank.

Wergeld

Law of Ine (c. 690)

- ▶ (Free man): 200 shillings
- ▶ (Lesser nobleman): 600 shillings
- ▶ (Nobleman): 1200 shillings

Law of the Mercians (s. XIⁱⁿ)

- ▶ *ceorl*: 200 shillings
- ▶ *þegn*: 1200 shillings
- ▶ King: 7200 shilling
= 30,000 *sceatta* = £120

Law of Hlothhere and Eadric (s. VII^{2/2})

- ▶ Free man: 100 shillings
- ▶ Nobleman: 300 shillings

Law of the Northmen (s. XI)

- ▶ *ceorl*: 266 *þrymsas*
- ▶ *þegn*/priest: 2,000 *þrymsas*
- ▶ *hold*: 4,000 *þrymsas*
- ▶ *ealdorman*/bishop: 8,000 *þrymsas*
- ▶ *æpeling*/archbishop: 15,000 *þrymsas*
- ▶ King: 30,000 *þrymsas*

Wergeld

“
Whoever takes part in a large-scale raiding party, let him
redeem himself by his wergeld or clear himself by [an oath in
the value of] his wer[geld]. (Ine 15) ”

“
If someone kills a pregnant woman, let him compensate the
woman fully, and the child by half the wergeld on the father's
side. (Alfred-Ine 9) ”

Law of Æthelberht (c. 600): Selected Readings

“ If a person sleeps with one of the king’s maids, let him pay a compensation of 50 shillings. If she is a grinding-slave, 25 shillings. The third [in rank]: 12 shillings. (10) ”

Law of Æthelberht (c. 600): Selected Readings

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“ If a free person sleeps with the wife of a free person, let him pay him his wergeld and hire another woman with his own money and lead her home to the other person. (31) ”

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“ If a person injures someone’s sexual organ, let him compensate them with three times the wergeld. (64) ”

The Law of Æthelberht of Kent (c. 600)

- ▶ Opens with laws addressing crimes against the Church
- ▶ Remainder largely untouched by Christianity?

The Roots of Anglo-Saxon Law

Lex Salica

- ▶ Issued by King Clovis of Neustria (r. 481–511)
- ▶ Based on feud; intervention by authorities a last resort
- ▶ Selective: focuses on the adjustment of a Frankish population to life in a Gallo-Roman province
- ▶ Most Frankish law remained unwritten
- ▶ “The Franks, then, were not so much creating law for subject peoples as coaching them in the value of having written law. As the Bavarian prologue forcefully implied, it was a quintessentially Roman policy.”
(Wormald, *The Making of English Law*, 44)

Folk law

- ▶ Stored in communal memory
- ▶ Orally transmitted
- ▶ Variation and flux

The Nature of Law

Royal Law Codes

- ▶ Prescriptive
- ▶ Selective
- ▶ Occasionally inconsistent
- ▶ Often reiterate preexisting codes

Charters: Diplomas, Writs, Testaments

- ▶ Descriptive

Charters

Diploma

Legal record of a royal grant of land or privileges to a religious house

Charter

Early sense = diploma; came to refer more generally to grants and leases including other kinds and to laymen as well as to religious houses

Writ

Short, sealed letter intended for reading out in legal gatherings, announcing e.g. changes in land ownership

Chirograph

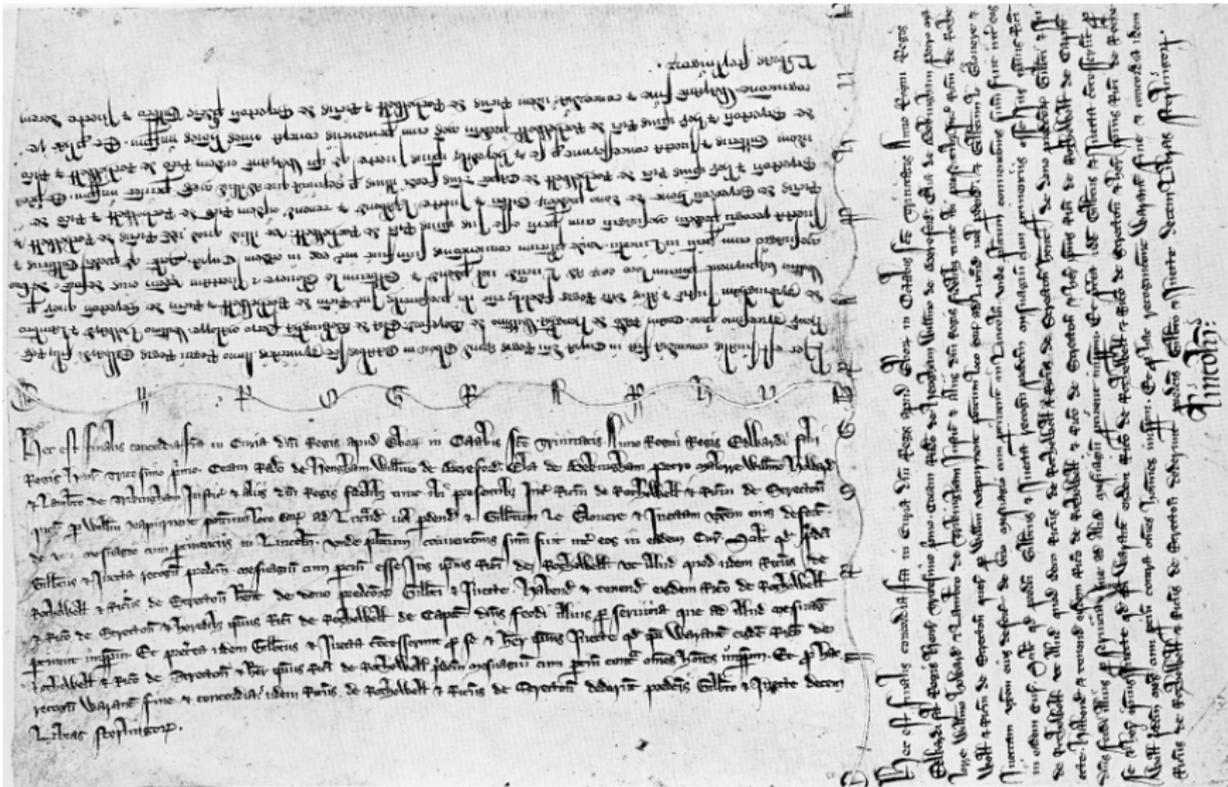


Figure: Chirograph (public domain / [Wikimedia Commons](#))

Part I: Law

Part II: Gendered Law

Part III: Gendered Literature

Women in Prescriptive Law: *Be wifmannes geweddunge* (s. X/XI)

“

Æfter ðam is witanne, (1) hwam ðæt fosterlean gebyrige;
weddige se brydguma eft þæs; 7 hit aborgian his frynd.

Ðonne syððan cyþe se brydguma, (2) hwæs he hire geunge, wið
þam ðet heo his willan geceose, 7 (3) hwæs he hire geunge, gif
heo læng sy ðonne he. Gif hit swa geforword bið, þonne is riht,
ðæt heo sy **healfes yrfes wyrðe 7 ealles, gif hy cild gemæne
habban**, bute heo eft wær ceose.

”

Women in Prescriptive Law: *Be wifmannes geweddunge* (s. X/XI)

“

After that, it has to be clarified (1) to whom the maintenance payment belongs. Let the groom pledge this, too, and let his friends stand surety for it.

Then let the groom afterwards make known (2) what he will grant her in return for her agreeing with his will, and (3) what he will grant her, if she lives longer than he. If it is settled thus, then it is right, that **she is deserving of half [his] property, and of all of it, if they have a child together**, unless she choose a man again.

”

Women in Prescriptive Law: Concepts

Marriage Transactions

1. **Maintenance payment (OE *fosterlean*):** Sum paid by the groom, presumably to compensate the bride's guardian for having kept her thus far
2. **Bride price, cf. OE *morgengifu*:** Sum paid by the groom to the bride, apparently at her immediate disposal
3. **Dower:** Property of the groom's that becomes the bride's on his passing
0. **Dowry:** Property brought into the marriage by the bride; effectively ~~her share of her father's inheritance~~

All these were to be agreed upon before the marriage was concluded.

Other

- ▶ ***mund*:** A dependant's "protection" or "guardianship"; in law, refers to the sum payable on violation of said guardianship

Women in the Royal Law Codes: Æthelberht (c. 600)

- 74 Let the compensation for an unmarried woman be that of a freeman.
- 75 For violation of the guardianship of widows of the best, i.e. noble class, compensate with 50 shillings.
- 75.1 Of the second class, 20 shillings; of the third, 12 shillings; of the fourth, six shillings.
- 76 If one takes an *unagen* widow, let twice the *mund* be paid.
- 77 If one purchases an unmarried woman, let the contract stand if it was done without guile.
- 77.1 If with guile, let her be brought back home, and let him be given his money back.

Women in the Royal Law Codes: Æthelberht (c. 600)

- 78 If she gives birth to a live child, let her have half the money, if the man dies first.
- 79 If she wants to live with her children, let her have half the money.
- 80 If [she] wants to have a husband, [let her have] one child[’s share of the money].
- 81 If she does not bear a child, let her father’s relatives have the money and the morning gift.
- 82 If one takes an unmarried woman by force, let him pay 50 shillings to her owner, and then buy the owner’s consent.
- 83 If she is financially engaged to another man, let him pay 20 shillings’ compensation.
- 84 If she is brought back (*or* assaulted?), 35 shillings, and 15 shillings to the king.
- 85 If one lies with a servant’s wife during his lifetime, let it be doubly compensated.

Women in the Royal Law Codes: Alfred (c. 890)

- 10 If someone lies with the wife of a man worth 1200 shillings, let him compensate the man with 120 shillings; let him compensate a man worth 600 shillings with 120 shillings; let him compensate a peasant with 40 shillings.
- 11 If someone touches the breasts of an unmarried peasant-girl, let him compensate her with five shillings.
 - 11.1 If he throws her down and does not sleep with her, let him compensate her with ten shillings.
 - 11.2 If he sleeps with her, let him compensate her with 60 shillings.
 - 11.3 If another man has lain with her previously, then let half the compensation be incumbent on him.
 - 11.4 If she is accused, let her vindicate herself with [an oath worth] 60 hides, or lose half the compensation.
 - 11.5 If this happens to a woman of noble birth, let the compensation be increased according to [the rank of] the man.

Women in the Royal Law Codes: V Æthelred and II Cnut

V Æthelred (1008)

- 21 Let every widow of legal conduct be in God's and the King's peace.
- 21.1 And let her be without a man for twelve months; then let her choose what she herself wants.

II Cnut (c. 1023)

- 73a And if she chooses a man within a year's time, then let her give up her morning gift and all the property that she had through the first husband, and let her next of kin be given the land and property that she had owned.
- 74 And let no-one force a wife or unmarried woman to [marry] one who displeases her, nor let her be given in return for money, unless he wants to give something of his own will.

The Double Standard of II Cnut (c. 1023)

- 53 If a wife commits adultery with another man during the lifetime of her husband and it becomes openly known, let her come to public shame, and let the rightful husband have all that she had owned, and let her lose her nose and ears.
- 54 If a married man commits adultery by his own will, let him give her up and do penance for himself before God and men.

Complicity

Ine (c. 690)

- 57 If a man steals property and brings it into his house, and he is caught, then he is guilty for his part excepting only the wife, because she has to obey her superior (*ealdor*); if she dares announce under oath that she has not partaken of the stolen property, let a third of her property be taken away.

II Cnut (c. 1023)

- 76 If any man bring a stolen object home to his house and he is found out, it is right for him [the rightful owner] to have what he was after [in going through the thief's house].
- 76.1 And unless it has been brought into the wife's locker, she is in the clear.
- 76.1a But she is to guard the key, i.e. her store-room and her chest and her case; if anything is brought into it, she is guilty.

Women in Prescriptive Law: Summing Up

Kent c. 600 (Æthelberht)

- ▶ Seemingly always under guardianship
- ▶ Automatically complicit in her husband's theft

Greater Wessex c. 890 (Alfred)

- ▶ Compensation payable by male adulterers calculated by the wergeld of, and payable to, the wronged husband
- ▶ Compensation of unmarried women payable to the victim

Nationwide c. 1023 (II Cnut)

- ▶ Responsible for parts of the house and hence only complicit if the stolen goods are found there
- ▶ Severe penalties on female adultery, mild penalties on male adultery

Women in the Charters: Highlights

- ▶ Whereas law codes appear mostly to address peasants, charters concern the nobility
- ▶ In this category, we find that women held, received, and passed on property: first as abbesses, later as lay individuals

Part I: Law

Part II: Gendered Law

Part III: Gendered Literature

Female Typecasting in Old Germanic Literature

Diverse Germanic Traditions

- ▶ Hostess
- ▶ Peaceweaver
- ▶ Supernatural creature
- ▶ Inciter
- ▶ Witch

Beowulf

- ▶ Hostess
- ▶ Peaceweaver
- ▶ Monster

The Inciter

“ She went to the far end of the room, unlocked her chest, and took out the cloak that Flosi had given Hǫskuldr, the one in which he had been killed and that she had saved, blood and all. She came back with it and silently walked up to Flosi. He had finished eating and the tables had been cleared. Hildigunnr threw the cloak over his shoulders, and the bits of blood showered all over him. Then she said: “This cloak, Flosi, you gave to Hǫskuldr, and now I give it back to you: it is the cloak he was wearing when he was killed. In the name of God and all good men, I charge you by all the powers of your Christ, and by your manhood and your valor, to avenge all the wounds on Hǫskuldr’s body in death — or else be held in contempt by all men.’ Flosi thrust the cloak back into her arms, saying: ‘You fiend! What you want us to do will be the ruin of us! Cold are the counsels of women!’

(Trans. Anderson and Swenson, “Hildigunnr’s Lament,” 16) ”

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Grendel's Mother: Characterization

“

1255

It was clearly seen,
obvious to all men, that an avenger still
lived on after that enemy for a long time
after that grim battle — Grendel's mother,
monster-woman, remembered her misery

[...]

1275

He went away wretched,
deprived of joy, to find his place of death,
mankind's foe. But his mother still
greedy, grim-minded, wanted to go
on her sorrowful journey to avenge her son's death.

(Trans. Liuzza, *Beowulf*)

”

Grendel's Mother: Appearance

“ I heard the inhabitants of the land say, my people and hall-counsellors, that they saw two such large wanderers of the borderland, foreign creatures, inhabiting the marshes. One of them had the likeness of a woman, as far as they could tell; the other vile creature walked the paths of exile in the form of a man, except that he was taller than any other man. The inhabitants of the land named him Grendel in times past. They do not know of a father, whether any mysterious spirit was born before him. (ll. 1345-57) ”

Grendel's Mother: Impression

“

She reached Heorot, where the Ring-Danes
1280 slept throughout the building; sudden turnabout
came to men, when Grendel's mother
broke into the hall. The horror was less
by as much as a maiden's strength,
a woman's warfare, is less than an armed man's
1285 when a bloodstained blade, its edges strong,
hammer-forged sword, slices through
the boar-image on the helmet opposite.

(Trans. Liuzza, *Beowulf*)

”

Grendel's Mother: Gender Transgression

“

Grendles modor,
ides aglæcwif, yrmþe gemunde,
1260 se þe wætereges an wunian scolde

”

“

1390 Aris, rices weard, uton hraþe feran,
Grendles magan gang sceawian.
Ic hit þe gehate, no he on helm losað,
ne on foldan fæþm ne on fyrgeholt
ne on gyfenes grund, ga þær he wille.

”

“

1497 Sona þæt onfunde, se ðe floda begong

”

Nonmonstrous Women of *Beowulf*

Hostesses

- ▶ Wealhtheow of Denmark
- ▶ Hygd of the Geats
- ▶ Freowaru of the Geats

Peaceweavers

- ▶ Hildeburh of Denmark
- ▶ Freowaru of the Geats

Finnsburh Episode

1. (Presumably,) there is some tension between Hnæf's Danes and Finn's Frisians.
2. (Therefore,) Hnæf gives his sister Hildeburh to Finn in marriage to secure the peace.
3. (While visiting his sister,) the Danes are attacked (by "Jutes"?).
4. Hildeburh's brothers and sons are killed, presumably on opposing sides.
5. Finn's forces are so weakened that he is forced to agree to a truce.
6. The surviving Danes, led by Hengest, stay the winter with Finn in truce.
7. As soon as spring comes, the Danes remember their grievances and kill Finn.
8. The Danes carry Finn's wealth and Hildeburh back to Denmark.

(ll. 1063–1159)

Finnsburh Episode

“

1071 Hildeburh, indeed, had no need to praise
the good faith of the Jutes. Guiltless, she was
deprived of her dear ones in the shieldplay,
1074 her sons and brothers — sent forth to their fate,
dispatched by spears; she was a sad lady!

(Trans. Liuzza, *Beowulf*)

”

Finnsburh Episode

“

Then Hildeburh commanded at Hnæf's pyre
1115 that her own son be consigned to the flames
to be burnt, flesh and bone, placed on the pyre
at his uncle's shoulder; the lady sang
a sad lament. The warrior ascended;
to the clouds coiled the mighty funeral fire,
1120 and roared before their mound; their heads melted,
their gashes burst open and spurted blood,
the deadly body-bites. The flame devoured,
most greedy spirit, those whom war destroyed
of both peoples — their glory departed.

1125

(Trans. Liuzza, *Beowulf*)

”

Elegy

Men

- ▶ In motion
- ▶ Time-travel
- ▶ → Spiritual development

Women

- ▶ Static
- ▶ Passive
- ▶ → Flat characters

(Klein, “Gender and the Nature of Exile in Old English Elegies”)

Bibliography I

- Anderson, Sarah M., and Karen Swenson, eds. "Hildigunnr's Lament." In *Cold Counsel: Women in Old Norse Literature and Mythology*, 15–54. New York: Routledge, 2002.
- Hough, Carole. "Legal and Documentary Writings." In *A Companion to Anglo-Saxon Literature*, edited by Phillip Pulsiano and Elaine Treharne, 170–187. Malden, MA: Blackwell, 2008.
- Klein, Stacy S. "Gender and the Nature of Exile in Old English Elegies." In *A Place to Believe in: Locating Medieval Landscapes*, edited by Clare A. Lee and Gillian R. Overing, 113–31. University Park, PA: Pennsylvania State University Press, 2006.
- Klinck, Anne L. "Anglo-Saxon Women and the Law." *Journal of Medieval History* 8 (1982): 107–121.

Bibliography II

- Klinck, Anne L. "Female Characterisation in Old English Poetry and the Growth of Psychological Realism: *Genesis B* and *Christ I*." *Neophilologus* 63, no. 4 (1979): 597–610.
- Leyser, Henrietta. *Medieval Women: A Social History of Women in England 450–1500*. London: Phoenix, 1995.
- Liuzza, Roy M., trans. *Beowulf: A New Verse Translation*. Toronto: Broadview, 2000.
- McCarthy, Conor, trans. *Love, Sex and Marriage in the Middle Ages: A Sourcebook*. London and New York: Routledge, 2004.
- Porter, Dorothy Carr. "The Social Centrality of Women in *Beowulf*: A New Context." *The Heroic Age* 5 (2002 for 2001). Accessed February 3, 2016. <http://www.heroicage.org/issues/5/porter1.html>.

Bibliography III

Renteln, Alison Dundes, and Alan Dundes, eds. *Folk Law: Essays in the Theory and Practice of lex non scripta*. 2 vols. Madison, WI: University of Wisconsin Press, 1994.

Tollerton, Linda. *Wills and Will-Making in Anglo-Saxon England*. Woodbridge: York Medieval, 2011.

Wormald, Patrick. *The First Code of English Law*. Canterbury: Canterbury Commemoration Society, 2005.

———. *The Making of English Law: King Alfred to the Twelfth Century*. Vol. 1. Malden, MA: Blackwell, 1999.



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