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I. NOTES ON LOMBARD INSTITUTIONS

II. LOMBARD LAWS AND ANGLO-SAXON DOOMS

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INTRODUCTION

The present study is an attempt to analyze some of the institutions revealed in the *Leges Langobardorum*, a barbarian law code issued by the Lombard kings in the seventh and eighth centuries. At the time the first laws were issued by King Rothair in 643, the Lombards had been living in the northern part of the Italian peninsula for somewhat less than a hundred years. During this time, they had conquered the territory from its previous Byzantine rulers and had established themselves on the land. In a sense they constituted a Germanic aristocracy ruling over a subject Italo-Roman population. But that not all members of the ruling “aristocracy” were true aristocrats is clearly evident in the institutions of the people.

The following attempt to trace some of these institutions is concerned only with the Lombard population—it makes no attempt to determine the status or the institutions of the Italo-Romans. Even though this may be somewhat undesirable, it is nonetheless necessary since the Lombard laws were issued for the use of the Lombards only and make only indirect reference to the Roman part of the population with its own legal traditions.

The *Lombard Code* (the *Leges Langobardorum*) was issued in several parts. The first issue was an attempt at codification of the previously unwritten customary law; it was issued by King Rothair in 643. Containing 388 titles, it is frequently referred to as Rothair’s *Edict*. A brief supplement of nine titles was added by King Grimwald in 668, and a long series of supplements (153 laws) was issued in the years between 713 and 735 by King Liutprand. Then finally brief additions were made by King Ratchis in 745 and 746, and by King Aistulf in 750 and 755.
The first chapter of this study is an attempt to analyze the Lombard legal and judicial system. The second is an attempt to demonstrate the highly personal nature of most criminal actions among this people and to consider in some detail the most important of these criminal actions and the means whereby the Lombards strove to maintain peace and assure justice. The third chapter considers the relationship between state and church in the Lombard kingdom, and traces with as much detail as is possible from the laws the changes which occur in this relationship as the result of the gradual conversion of the Lombards from the Arian to the Roman Catholic form of Christianity. The fourth chapter takes up the subject of family institutions and deals with such matters as the family, marriage, inheritance, and so forth from the legal point of view.

The last chapter in this study deals with a subject which is somewhat removed from that of the first four chapters and it has consequently been labeled Section II of the study rather than Chapter 5. It compares some of the institutions described in the earlier section of the study with corresponding institutions found among the Anglo-Saxons of England. Although not definitive in any way, nonetheless this section demonstrates clearly that a profitable intensive comparison might well some day be undertaken with the end in view to prove or disprove the frequently met statement that there is an especially close relationship between the laws of the Lombards and those of the Anglo-Saxons.

The references to the Lombard Laws contained in this study are to the edition of the laws prepared by F. Bluhme, *Leges Langobardorum*, for the legal series of the *Monumenta Germaniae Historica*.

The best edition of the *Historia Langobardorum*, the only reliable contemporary history, by Paul the Deacon, is also that in the *Monumenta*. An Eng-
lish version of Paul’s History has been prepared by William Dudley Foulke and published in the University of Pennsylvania Translations and Reprints Series, but no English version of the laws is as yet available. A German translation did, however, appear a few years ago, by Franz Beyerle, a well-known German legal scholar. The translations found in the text and footnotes have been prepared by the author on the basis of Bluhme’s edition.
1. NOTES ON LOMBARD INSTITUTIONS
THE LOMBARD LEGAL AND JUDICIAL SYSTEM

The Lombards had a well-developed body of laws by the seventh century, and they also had a well-organized judicial hierarchy to apply these laws. But the concept of enforcing the laws by the state was not far advanced and in general wrong-doers could be made amenable to the laws only by the institution of an action by a private individual (except in those cases where the king himself was an injured party—and even in “royal” cases the king or his official instituted the action much as a private individual). But once suit was brought, the Lombard system assured strict justice in keeping with the laws.

In the Lombard Leges there is no clear distinction between public and private law. There is likewise as yet no conception of criminal law in a technical sense, although the laws do seem to represent a stage in its development. Minute provisions are made for all sorts of personal injuries and damages, but it would not seem that suits to redress such grievances were brought by the state in normal circumstances. There is some evidence, however, that the state is becoming stronger, for in several instances the initiative in criminal prosecution (in non-royal matters) is taken by the state.

Judicial officials.—The various local representatives of the Lombard king had charge of the administration of justice. The iudex or judge was the chief dispenser of justice beneath the king, and the judge presided over a judicial district which was called civitas or iudicaria, depending upon the context. Beneath the judge was an official called the sculdahis
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who presided over a subdivision of the civitas. The name of this subordinate region does not appear in the Lombard Leges but several writers have used the term sculdascia to refer to it. Beneath the sculdahis was another official known by a number of different terms. This was the centinus, the deganus, or the locopositus, all of which terms seem interchangeable with the possible exception of the last, probably a more general term used to apply to any official beneath the rank of iudex. Here also the term applied to the territory presided over by the deganus or centinus is not mentioned in the Leges Langobardorum, but if we concentrate upon the name centinus we might hazard the guess that the region over which he presided was called something like "hundred." So we have here a definite judicial hierarchy, beginning with the deganus or centinus at the bottom and rising through the ranks of the sculdahis to the judge and finally from the judge to the king. To these members of the regular judicial hierarchy might be added the name of the keeper of the forest, the saltarius, whose functions, however, were probably of a police nature and not judicial.

Composition of the courts.—The Lombard court system resembles the Roman but the actual procedure followed in determining judgment was Germanic. The Lombards did not have courts attended by the freemen of the community sitting in the capacity of doomsmen: the Lombard courts were presided over by a royal magistrate who rendered decisions in his own right in accordance with accepted custom as codified in the Leges Langobardorum. That the determination of suits was at the discretion of the judges and not of some more expanded court attended by the men of the community seems evident from the fact that the Lombard lawgivers very explicitly state that they are issuing their laws
in order that their judges will no longer be in doubt with regard to the settlement of a certain type of case, and appeal was allowed to the king only when the aggrieved party felt that the judge of the region where he resided had failed to render a decision to his suit in accordance with justice. And if the king should decide that the appellant was justified in protesting the judge's decision, it was the judge and not some more expanded court who had to pay a composition (or fine) to the king. Our conclusion is therefore that if the Lombard freeman did attend the court held daily in his civitas by the judge, he did it simply in a passive capacity as an auditor, or in a more active capacity as an oathtaker (sacramentalis) or surety (fideiusssor).

The lowest royal officials, the degani or centini, do not seem to have had the power to render judicial decisions. Perhaps they performed police duties or acted as agents (missi) of the judge or sculdahis when such were necessary. The region presided over by the judge, however, was broken up into a number of units, each presided over by a sculdahis. Judicial suits arising within this local unit were to be brought before the court of the sculdahis. If it were a relatively minor matter, the case would be decided then and there by the sculdahis. If, however, the sculdahis decided that the matter was out of his jurisdiction, the case was referred to the judge; and if the case were so serious that even the judge hesitated to render a decision, the parties to the suit were then referred to the king. There is no hint in the Laws as to what constituted relatively minor or more serious cases—perhaps this was left up to the discretion of the officials.

The Lombards employed methods of proof which were essentially Germanic. Whereas among the Romans the burden of proof rested with the plaintiff, rather than with the
defendant, among the Lombards proof rested with the defendant. The means of arriving at a decision ordinarily rested on that type of "proof" known as compurgation. No one was present to hear the prescribed oaths except the judicial official, the parties to the suit, and the oathtakers themselves. As the laws establish a definite number of oathtakers in specific kinds of cases, there was evidently no need for a body of "doomsmen," and the judge himself was considered sufficient to decide when the oath was perfect or imperfect.¹⁰

By the middle of the eighth century, it would seem that this centralized judicial system under royal control was beginning to break down with the spread of a system of personal lordship. Private courts had come into existence and their jurisdiction challenged that of the royal courts.¹¹ Such a development did not take place with the royal approval, however, and the Lombard lawgiver definitely tries to circumvent such a change.

Procedure.—The Lombards used two methods of judicial proof: that of compurgation and that of trial by combat. The proof by compurgation was the more usual method of procedure, although in certain more serious cases trial by combat seems to have been resorted to either because of the nature of the case or at the request of the accusing party. That the method of proof by combat was passing out of favor and was somewhat distrusted as a means of judicial proof is indicated by several of the laws of Rothair and of Liutprand.¹²

(1) Compurgation.—The method of compurgation followed by the Lombards resembled that in use among the other barbarians. It was a method of proof or of defense which rested not upon the presentation of material witnesses but upon one's personal standing in the community. Thus de-
pending on reputation and rank and upon the seriousness of the accusation, one had to counteract the charge against him with a certain number of oathtakers or oathhelpers \((sacramentales)\) consisting of those who knew the defendant best—either his near relatives or fellow freemen \((conliberti)\) of the community, men of good reputation. The principle seems to have been that if these oathtakers, who were known to be men of integrity in the community, were willing to offer oath for the defendant, then the oathtaker must be convinced that the accused was not guilty of the charge, and therefore the community as a whole (represented by the king's official, the judge) should be willing to accept that decision also.

The word used for such an oathtaker or oathhelper is \(sacramentalis\) although occasionally it is replaced by \(fideiusssor\), perhaps best translated as surety (guarantor, warrantor). This interchange of terms seems to arise from the fact that the methods of compurgation and surety were combined in certain civil suits requiring the giving and taking of pledges or guarantees. As will be shown later, the party guaranteeing the debt or pledge or providing the pledge himself, was the \(fideiusssor\). Aside from offering such a surety, the party accused must bring the case to settlement according to the procedure of compurgation: that is, he must offer one or more oathtakers \((sacramentales)\) who were willing to take oath to the effect that the party accused did or did not owe the debt in question. In some cases the surety \((fideiusssor)\) and the oathtaker \((sacramentalis)\) were evidently the same person, thus leading to the confusion of terms.

Here we will consider only the system of compurgation. This system is most fully revealed in the Edict of Rothair, although Grimwald adds one law which is supplementary, and Liutprand adds a few further laws which simply clarify
those issued on the subject by Rothair. According to the Edict of Rothair, every freeman under normal conditions had a certain number of oathtakers who were called upon to offer oath in case of necessity. These oathtakers are described as "legitimate," and evidently they were usually twelve in number.¹³

In some cases, a man might be required to present himself in court with his twelve oathtakers, or again, the case might be of a less serious nature and the number of oathtakers required would be fewer. The Lombard method is not clear, but there is some indication that half the oathtakers were provided by the accusing party (not including the claimant), and half by the defending party (including the defendant). How the value of the oath under such a balanced selection could be determined is not, however, apparent.¹⁴

(2) The judicial duel.—That proof by combat was an accepted means of judicial proof is clear in the Lombard Laws. The greater number of laws mentioning proof by combat (the camfio) indicate, however, that compurgation was a more satisfactory method;¹⁵ occasionally either method of proof is provided;¹⁶ and again combat is the only remedy.¹⁷

A striking example of the barbarian intellectual level of the Lombards is demonstrated by one curious law outlining the procedure for the judicial duel:

Concerning those engaging in combat. No one engaging in combat when he is going to fight against another, may have upon himself herbs which belong to witches, nor any similar thing; let him have nothing except those arms which are agreed. And if the suspicion has arisen that he has such things secretly, let them be sought by the judge, and if they are found on him, let them be torn out and cast aside. And after this inquisition, let the one engaging in combat hold his hand in the hand of his relatives or fellow freemen and say before the judge to whom he is making satisfaction that he does not have on himself anything which belongs to witches; then let him go to the contest.¹⁸
(3) Proof by ordeal.—Proof by ordeal does not seem to have been used very extensively by the Lombards, perhaps never in the case of freemen. There is, however, some indication that the ordeal was used as a means of proof among the slaves.

 distint and surety.—The usual means for enforcing an obligation among the Lombards was that of pigneratio, and this took the form of judicial and private distraint. This idea—which involved the giving and taking of pledges (wadía) and the offering of a surety or guarantor (fideiussor)—is well-advanced in the Leges. Unfortunately this institution was so well known to the Lombard people that it seemed unnecessary for the lawgiver to define his enactments in detail: as a result the modern reader may find it impossible to interpret some of these laws.

The Lombard system of distraint corresponds more or less closely with that of the other Germanic peoples. However, it should be noted that the Germanic system did not differ essentially from the Roman, and the Lombard pledge (pignus or wadium) was much like the Roman pledge (pignus or hypotheca), and the Lombard surety (fideiussor) like the Roman surety (fideiussor). Germanic and Roman law differ primarily in the way distraint is to be applied and in the relative liability of the surety. However, since the Lombard Law does not make either of these matters clear, it would be hazardous to say to what extent the Lombard practice had been influenced by Roman Law.

Private distraint was the more usual form among the Lombards and was probably a holdover from the period when the state was weak and the enforcement of obligations was left up to the individual or the expanded family group. In such a case, a man becoming a creditor might take or simply
designate pledges, from the property of his debtor, to guarantee payment of the debt. Ordinarily the pledges were actually taken by the creditor and became his property upon the failure of the debtor to pay his debt within the designated period of time. What sort of property constituted the pledge depended upon who the creditor was and the type of property possessed by the debtor. By the time the Lombard Laws were codified, a restriction had been placed on the unlimited right of the creditor to take in pledge just any property of his debtor. Such restrictions seem to have been placed on the land itself (which in the case of a debtor might often be land not held in full ownership but simply as the tenant of his lord) and on certain chattels very valuable from the standpoint of the Lombard agrarian economy: a trained ox or horse, mares or pigs. In case the debtor had no property to offer other than these types upon which restrictions had been placed, then the creditor should approach a public official and secure permission to take such property in pledge, or else the public official himself would hold the pledge until the debt was paid. In this case, the distraint was no longer private, but had become judicial—the state had become powerful enough to impose certain regulations upon the unrestricted right of self-help.

The taking of the pledge was then the creditor’s means of insuring that the debtor would pay his debt to him, for unless the debt were paid, the creditor would retain possession of the pledge. The debtor might secure the release of his pledges, however, by offering a guarantor or surety (fideius-sor) who either kept the pledges himself in trust for the creditor or else guaranteed in his own person and property the debt of the debtor—in such a case, the creditor was then required to return the pledges to the person of the debtor.
Protection was offered to the creditor by the provision that not just anyone might become surety for a debt—only those known to the creditor or to the freemen of the neighborhood or those who possessed property to at least the amount of the debt were allowed to become sureties. Only in case the debtor could offer such an acceptable surety was the creditor required to return the pledge which he had taken from the property of the debtor.

Wergelds and compositions.—The Lombards, like the other Germanic invaders of the Empire, were passing out of the stage where the execution of justice rested with the family itself and where it took the form of the vendetta or blood-feud (called faida in the Lombard Code). To eliminate such a chaotic state of affairs where almost every individual would find his family group involved in the blood-feud with one or more families, an alternative system had grown up based upon a type of compensation varying from payments in kind to payments in coin as the economic status of the barbarians changed as a result of their contacts with civilization. Perhaps even from the beginning certain minor offenses had never been the subject of the blood-feud but had always been compensated for by the return of a similar object or something corresponding in value to that thing or person injured. At any rate, by the period when the Lombard kings issued the Leges, the faida was expressly prohibited. For it had been substituted a system of wergelds and compositions. Strictly speaking the wergeld was the value placed on a man’s life, and so it varied according to his social status. In such a case involving the death of another man, the killer was required to pay the dead man’s wergeld to the relatives or heirs of the man killed, this payment being made to satisfy them and to eliminate the feud. The composition (or com-
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Compensation) was the sum paid by the guilty party in types of offenses other than homicide. Among most of the barbarians, the composition was paid to the injured party or to his legal protector, and in addition another payment (called *wita* among the Anglo-Saxons and *multa* among the Burgundians) was exacted for the king. Among the Lombards, however, the composition mentioned in the law is usually stated to include so much to the injured party and so much to the king, no specific word for "fine" being used. The composition is often stated with the accompanying phrase: half of this composition is to go to the injured party and the other half to the palace of the king (*palatio regis*), to the court of the king (*curtis regis*), or simply to the king. Here it seems that the term *palatio* and even *curtis* is used in the sense of *fiscus*, these sums being paid to the public or royal treasury.²⁰

By the period of the compilation of the *Leges*, a definite system of tariffs had been set up for specific kinds of cases. This system of tariffs is most complete for those cases involving quarrels resulting in some kind of physical injury. A considerable portion of the Edict of Rothair (Titles 41 to 125) is taken up with the statement of compositions to be paid in each of a long number of injuries. Here the composition to be paid varied with the quality of the person injured: an injury to a freeman involved a larger payment than a corresponding injury to an *aldius* or a household slave (*servus ministerialis*), and such an injury to an *aldius* or household slave likewise involved a larger payment than a corresponding injury to an agrarian slave (*servus rusticus*). The person to whom the composition was paid also varied depending upon the legal competence of the person injured. Ordinarily only the person who was *selpmundius*, that is, in his own legal power, was entitled to receive composition. This would
mean that in case of an injury to a woman, the composition would be paid to her husband or to her mundwald (the holder of her *mundium*); in the case of a minor, to his guardian, in trust for the minor; in case of an injury to an *aldius* or freedman the payment would be made to the *aldius’* or freedman’s patron (*patronus*); and similarly in the case of a slave or maidservant, the payment would be made to the slave or maidservant’s lord. In all these instances, then, it was generally the case that the person legally responsible for the injured party was the one to receive the composition. However, this was not always true, for in certain specified cases it was the injured party himself—even though he were a person who was not *selpmundius*—who received the composition, and this exception was even in rare cases extended to the slaves themselves.

The schedule of compositions comes almost directly from Rothair’s Edict and so was evidently well established at the time when the Lombard customs were first reduced to writing. The later issues of the laws made only a few additions, these provisions usually stating that composition was to be made “as established before,” or “as has been established by King Rothair of glorious memory.”

*Faida.*—That the Lombards were not far removed from a state of civilization relying upon the bloodfeud or *faida* is quite evident from the *Leges*. By the time that the *Leges* were issued by the Lombard kings in the seventh and eighth centuries the *faida* was no longer legally practiced, but the fact that its prohibition had to be repeated a number of times in the laws leads one to suspect that it was still quite common for these people to take justice into their own hands and to exact vengeance upon the perpetrator of an injury to one of their clansmen. At any rate, there does seem to have
been some unwillingness to accept the money composition set by law as a substitute for the old principle of requiring "an eye for an eye and a tooth for a tooth." Nonetheless, the fact that certain minor offenses were to be compounded with a payment of some sort had long been accepted and a schedule of tariffs for various types of injuries is well-formulated; in such cases, it seems likely that the *faida* rarely arose.

In certain more serious offenses, however, such as murder, arson, rape, or treason, it would presumably take a payment of considerable size to allay the wounded feelings of the injured family. By the time the *Leges* were compiled, a composition had been established even for these very serious offenses, but the composition set is so high as to imply a considerable police power on the part of the state to exact this payment; if this were lacking, the family no doubt did not hesitate to resort to the old method of taking revenge.

It is thus clear that the Lombards were in a transitional stage between the rule of force and that of law. The blood feud has not disappeared but the state has become strong enough to make some attempt to keep it under control. From the evidence of the laws, it is thus impossible to say just what the status of the blood-feud was among the Lombards. Perhaps the only safe conclusion to be drawn is that it was an institution well known to this people, but was, at least in the mind of the lawgiver, on the way out in practice.

*Debt servitude.*—With very few exceptions, the compositions imposed in the *Lombard Code* vary from half a solidus to twelve hundred solidi. The range of the majority of the compositions is much less than this, however, from half a solidus to twenty solidi. Some writers argue that the compositions were graded according to a decimal or a duodecim...
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mal system, depending upon just which compositions are under consideration, but however that may be, it is true that the composition of twenty solidi seems to mark a division between what might be called the more and less serious cases. Those compositions up to and including twenty solidi are for the most part those imposed for injuries to various parts of the body which do not result in death or permanent injury, and those imposed in specific cases of petty theft. The reason for this division in composition seems to lie in the fact that the case of the larger compositions must have been intended to be so large in some instances as to constitute a punitive measure, for in the case of these larger compositions, if the defendant were not able to make the payment, he was handed over in permanent servitude to the injured party. In other words, debt slavery was simply a legal method of taking revenge upon the party committing the offense. The principle was followed that if a man were unable to pay a composition of twenty solidi or more, he was liable to permanent slavery; whereas if a man were unable to pay a composition which varied from six to twenty solidi, then he was liable to temporary slavery until he had worked out the sum of his debt.

Legal competence.—(1) Freemen. Generally speaking, all adult free males in the Lombard kingdom were legally competent; that is, they were capable of entering into contracts in their own names and of bringing and defending suits before the royal courts. In a few cases involving undivided property some sort of overall power seems to have resided in the hands of the father of the house even though that man may have had sons and grandsons who were grown. Even in such cases, however, the property of the heirs was protected against alienation by this “house father.” We may say, there-
fore, that the Lombard house father did not enjoy the right of legal protection and representation over all of his living descendants as did the Roman house father. It is true that the Lombard did enjoy such rights over the women of his house, over his minor sons, and over his slaves and *aldii.*

His own sons, however, became legally competent at the age of eighteen and thereafter were able to handle their own property. All free males within the Lombard kingdom above the age of eighteen, with the exception of a few incompetents who will be considered below in the discussion of minors and wards, were able to handle their own property, and to sue and be sued before the judges of the land. They were further responsible for the giving and receiving of compositions in criminal and civil cases as well as able to offer oath for themselves or friends or to become sureties for the payment of some debt.

(2) Women. Women were not legally competent under the Lombards. Instead, a woman always had to be under the legal protection of some legally competent male. The Lombard right of protection was both a legal and a property right, the word used to express it in the laws being *mundium.*

Ordinarily this *mundium* was in the power of the father until the marriage of the girl, at which time it might pass to her husband, but only if the prospective husband fulfilled the terms of the marriage contract, that is, only upon the full payment of the *meta* which had been agreed upon in negotiations with the girl’s father. Before this payment was made or if it was agreed that it would not be paid, the *mundium* of the wife did not pass to the husband but remained with the father or whoever possessed it. If the father of the girl was dead, then her *mundium* passed to her brother, or in the absence of a brother, to some other guard-
ian in accordance with the rules of inheritance, or lacking any suitable relative, to the court of the king. If the possessor of the *mundium* was someone other than the father or brother (or later the husband), he is described as the mundwald and the girl is his ward or *frea*.

That a woman was not legally competent is clearly stated in the Edict of Rothair:

> To no free woman living under the dominion of our realm according to the law of the Lombards is it permitted to live in her own power of judgment, that is to be legally competent (*selpmundia*), but she ought always to remain under the power of men or indeed of the king; nor may she have the power to give or to alienate any of her movable property without the consent of him to whom her *mundium* belongs.

As a result of this lack of legal competence, a woman was not allowed to take part in judicial suits or to sell property without the consent of her husband and the witness of her relatives or of the judge. In a similar manner, a woman did not pay composition, but instead her compositions were paid by the person to whom her *mundium* belonged. A woman also did not have a wergeld, in a strict sense, although in practice it was the same as for a male member of her social class. In some very few cases, however, a woman does seem to have received composition, although probably only in case of such violations of her honor as rape.

(3) Slaves. As would be expected, slaves were not legally competent among the Lombards. The Laws seem to differentiate between two main types of slaves: those described as *servi rustici* and those described as *servi ministeriales*. The *ministeriales* enjoyed the same *pretium* or value as the *aldii* and also received the same composition in case of injury; but aside from this, their legal position seems to have been the
same as that of the other *servi*. Hence we will treat all slaves as one class.

Legally, the lord was responsible for his slave. This meant that the lord was not only responsible for the slave to the extent that he had to pay composition for the illegal acts committed by his slave, but he also received composition for the injuries inflicted upon him. From this it followed that slaves were not allowed to enter into commercial negotiations involving the property of their lord without the lord’s consent—if such did take place, the transaction was invalid and the party negotiating with the slave lost his investment since he should have known better than to enter into transactions with a slave.

It must be said that in not all cases—in fact not even in a majority of cases—dealing with the composition to be paid for a specific injury to a slave, was the fact stated that the composition was to be paid to the slave’s lord. But some of the laws do state this fact, and it seems a reasonable assumption that this was one of those things so taken for granted that the lawgiver felt little need for expressly mentioning it.

(4) *Aldii.* The *aldii* occupied a social and economic status in the Lombard kingdom which is but ill-defined. In regard to their legal competence, they seem to be halfway between the slave on the one hand and the freeman on the other. In some of their characteristics (for instance, in their being able to marry free women), they seem closer to the free in status than to the slave, but in other respects, as for instance, their inability to enter into contracts, their position seems to have been closer to that of a slave.

In a legal sense, the position of the *aldius* in relation to his lord was sometimes equated with that of the slave, and at other times, it seems to have been more like that of a client
to his *patronus*; that is, it was something like a guardian-ward relationship.\(^51\) And again, in some cases, the position of the *aldius* seems the same as that of the freedman, and there are specific laws for the raising of a slave to the position of an *aldius*.\(^52\) So it may further be that the *aldius* was a slave who had been partially emancipated—he remained personally free but under the tutelage of his former lord and in direct servitude to him still. However this might be, we will here treat *aldii* and freedmen separately, for quite certainly not all freedmen and *aldii* were alike.

The *aldius* was not legally competent; that is, he could not enter into transactions in his own name,\(^53\) and he might not give and receive compositions in the case of offenses involving the payment of composition,\(^54\) although, as in some instances in the case of women, the *aldius* might be allowed to receive the composition. Here again, however, the type of offense involving such a payment is usually that reflecting upon one's personal honor, as in the case where someone raped the wife of an *aldius*.\(^55\)

The *aldius* had a lord, a *dominus*, just as had the slave. To this lord was paid the composition for injuries suffered by the *aldius*.\(^56\) As has been mentioned before, the *aldius* might engage to marry a free wife, but in this case if the *aldius* was to acquire the mundium of the woman he married, it was his lord who paid the agreed price. It would seem that the children of such a marriage were *aldii*, but their freedom might be purchased by the mother's relatives paying for each a sum equivalent to the mundium of the mother.\(^57\)

(5) Minors. The well-regulated Lombard system for providing for the wardship of minors and other incompetents parallels such provisions in the Roman Law, where the state set up and enforced regulations directed toward protecting
the life and property of the minor during his minority. The Roman system is much more sophisticated than that of the Lombards, but it is tempting to suggest that the formalities of Roman Law—which in principle was so much like Lombard custom—tended to influence Lombard Law, especially with regard to the power of the state to interfere and to regulate contracts entered into by minors.

For purposes of the transfer of property and such, the legal age for the free Lombard male was eighteen. If a boy’s parents were dead, presumably he was under the protection of a guardian until the time he was eighteen, but the powers of this guardian were strictly limited by the state, for minors were under the special surveillance of the royal judges.

The “legal age” for girls was described as being twelve years. This was the legal age for marriage, however, and had nothing to do with the legal competence of the woman, for as has been noted above in the section on the legal competence of women, women were never legally competent in their own right, but always had to remain under the legal protection of some male, whether he was the woman’s father, brother, husband, guardian, or the king.

Somewhat related to the question of wardship is that of the legal representation of one party by another. No one was to undertake to represent another legally except with the consent of the judge or in the case of a widow or of an orphan. If anyone through ignorance did not know how to bring his suit, he was to come to the palace, and if the king or judge decided that it was true that the man did not know how to bring his suit, then the king or judge was to provide him with an adviser able to do so.

A relationship resembling that of wardship had evidently been introduced by the time of Ratchis in the gasindium re-
relationship. Here the question of legal representation must have been involved, although the exact nature of this relationship is not clear. One of the laws of Ratchis, however, indicates that should a man who was the gasindius of some lord fail to secure justice from one of the royal judges, then his lord was to represent him before the court.63

(6) Freedmen. Emancipation brought former slaves under the Lombard Law, regardless of their original tribal affiliation.64 As to their exact status under that law, this seems to have depended upon the type of “freedom” granted by the lord. It was possible that the freed slave receive complete freedom—that is, he became not only personally free but even enjoyed the right of legal competence. A lesser degree of freedom was enjoyed by the former slave who had been emancipated by a ceremony which gave him complete personal freedom but retained him as a legal member of the lord’s family; in such a case the patron or his heirs would succeed the freedman if he died without heirs. And still a third degree of freedom was enjoyed by that former slave who was made personally free, but who remained in the lord’s family in much the condition of a ward with even the right of legal representation (as for a minor or woman) remaining in the lord.65

Manumission.—In Rothair’s Edict it is stated that there are four kinds of manumission, and these four kinds of manumission are defined. Later laws on this subject do not change this basic provision—they are simply modifications and clarification of it.

As suggested above, manumission for the slave of his Lombard master did not always bring with it complete freedom. It is true that the Lombard lord could give complete freedom to his slave. According to the Edict, the slave would
then become *fulcfree, amundius, and extraneus*. This meant that he was "folk-free" and *a-mundius*, that is, that he was not under the *mundium* or protection of any person. Finally, that he was *extraneus* meant that he was no longer a member of the family of his former lord—he had become *extraneus*, a stranger, to the family. Such complete freedom was accomplished by giving the slave to be freed into the hand of another freeman by the formal ceremony of *gairethinx*.

The slave was then passed in similar manner from the second hand to a third, and from the third hand to a fourth. The fourth man then took the slave to "a place where four roads meet," and there handed him an arrow and whip, symbols of his freedom.

The master or lord, however, might not choose to give his slave such complete freedom. He might make him *inpans*, which seems to have meant that he became folkfree without becoming *amundius*, for he remained in the *mundium* of his former master. In such a case, the former slave presumably did not become *extraneus*, although the law does not specifically say so. A third type of manumission is that which made the slave folkfree and *amundius*, but which did not make him *extraneus*; in other words, the former slave, now completely free, still remained a member of his former lord's family. Under still another type of manumission, the lord might raise his slave to the status of an *aldius*. In such a case, he presumably was made neither folkfree, *amundius*, nor *extraneus*. Unfortunately there is little said about this type of manumission which might throw some light upon the actual status of this presumably abundant class of the population. The Laws do not indicate the nature of the ceremonies whereby these latter forms of emancipation were secured.
The next laws dealing with the problem of manumission come from the reign of Liutprand. By this time, the church had come to be of some influence in the Lombard kingdom, and in this sphere as much as in any. In the period between Rothair and Liutprand it had evidently become possible to free a slave by taking him to the church and handing him over to the priest, who would then perform some kind of emancipation ceremony before the altar. This type of ceremony brought with it complete freedom, that is, the same type of freedom which had followed the giving over into the four hands and the choice of four roads.68

The types of manumission which have been discussed above were the result of a voluntary manumission by the lord. It was possible, however, that manumission take place without the consent of the lord. If a lord raped the wife of his slave or aldius, he was to lose the slave or aldius and the wife also, and they were to become folkfree as if their manumission had been given to them by the formal ceremony of gairethinx.69 In order that such a ceremony could actually take place and so that the manumission would become legal, the man and woman were to present themselves before the prince of the land and he would then give them their freedom and set down the terms of their freedom in a charter. Slaves or alditi manumitted in such a fashion thereby became completely free even without the consent of their former lord.70
THE PERSONAL ELEMENT IN THE LAW

The Germanic approach to the problem of crimes committed against the individual person or family was little different from the approach to civil offenses. Hence the provisions of the laws were made with the idea in mind of placating the injured person or family (and thus averting the faida), not of punishing the criminal. In fact there was no punishment of crime in a physical sense provided in the Lombard Laws except in those few cases (discussed below) where the criminal forfeited his life because of his crime. In such a case, it would seem to have been the state which imposed the punishment, but ordinarily the role of the state's officials was merely to referee contention between two parties and to require the payment of compensation. Crime is thus a very personal thing. Society as such had no independent existence and the notion that offenses against individuals might also be offenses (crimes) against society had not yet appeared. Consequently, society did not punish the offender although the peace of the community had become a well enough established goal that it was desirable to prevent open warfare between the families of the community. Hence the state was recognized to have an independent enough existence to regulate disputes (whether of property or injury) between individuals and families, but it did not yet presume to punish criminals in the hope of reforming them. In other words, individual persons or families could behave just about as they pleased provided they could afford the composition involved—if not, they faced the prospect of temporary or permanent servitude in the household of the person or family.
injured. But again, the question was not one of punishment—rather it was one of equal recompense for a loss suffered.

Schedule of tariffs.—A considerable portion of the Lombard Code deals with offenses against individual persons. By far the great majority of these laws appear in Rothair’s Edict where minute provisions were made for composition in the case of a long number of injuries, the amount of the composition depending upon the social status of the person injured. As far as social classes are concerned, only the three major groups were distinguished by these laws: the freemen, the aldii, and the slaves. Perhaps it is this part of the Code more than any other which shows characteristics popularly considered as Germanic, for such schedules of tariffs are common to almost all of the barbarian codes.

Most numerous of the laws dealing with offenses against persons are those involving physical injuries. Almost a third of the number of laws in Rothair’s Edict are devoted to setting forth various types of physical injuries which might be inflicted and the specific composition to be imposed in each case, the entire schedule being repeated three times, once for injuries involving freemen, then for the same injuries to aldii and servi ministeriales, and finally for the same injuries to the ordinary type of slaves described as servi rustici. The compositions set for injuries to aldii are usually a third or a fourth of the composition set for a corresponding injury to a freeman, while the compositions set for injuries to servi rustici are usually half of the composition set for the corresponding injury to aldii. The minuteness of the Code is indicated by the fact that the schedules for all three groups include provisions for such injuries as various types of blows on the head, against the nose, the lips, the teeth, the ear, or face; the breaking of bones in the head, the arm, leg, chest,
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or hip; the gouging out of an eye or the cutting off of an ear, nose, or lip; the striking out of one or more teeth; the cutting off of an arm, hand, or any one of the five fingers, of the leg, the foot, or any one of the five toes. The less serious of these offenses were compounded for (compensated) by sums varying from half a solidus to twenty solidi. The more serious, such as the gouging out of an eye, the cutting off of an arm or leg, of a hand or of a foot, were stated as being at a portion (one-sixth, one-quarter, or one-half) of the wergeld or pretium.

Homicide.—Most serious of the personal laws were, of course, those dealing with homicide. The Latin word *homicidium* is used in the Lombard *Leges* in the sense of both homicide and murder, although the latter is sometimes further described as “secret homicide” or *mortum*. However, although in some instances there is no distinction in terms for the two offenses, the Lombards were quite aware of the difference, and the severity of the punishment set in each case corresponded with whether it was determined to be homicide in self-defense or murder, premeditated and with an attempt at concealment. Generally speaking, the penalty for killing in self-defense was the payment of the dead’s wergeld to his family. On the other hand, the penalties for murder varied from king to king, but in general, they were much more severe than those provided for ordinary homicide.

In Rothair’s Edict² a provision for murder was given: the payment of the wergeld of the murdered man plus a fine of nine hundred solidi. This law was supplemented³ by the provision that should a man kill his wife without reason, he must pay a composition of twelve hundred solidi, half to the relatives of the woman, half to the king. Likewise the murder of a free girl or woman brought a composition of twelve hun-
dred solidi, half to the king and half to the relatives or mundwald of the woman.  

This seems clear enough, but a consideration of a number of other laws reveals that the Lombard conception of secret homicide or murder was very narrow indeed for much less severe penalties are provided in some cases of homicide which we would definitely classify as murder. For instance, if a man plotted the death of another, the penalty was only the payment of the wergeld. Death by poison likewise involved only the payment of the wergeld. The taking of blood revenge after the wergeld composition had been received required the payment of a sum equal to twice the wergeld. Murder of one’s brother seemed to entail the loss of the killer’s expected share of the inheritance, and the killer himself was to be turned over to the king for punishment. It is evident that the penalties for homicide which verged on murder were becoming increasingly severe during the reign of Liutprand, for in addition to the provision just noted whereby the person of the killer was to be turned over to the king, another law of Liutprand definitely states that it is increasing the penalty for murder: the guilty must not only pay a fine of nine hundred solidi, but his entire property was to be confiscated—that which was in excess of the nine hundred solidi payment to be shared equally by the relatives of the dead and by the king. Furthermore, Liutprand provides that the penalty for him who plotted the death of another should be the same as if he had committed the murder himself.

In those cases where the homicide was clearly accidental, the laws agree that the penalty should consist in the payment of the wergeld only.

**Offenses involving personal insult.**—Perhaps next in im-
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importance of those laws concerning offenses against the person are those involving personal insult. Of these laws, there is a group which concerns penalties imposed not because of the seriousness of the injury which had been inflicted, but because the word or act was considered an insult to the status of a freeman or a violation of his "peace." Such defamatory acts might involve simply the speaking of an insulting word. For example, one law states that if anyone in anger has called another man a fool,\textsuperscript{12} he must offer oath that he spoke the word only in anger and did not mean it, and in addition he must pay a composition of twelve solidi for "this injurious word." Moreover, if the original man persisted in his charge, he must be willing to prove it by combat.\textsuperscript{13} Similarly if anyone has thrown himself upon another man standing unprepared and unsuspecting, and has held him disgracefully or struck him without the order of the king, he is to pay in composition half of the price he would have paid if he had killed the man "on account of the fact that he had treated him illy with disgrace and derision."\textsuperscript{14} Further, if anyone bound a freeman without cause and without the order of the king, he was to pay two-thirds of the man's wergeld to him as composition.\textsuperscript{15} If anyone in a quarrel with a freeman dragged him by the beard or hair, he was to make a composition of six solidi.\textsuperscript{16} And another law related to this general subject of injury to one's honor provided that if anyone sold a freeman outside of the province, he must pay his wergeld in composition to the relatives.\textsuperscript{17}

(1) \textit{Crapworfin}.—Then there are a number of laws which deal with insulting acts. Here it is curious to note that a large number of these laws retain the Germanic name for the offense, an indication that the offense itself was known among the people long before they entered the Italian pen-
insula and that in Italy they encountered no Latin word which aptly described it. In other words, the Germans found no Roman equivalent for this offense against personal honor. One of Rothair’s laws provides for the offense known as crapworf. This was explained as being the act of breaking open the tomb of a dead man, despoiling the body and throwing it out. And the extreme seriousness of this offense against the honor of the dead and of the family was shown by the fact that it involved a composition of nine hundred solidi to be paid to the relatives of the dead, and if there were no such relatives, then the payment was to be made to the court of the king.18

(2) Rairaub.—Another law provides for the offense called rairaub. Here the offense involved is the finding of a dead body, either in or out of a river, despoiling it and hiding it, and the composition set was eighty solidi to be paid to the relatives of the dead man.19

(3) Wegworin or orbitaria.—Wegworin or orbitaria was the offense of placing oneself in the road before another person and thus blocking the way to him. This offense was obviously a very serious one and the penalties provided are very high. For example, should the road be blocked to a free woman or girl, whether or not any injury is inflicted upon the woman, a composition of nine hundred solidi was to be made, half to the king and half to the mundwald of the woman.20 Likewise in the case of a freeman, even though no injury was inflicted upon the man, the very act of placing oneself in the road before the man was a personal offense, a violation of his “peace,” and brought a composition of twenty solidi to the “injured” man. If any physical injury had been inflicted at the same time, additional composition was to be made in accordance with the nature of the injury.21 The same concept
even applied to the servile and semi-servile class, although here the injury was an affront to the lord of the slave or * aldius* and consequently the compensation went to the lord.²²

(4) *Marahworfin.*—The next of these personal insulting offenses is that described as *marahworfin.* This is the case where a man with evil intent throws a freeman from his horse to the ground. The composition in this case is to be eighty solidi in addition to any further composition which would have to be made for injuries inflicted in the act.²³

(5) *Walopaus.*—Then there is the case of the *walopaus,* who is described as being one who has put on another's clothing secretly or who has disguised his head or face with the intent of committing robbery. The *walopaus* is to pay eighty solidi to the injured party in addition, presumably, to the usual composition for anything which might have been stolen.²⁴

(6) (H)*Oberos.*—That each man enjoyed the right to "peace" within his own courtyard is clearly revealed in the laws. This breach of a man's courtyard, this violation of his peace, is known as *oberos* or *hoberos.* A man might with impunity kill anyone whom he found in his yard at night who had not called out and announced his presence there, for it is assumed that under such conditions he was there for no good purpose, but for some mischief.²⁵ It is further provided that if a slave has been found at night in the courtyard of another and, when accosted, has not given his hands to be bound, he is to be killed and no composition for his death may be sought by his lord. However if the slave does allow his hands to be bound, his lord may secure his release upon the payment of forty solidi.²⁶ If anyone has entered another's courtyard in unjustifiable rage, in a state described by the Germanic word *aistandi,* he must make a composition of twenty solidi to the possessor of the courtyard.²⁷ And the
inviolability of a man’s estate is further revealed by a law providing that if anyone has secretly taken his own animal from another’s enclosure without asking for its return, he is to make the composition of twenty solidi for breach of the court or hoberos.\textsuperscript{28}

**Offenses against the family.**—An extension of the ideas involved in offenses against the person brings one to offenses which were considered a reflection on the honor of the family rather than on that of the individual person. In this regard, we might first consider those provisions made for fornication and adultery.

The laws on fornication and adultery are scattered throughout the Code. The penalty in case of fornication is, of course, much less severe than in the case of adultery. If a free woman or girl has voluntarily fornicated with a free-man, her relatives have the right to take vengeance on her. However, it might be arranged with the relatives that the man take the woman to wife, in which case he has only to pay a composition of twenty solidi for this breach of the family honor described as anagrip. If moreover it is not agreed that he will take her to wife, then he is to make a composition of one hundred solidi, half to the king and half to the woman’s mundwald, and the relatives are to take the girl in hand. If the relatives neglect to do this, then the woman is to be taken by the officials of the king in order that the king may render judgment concerning her as it pleases him.\textsuperscript{29}

If the aldius of anyone fornicated with a free woman or girl with her consent, then the lord of the aldius\textsuperscript{30} was to make a composition of fifty solidi to the girl’s mundwald, and the relatives of the girl were responsible for her punishment.\textsuperscript{31}

There are a number of specific provisions for the offense
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of adultery. If a man takes his wife in adultery with either a freeman or a slave, he has the right to kill them both without blame. But if a husband merely suspects adultery, and accuses another man of committing adultery with his wife, then the accused man shall clear himself either by oath or through combat. If the judgment goes against him, he is to lose his life. On the other hand, if a man betroths the wife of another, he is liable to the payment only of his wergeld whereas it would seem that punishment of the wife was left up to her husband.

Perhaps in the early period when the laws of Rothair were being issued, and for that matter throughout the Lombard Leges, the charge of adultery could only be levelled at the wife. In other words, marital fidelity was required only of the wife and the husband was relatively free so long as he did not tamper with the wife of another freeman. By the time of Grimwald, however, some responsibility on the husband's part seems to have been recognized, although in small fashion it is true. At any rate, one of Grimwald's laws provides that if a man has set aside his wife without legitimate cause and has taken another woman into his home, then he is to pay fifty solidi in composition, half to the king and half to the relatives of the wife; in addition, he is to lose the mundium of the woman who is his wife, and she may choose whether she wishes to remain with him or return to her relatives. Concerning the "other" woman involved in such a relationship, another law of Grimwald provides that the woman who knowingly consented to the husband of another shall lose all of her property, half of it to go to the court of the king, and the other half to her relatives.

Like married women, women who had taken the veil were also subject to the adultery laws. In the case of a religious
woman who had committed adultery, he who committed adultery with her was to make a composition of two hundred solidi, presumably to the ecclesiastical establishment of which she was a member, and the woman was to be punished in accordance with a law which does not seem to be in the law code as it presently exists.37

Somewhat related to the offense of adultery and yet less serious is the case of undue intimacy between a man and another's wife. Here it is provided that he who handled shamefully the wife of another man, should pay his wergeld in composition to the husband. If the wife had consented to such treatment, her husband might do as he pleased with her. If the guilty man did not have enough to pay the composition, he too was to be turned over to the husband to do with as he pleases: and yet in neither case was the husband permanently to injure the guilty parties.38

Likewise regarded as offenses against the family are those offenses against women. There are quite a number of such offenses provided for in the laws. Here it should be noted, however, that the character of these offenses is very different from those physical injuries which occur as the result of contention between men, for these offenses are usually against honor, and this ordinarily means the honor of the family which would be expected to raise the faida in behalf of the injured woman. The majority of these laws appear in Rothair’s Edict, but there are a number also included in the laws of Liutprand.

As noted in a previous section, he who blocks the road to a free woman or girl (wegovorin), must pay a composition of nine hundred solidi, half to the king and half to the mundwald of the woman.39 Evidently any form of violence done to a free woman involved a nine hundred solidi composition,
for further laws provide that should women be killed or injured while participating in a brawl, only the composition which would apply in case of death or injury to a free man is to be required, not the nine hundred solidi composition for violence to women. If a man takes a woman to wife without consent (presumably of her relatives), he is also to pay a composition of nine hundred solidi, half to the king and half to the relatives of the woman. If the offender pays the required composition, however, he is then allowed to acquire the mundium of the woman. But upon her death, her property is to return to her relatives and the man who took her as his wife without consent must make composition for her death to her relatives in accordance with her rank.

If a man rapes the girl or the widow betrothed to another, he is to pay a composition of nine hundred solidi, half to the king and half to the relatives of the girl, in addition to a payment to the bridegroom double the amount of the meta which he has paid for the girl.

There are provisions for offenses committed by a guardian (mundwald) against his ward. In such instances as plotting against the girl's life, giving her to a husband whom she does not want, accusing her of adultery, or accusing her of being a witch or a harlot, the mundwald is to lose the mundium of the woman and the girl may choose between returning to her relatives or commending herself to the palace of the king, in which latter case she and her mundium will be in the power of the palace. A later law further defines those cases where the mundwald was to lose the mundium of his ward: not furnishing her with suitable clothing, striking or beating her, setting her forcefully to indecent work, or committing adultery with her. Offenses against the peace.—Although the Lombard king
did not enjoy any of the sacred attributes of the Roman emperors, he did enjoy a rather privileged position in his nation. This position was the result of an extension of the idea of a right to a "peace" which every man enjoyed. But whereas the ordinary individual's peace was confined to his courtyard or person, the king's peace was somewhat more extensive, and in some instances seemed to approach a public peace.

This special position of the royal power is indicated by the provision of a special protection to those who are on their way to or returning from an audience with the king. When this special protection is violated, there are actually two offenses against the peace involved. The first is a violation of the individual's peace and would be described by the Lombard word *wegworin*; the second is a violation of the king's peace and is probably the same type of offense described as *scandalum* in other laws.

That the idea of the king's peace was extended to cover a community where a royal official resided, or even just any community, seems to follow from several laws of the Edict. Note here the provision that if anyone, in order to avenge some injury, leads an armed band containing up to four men into a village and they fall upon and injure a man, then he who was at the head of the band must pay an exceedingly high composition. Furthermore it is provided that if a man collects a band of rural slaves together and leads them or sends them armed into the village for some evil purpose, he is to suffer death or pay a similar very high fine.

The king's prerogative extended also to certain forest areas designated as the preserve of the king. Accordingly it is provided that although bees and falcons might ordinarily be
taken from unmarked trees, they might not be taken in the preserve of the king.\textsuperscript{49}

There are a number of laws in Rothair’s Edict, as well as a few from Liutprand’s laws, which deal specifically with the breach of the peace described as \textit{scandalum}. If anyone has committed \textit{scandalum} in the council (\textit{concilio}) or in any gathering (\textit{conventu}), he is to pay nine hundred solidi to the king.\textsuperscript{50} If anyone has committed \textit{scandalum} within the palace of the king when the king is present, he is to lose his life unless he is able to redeem it from the king.\textsuperscript{51} If a freeman commits \textit{scandalum} in a district (\textit{civitas}) where the king is present, he is to pay twelve solidi if he did not strike a blow or twenty-four solidi if he did strike the blow.\textsuperscript{52} If a slave commits \textit{scandalum} in a \textit{civitas} where the king is present, he (i.e., his lord) is to pay six solidi to the king if the slave did not strike a blow, or twelve solidi if the blow were actually struck.\textsuperscript{53} If a freeman incites \textit{scandalum} in a \textit{civitas} where the king is not present, he is to pay six solidi to the king if he has not actually struck the blow, or twelve solidi if he has.\textsuperscript{54} If a slave commits \textit{scandalum} in a \textit{civitas} where the king is not present, he is to pay three solidi to the palace of the king if he did not strike the blow, or six solidi if he did.\textsuperscript{55} If two swineherds fight between themselves or commit \textit{scandalum} and thus disturb the peace in the course of the fight, composition is to be made for the injuries which they inflicted, but other penalty is not to be required.\textsuperscript{56} Finally the woman who participates in a brawl and thus disturbs the peace, thereby committing \textit{scandalum}, is not to receive the nine hundred solidi composition provided for ordinary violence to a woman.\textsuperscript{57}

A few more laws are related to this subject. Where a man takes back his pledge before he has legally secured its re-
lease, he must pay a composition of twenty-four solidi in order that no *scandalum* may arise as a result of this act. Where a number of men in one village get together and decide that they do not like the presence of another in their midst, and so they go forth and expel the man, striking him in the process, they thereby commit *scandalum*. In addition to composition for the injuries which they inflicted, these men are to pay a composition of twenty-four solidi for having committed *scandalum*. Where a man has run off with a woman's clothes while she was bathing in the river, he must pay his wergeld in composition to prevent her relatives from committing *scandalum* when they come up with him. Where certain men get together a band of women, arm them, and set them upon other men under the assumption that the women would be protected by the heavy nine-hundred-solidi-violence composition, it is reaffirmed that such women participating in *scandalum* may not claim this composition. And finally where perverse men throw down unclean and polluted water upon a wedding party, they are to make a composition of nine hundred solidi that murder or *scandalum* might not arise from this cause.

Related to the problem of offenses against the peace or against the king is the question of treason. The offense of treason, although not the name, was known to the Lombard Laws. As in the case of the other medieval kingdoms, treason among the Lombards took two related forms: treason against one's lord, and treason against the king. If we define treason as faithlessness to one's lord or people, it might be that treason against one's personal lord or against the people was the older concept, a concept as old as the *comitatus* and the days of tribal organization. If this is true, then treason against the king as a higher offense began as treason against the king
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as one's personal lord and only later was extended to include the concept of an offense against the king as king. The Lombard Laws do not throw much light upon this problem of development. Already treason was an offense against the king as king, or against the kingdom, or against a royal official as representing the king. 63

There is only one law in the Code dealing with the subject of treason against one's lord. Here it is provided that if anyone kills his lord, he is to die. The seriousness of the offense is indicated by the remainder of the law: if anyone defends him who has killed his lord, that person is to be liable to a composition of nine hundred solidi, half to the king and half to the relatives of the dead man. Furthermore, if anyone denies help in avenging the death of that lord when it is sought, he is to pay fifty solidi in composition, half to the king and half to him to whom they denied aid. 64

As for treason against the king or kingdom, the first title of Rothair's Edict states that if anyone has conspired or counselled against the life of the king, he is to lose his life and suffer confiscation of his property. 65 Another law provides that if a man tries to flee outside of the province, he is to lose his life and his property is to be confiscated. 66 If anyone hides a spy within the province or gives provisions to one, he is to lose his life or make a composition of nine hundred solidi to the king. 67 If anyone while he is in the army has raised sedition outside the province against his commander, he is to lose his life. 68 If anyone raises sedition against his judge without the consent of the king, he is to lose his life and his property shall be confiscated. 69 The last law on this subject of treason against the king provides that, if anyone seeks information about the king's affairs from the personal
officials of the king, he is to lose his life and, in addition, his property is to be confiscated. 70

Somewhat related to this question of offenses against the king or against the kingdom is that of offenses against the officers of the king. The Lombards did not clearly distinguish in their laws between the various ranks of freemen. In the lack of information to the contrary, we must presume that the laws providing penalties for offenses committed against ordinary freemen also applied to such persons of superior rank as nobles and royal officials. However that such persons did enjoy a somewhat more favorable position than ordinary freemen in at least some cases involving the payment of wergelds and compositions is clear from several laws in the Code.

Thus it is provided that if anyone “scorns” his duke when the latter is holding court, 71 he is to pay twenty solidi in composition to the king as well as twenty solidi to the duke. 72 If anyone scorns to go into the army or into the guard, he is also to pay twenty solidi in composition to the king as well as twenty solidi to his duke. 73 Again, if anyone has refused aid to his duke when the latter is holding court, 74 he is to pay twenty solidi as composition to the king and twenty solidi to the duke. 75

It is further provided that if one of the king’s officials (the sculdahis and actor are mentioned specifically) is killed while engaged upon the king’s business, then composition is to be made to his relatives in accordance with his normal wergeld as a freeman; but in addition, a payment of eighty solidi is to be made to the king. Likewise, he who strikes or beats one of the king’s agents while engaged upon the king’s business, is to pay the ordinary composition for such an injury to a
freeman, in addition to a payment of eighty solidi to the court of the king.  

The above provisions concerning royal officials come from Rothair's Edict. A final law differentiating between nobles and freemen comes from a later period, from the time of Liutprand. Here it seems that some differentiation in wergeld value as between royal followers and ordinary freemen is to be made. The law provides that a freeman who is a minima persona is to have a wergeld of one hundred fifty solidi while he who is "of the first class" is to have a wergeld of three hundred solidi. The law continues, in somewhat paraphrased form: "Indeed concerning our gasindii, we wish that anyone who has killed the least of these (minimissimus) in such a manner, shall make a composition of two hundred solidi because he serves us; indeed the amount may be greater, for according to the quality of the person . . . that composition may rise to three hundred solidi." A difficulty remains since it is not certain that one can identify royal officials with the royal gasindii. Perhaps it is safe to say only that some of the gasindii were royal officials, and some royal officials were gasindii, but that the two groups were not necessarily identical. Perhaps only the higher royal officials, such as the gastaldii, were also gasindii of the king. 

Violations of proprietary rights. (1) Theft.—The fact that the Lombards were essentially a rural and agrarian people is clearly revealed in their property laws, especially those concerning theft. It should be remembered that most of these laws apply to freemen, and hence to Lombards, so there is little validity in the argument that the Lombards settled in Italy solely as a ruling aristocracy and required the former population and their own slaves to work the land for them. The implements of the farmyard seem much too famil-
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iar in these laws to allow such an interpretation. All of the theft laws appear in Rothair's Edict. For the most part they are extremely short, containing a simple statement of the theft of a certain article and the corresponding composition which is to be imposed. The compositions vary from one to twelve solidi for the lesser thefts and require a payment equal to eightfold the value of the object stolen for the greater thefts.

To illustrate the essentially rural nature of the Lombard people, we might note a few of the objects subject to specific provision in case of theft: cow bells, oxen yokes, bee hives, hobbles, fence posts, vine poles, fish nets, grape vines, halters, and so on.\textsuperscript{80} Theft of most of these articles involved a payment of six solidi or less and constituted cases of what we might describe as "petty" theft. The much greater value of some rural objects is demonstrated by the provision that theft of such an object was to entail an eightfold return of the object stolen, and in addition the thief was to be held as taken in the act of theft (\textit{figangit}).\textsuperscript{81} Such valuable objects were the plow, the dog, the horse, and the boar or pig.\textsuperscript{82}

The laws involving discovery of the thief are very interesting. That anyone entering another's courtyard at night without giving notice was considered a thief is clear from the provision noted above on the violation of an individual's peace, for such a man might be killed with impunity, or if he were not killed, he was liable to a composition of eighty solidi.\textsuperscript{83} Likewise the slave found at night in another's courtyard might be killed on the spot or his life might be purchased by the payment of forty solidi by his lord.\textsuperscript{84} A later law reveals the use among the Lombards of a curious individual here described as the \textit{proditor}:\textsuperscript{85} if a theft was discovered through the \textit{proditor}, he who committed the theft
must return the object stolen to its owner ninefold. The Lombards seem to have had a general conviction that all fugitives, whether slave or free, were thieves. Consequently the laws make careful provision for the apprehension of all fugitives in order that an investigation of the cause of their flight might be made. Lords were expected to pursue their run-away slaves and whether the slave were caught or not, the lord remained fully responsible for anything which the slave stole prior to his flight and partially responsible for anything stolen while the slave was in flight.

A detailed system was provided by the laws whereby fugitive slaves were to be returned from one province to another. A judge or other official who found the slave was to take him and whatever property he had with him in custody and send notice immediately to the judge of the territory from which the slave fled, the first judge receiving a daily allowance for the period during which he kept the slave in custody. If the slave was killed in the process of taking him, or if anyone was killed by him, no payment was to be required.

Evidently the passage of some rivers and streams occasioned the appearance of a professional ferryman or boatman called *portonarius* in the laws. Since fugitives might have to seek the assistance of such an individual during the course of the flight, a number of laws make the *portonarius* liable to a heavy penalty for the knowing transportation of a fugitive.

That all strangers and all freemen from another judicial district were assumed to be thieves is clear from one of Liutprand's laws which provides that the *deganus* or the *saltarius* is to apprehend any stranger from another judicial district and take him to the *sculdahis*, and the *sculdahis* is to take him to the judge. The judge is then to inquire from
what place he comes and whether he is a fugitive slave or a thief. The judge is then to send to the judge of the province from which that fugitive came, in the meantime receiving two solidi per day for detaining him until he could be sent for by the judge of his own judicial district. If the man thus taken in custody turns out to be a freeman, he is to be released and no blame is to attach to the officials who took him in charge. Moreover if the judicial officers are negligent in the matter of apprehending all strangers in their province, the deaganus or saltarius is fined, part of the fine going to the judicial superior, the other part to the owner of the property stolen by the fugitive.\textsuperscript{90}

Since members of the servile and semi-servile classes were regarded as forming part of the property interests of their lords, injuries and insults to them were, in a sense, injuries and insults to their lords. The language used in describing these affronts is the same as that describing similar offenses to free persons, but there is the very significant difference that composition is to be paid to their lords and not to them. Compositions for injuries to slaves and \textit{aldii} are included in the schedule of tariffs for injuries found in Rothair's Edict (Titles 44-125). As indicated before, that schedule is repeated three times: once for persons of free status, once for \textit{aldii} and \textit{servi ministeriales}, and once for \textit{servi rustici}. In addition, however, to the basic provision for injuries to persons of servile status found in this schedule of tariffs, supplementary provisions are found in a number of later laws.\textsuperscript{91}

Whereas the freeman is described as having a wergeld, the person of servile status is described as having a "price" or \textit{pretium}. As in the case of freemen, death and other kinds of very serious injury required the payment of the wergeld or a portion of it, and killing or seriously injuring a person
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below the rank of freeman required the payment of his pretium or a fraction of it to his lord.

Secret homicide or murder (morth) seems also to have applied to such persons. According to Rothair, the murder of a freeman brought a composition of nine hundred solidi in addition to the payment of his wergeld in accordance with the rank of the man; furthermore, even if the murder was of a slave or freeman, the nine hundred solidi composition was still to be made in addition to the payment of the pretium at which the person of servile status was valued. A later law from Rothair’s Edict modified this penalty in the event the murdered servant was a female slave or aldia murdered on the pretense of witchcraft: in such a case one hundred solidi was added to the usual composition, to be paid to her lord.

A very interesting extension of the idea of an individual’s “peace” is found in connection with offenses against persons of servile status. Perhaps the right to peace, which the lord enjoyed with regard to his own person, extended also to cover those who were his dependents. Such at any rate seems to be the implication of one of Rothair’s laws where it is provided that if anyone commits the insulting offense of blocking the road (wegworin) to another’s slave or maidservant, or to his aldios or aldia, he is to pay the same composition to his lord as that paid in the case of a similar affront to a freeman.

As it was the lord who collected in case of injury to one of his servants, so it was the lord who paid in case of offenses committed by them. This is clearly stated in a number of the laws, and can be implied for the rest of them.

We shall close this section on violations of proprietary rights by noting that there are a number of laws in the Code
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providing separate penalties for accidental and deliberate injury to such property items as animals, fields, crops, and fences. In the case of accidental injury, a simple composition is imposed corresponding to the value of the property injured or destroyed. In case of deliberate injury, a penalty payment is added to the usual composition.
THE CHURCH IN THE LOMBARD KINGDOM

PROGRESS of Christianization.—The Lombards were converted to the Arian form of Christianity while they were living in upper Germany along the Danube. They were still Arian Christians when they entered the Italian peninsula and settled there. The fact that the Lombards were Christians, although of this heretical type, and had been for over a hundred years, is bound to have influenced much of the general tenor of their laws. But the organization of the Arian Church was never centralized enough to exert a great deal of influence upon the lawgivers.¹ One must also consider that the Lombards were directly exposed to the Catholic form of Christianity when they entered Italy. The Catholic Church must early have begun to make itself felt in the kingdom and Paul the Deacon records that it was not unusual to find a Catholic and an Arian bishop in the same town.² Such considerations seem to refute the papal claims about the suppressive measures of the Lombards.

It was not long before the Lombards themselves began to be converted to Catholicism. At the close of the sixth century one of their kings, Authari, married Theodolinda, the Catholic daughter of the Duke of Bavaria. When Authari died, Agilulf was chosen as his successor and married Authari’s widow, Theodolinda. Although Agilulf was an Arian and did not turn to Catholicism, he allowed his son, the heir to the throne, to be baptized a Catholic. After a time the succession devolved upon a daughter of Theodolinda; this second Catholic queen chose as her second husband, Rothair, a staunch Arian, and he was chosen by the assembly to be
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The king of the Lombards, Rothair did not attempt to counteract the steps toward Catholicism which had been made among his people, yet he himself made no compromise with this form of Christianity. This is the reason why Rothair's Edict shows no traces of the influences of Catholicism, although there are some definite Christian influences.

After the time of Rothair, the position of Catholicism among the Lombards gradually became stronger, until by the time of Liutprand in the first half of the eighth century, the entire nation had adopted the Roman Catholic form of Christianity. Furthermore Liutprand was susceptible to Romanizing influences in the kingdom, and these two facts together account for the scattered Roman and Catholic references in his laws. By this time the Church as an organized institution had evidently acquired a considerable degree of power within the kingdom, but it never assumed so dominating a position as it did toward the Visigothic rulers. There are some traces of Catholicism also in the brief issues of Ratchis and Aistulf, and these will be considered below. But it is significant to note that in contrast with most of the other barbarian codes, the Lombard lawgivers never refer to the bishops in that group with whose advice and consent the laws are issued.

**Influence of the Church on the laws.**—For the moment we will postpone consideration of the few specific provisions found in the laws providing for clerics and church property. We will rather consider here those other direct or indirect references to the Church which are for the most part found in the various prologues to the laws.

Aside from the ameliorating effect which the conversion of the Lombards to Arian Christianity may have had on the general tone of the laws, there is no mention of the Christian
faith in the laws of Rothair and no provisions made for a clerical class of the population. That Rothair and the Lombards were Christian, however, is clear from the prologue and postscript to Rothair's Edict. In the prologue Rothair states that the Lombards were led to Italy "by divine providence," and "with God favoring" he is issuing this Edict for the use of his Lombard subjects. The postscript once again mentions that the laws have been established "with God favoring" and "heavenly favor" having been secured.

In addition to these allusions, there are a few traces of Christianity in the laws of Rothair's Edict. Title 2 states that if a man has killed another at the king's command, he is not liable to punishment, since "the heart of the king is in the hand of God"; therefore it can only be just that a man designated by the king should die. The only reference to a church in the Edict is Title 343. Here it is provided that if a man finds a strange horse in his field, and no one comes for it, he is to take the horse to the judge or present it "in a gathering before the church" four or five times, and if its owner does not then appear, he may keep the horse for himself. There is no mention in the laws of an assembly which meets before the church, so perhaps this refers to a gathering of the type before which public acts, such as purchases and sales, took place. Then, although the procedure of proof by oath probably goes back to the pre-Christian days of the Lombards, it is obvious that the method has been assimilated to Christianity, and so Rothair's Edict provides that an oath is broken when the accused and his oathtakers place their hands on "the holy gospels" or on "consecrated arms" and one or more of them does not dare to take the oath. There are further a few laws on witchcraft among the laws of Rothair which are vaguely Christian in tone, but we will consider them below.
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in the discussion of regulations concerning the church.

As in the case of the laws of Rothair, there is no specific mention of Christianity in the laws of Grimwald, but in the prologue to his Laws, Grimwald also mentions that his laws are issued with "God approving" and with "God favoring."

With Liutprand, we have definite mentions of Christianity and Catholicism, for this lawgiver emphasizes the fact that he is the Catholic Christian king of the Catholic Christian nation of the Lombards. We might take as characteristic a few samples from the prologues added to each of his various issues. The prologue to the first year starts off in a very lofty manner:

This Catholic Christian prince has been disposed to institute these laws and to judge wisely; not by his own foresight but with the knowledge and inspiration of God he has conceived them in his heart, studied them in his mind, and salubriously fulfilled them in his work, because the heart of the king is in the hand of God, as the most wise Solomon attests, who has said: Just as the waves of the sea, so the heart of the king is in the hand of God; if he decrees it, all things should be dried up; if moreover he provides mercifully for them, all things will be watered and their sweetness will be restored. A certain James, an apostle of the Lord, has put it in his epistle saying: Every good and every perfect gift has arisen, reflecting light from the father.

The prologue to the fifth year states that "In the name of omnipotent God, I, Liutprand, most excellent king of the most happy and Catholic, chosen by God, nation of the Lombards. . . ." Likewise the prologue to the ninth year states that "I, Liutprand, in the name of almighty God, most excellent king of the Catholic nation of the Lombards, chosen by God" issue those laws, "with God protecting," which seem right to us "according to God." The prologue to the eleventh year varies the formula somewhat: "...we believe that the compassion of God will be obtained for these
things and we will be deserving in no wise of eternal punish-
ment from our Lord Jesus Christ. Therefore in the name of
the omnipotent God, I, Luitprand, etc." The other prologues
simply vary these formulas in other forms. We might further
note only the prologue to the issue of the fifteenth year
which ends with the statement: "... we take care to estab-
lish for the defense of the Christian and Catholic law to what
extent no one may presume to wander from the faith of
Christ, but may we have God as a defender and helper firmly
and permanently in those things."

A number of ecclesiastical influences must have been ac-
cepted by the time of Liutprand, and we will note below the
provisions which he made concerning the efficacy of manu-
mission accomplished in a church, concerning the conduct of
women and the disposition of their property when they en-
tered the Church, the conditions under which persons of
servile status might and might not enter the Church, the
privileged position of the Church with regard to the accept-
ance of gifts and inheritances, violations of the "peace" of
the Church, and concerning the prohibition of incestuous
marriages. In connection with this last subject, we might
note that the lawgiver closes with this statement:

Moreover, we therefore add this, because with God as a
witness the Pope of the city of Rome, who is the head of the
churches of God and of the priests throughout all the world,
has exhorted us through a letter that we not permit such a
union to be made in any wise.¹α

That the Lombard king was willing to heed the Pope's ap-
peal in this case may well have been influenced by the fact
that illegitimate children could not succeed to the property
of their parents and in the lack of any other near rela-
tives, such property fell to the court of the king—hence
it was to the king's advantage to extend the conditions
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under which children would be declared illegitimate.
At any rate, it is clear that by the time of Liutprand the
Church has come to enjoy a position of considerable impor-
tance in the kingdom and may even have been responsible
for the introduction into the Lombard Law of Roman forms
for the disposition of property.
The laws of Aistulf were issued in 750 and 755. Both issues
were preceded by prologues. The prologue from the first year
is mutilated, but what remains seems to say that the laws to
follow are being issued “With the aid of our Lord Jesus
Christ, in whose name Aistulf is king of the nation of the
Lombards, [a position] handed to us by the Lord of the
People of the Romans. . . .” The prologue to the second issue
contains a badly quoted passage from the Bible with regard
to the merits of justice and continues to note that the laws
are being issued by Aistulf, “the most excellent king of the
Catholic nation of the Lombards.”
There are two prologues to the brief issue of Ratchis, and
both invoke the aid of Christ. The first begins “in the name
of our Lord Jesus Christ,” and the second:

It is fitting that we complete these precepts with the aid of
Christ Jesus our Savior with whose providence we have at-
tained the culmination of our rule: with His compassion
aiding us, we have taken foresight to establish those things
that are fitting to be done for our nation, which is that of
the Lombards, a Catholic [nation] chosen of God.

There are no further laws in this group which reveal clerical
influence.
Our conclusion is, then, that from the time of Liutprand
on, at least, the Catholic Church had assumed a position of
considerable importance in the Lombard kingdom. Its in-
fluence however, was indirect, and churchmen, as such, seem
to have had little political influence nor do they seem to have
attended the assemblies asked to give their approval to the issue of the laws.

*Regulations concerning the Church.*—Men of the Church occupied a special position within the Lombard kingdom, but the exact nature of this position is not very clear since the Lombard Laws were compiled for the use of free Lombards and their dependents only. It is clear from indirect references in the laws that men of the Church were subject to Roman Law or some modification of it. Hence Churchmen are not recorded in the *Leges* as having a wergeld, nor is there any schedule of tariffs provided for injuries to them. That they were governed by another law—and presumably the Roman Law—is clear from such laws as that which provides that in case a Lombard who has a wife and children decides to become a cleric, "then the sons and daughters who were born before his conversion shall live by that law by which he [their father] lived when he begot them, and they ought to terminate their cases according to this law."¹

But even though the Lombard Law might ignore personal offenses against churchmen as being outside the proper province of its jurisdiction, the Church as an organization constituted what was essentially a "person" at Lombard Law. The two most notable instances of this are the provisions for violations of the Church's peace, and the special regulations set up regarding suits involving gifts or bequests to which the Church was one of the parties.

That the Church enjoyed the right to a special peace just as the ordinary person enjoyed a peace within his own courtyard or around his own person, is clear from several laws in the Code. One of Rothair's laws provides that if anyone commits *scandalum* (breach of the peace) in a church, he is to pay forty solidi to the church in addition to any
composition which might be necessary for the injuries which he inflicted there. Furthermore, one of the laws of Liutprand provides that if a slave or maidservant, aldias or aldia, seeks refuge in a church, and his or her lord or patron or his agent drags him forth by violence, then the lord or patron is to pay his wergeld in composition to the "injured" church. On the other hand, if that slave or aldias commits some offense while under the protection of the church but without the consent of his lord, then the lord is to hand the aldias or slave over to the custody of the church, and upon taking oath to the effect that the deed was done without his consent, he is not to pay the wergeld composition to the church.

The rather privileged position of the Church with regard to such formalities as the transfer of land or the emancipation of slaves has become clear by the time of Liutprand. Ordinarily property passed according to the laws of inheritance and could be bequeathed by testament only to the extent of increasing, within fixed limits, the share going to one of the legitimate heirs. This restriction on bequests, however, did not apply to gifts made to the church. Gifts to the church were to remain valid even if the contractual element in the gift had not been fulfilled—in other words, even if the gift were made without thinx or launigild. Such a provision is remarkable when one considers that except for this one instance the Lombard Laws for the transfer of property were extremely strict in their attempt to preserve such property for the heirs.

One of the laws of Aistulf states that many lords are not freeing their slaves because the slaves, once freed, will no longer respect and serve their former lords; therefore this pious work is being neglected. Now, however, it is provided that if a lord wishes to manumit his slave and yet retain his
services until his own death, he may manumit the slave by the formal procedure of *gairethinx* and give the slave a charter reserving his services until the lord's death. Manumissions which have been made in the church, however, are not to bring partial manumission, but are to bring immediate and unrestricted freedom for the former slave.\(^{10}\)

Another of Aistulf's laws states that it has come to the attention of the king that in some cases lords have made unwitnessed gifts of lands and tenants to the Church, and that after the death of the lord, his heirs have claimed the property since there was no recognized delivery of it made. This law is to provide that all property which has been left to the Church, even if by oral transfer only, is not to be contested but is to remain under the Church's control. Furthermore, if a lord dies before he has a chance to manumit his slave legally, he may simply designate to a priest him whom he wishes to be manumitted, and such an informal act will suffice for the manumission to be performed in the Church despite possible opposition from the heirs.\(^{11}\)

Another of Aistulf's laws further guarantees gifts of property made in favor of the church. Here it is stated that if a man makes an agreement with the Church concerning the disposal of certain of his lands or of his servants, he may afterward not be released from the agreement unless he is willing to pay a composition to the Church in proportion to the amount of the property about which the agreement had been made. And the same provisions are to apply to the heirs of the lord: they may not contest any alienation which the possessor of the property might have made in favor of the Church.\(^{12}\)

An exception to the general statement that in the Lombard Laws there are no provisions regarding churchmen is found in a number of laws concerning the lives and property of
women who have dedicated themselves to the Church. A law of Liutprand extends the control of the state to that of the Church over women who have assumed the veil. Here it is provided that if a woman enters a nunnery, she is on no account to give it up at a later time in order to take a husband. The law then provides penalties for the case where such a woman should leave the nunnery as well as in the case where someone rapes her.\textsuperscript{13} Another law provides penalty where the nun commits adultery (for as a “bride of Christ” she is subject to the adultery laws).\textsuperscript{14}

Not only might free women enter monasteries in accordance with their own wish, but also women of servile status might be placed in a nunnery as a pious act on the part of their lords. Consequently a law of Liutprand provides penalties in the case where such a woman later marries or where someone commits adultery with her.\textsuperscript{15}

When a free woman entered a religious house, she entered with a third portion of her property (if she were in the \textit{mundium} of her children), and on her death, this property belonged to the monastery and did not revert to her heirs. Likewise if the woman had no children, she entered the monastery with a half of her property, and on her death this half remained in the control of the monastery (the other two-thirds or one-half of her property remained in the control of the woman’s mundwald).\textsuperscript{16}

When a woman became a widow she was to wait at least a year after the death of her husband before entering a religious house. It is provided that if a widow should wish to enter a monastery before the space of a year had lapsed, she must first obtain the consent of the king to her doing it. Failure to obtain the king’s consent required the payment of penalty, usually by the woman’s mundwald.\textsuperscript{17}

That slaves or other persons of servile status might not
enter the priesthood without the consent of their lords is implied in the law of Liutprand which provides that if anyone takes the slave of another and makes him a cleric without the consent of his lord, the man guilty of such presumption is to pay twenty solidi as composition to the slave’s lord and the slave himself is to be returned.\textsuperscript{18}

There is one other class of offenses which might be classed as offenses against the Church or rather offenses against the law of the Church: marriage within the prohibited degrees of relationship. These laws are among those issued by Liutprand. The lawgiver states that he is establishing these laws in accordance with the wishes of the Pope, but since it is the crown and not the church which benefits by the penalties imposed in such instances, it seems hard completely to justify the statement that they are actually offenses against the church.\textsuperscript{19}

In a somewhat miscellaneous sense, we might note the provisions of two further laws from Aistulf. One states that it has become known that churches under the protection of the king have been exacting double composition as in the case of royal offenses. This law provides that such ecclesiastic establishments ought not to exact a double composition as in a royal cause, but should exact a composition as do the other sacred places which are not under the protection of the palace.\textsuperscript{20} Also in case of disputes with the Church over land, the normal prescription period of thirty years is to apply, and not the sixty years required in cases concerning the crown as one party to the suit.\textsuperscript{21}

One further law of Aistulf (probably spurious) states that no priest shall enter into the property of a Lombard on his own authority without the authority of a judge, nor may any Lombard, because of his greater strength, enter the property
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of the Church, of a priest, or of clerks. In case of violation of this rule, the offender is to restore the property which he invaded in addition to adding a property of equal value.\textsuperscript{22}

Witchcraft.—It is hard to determine whether the practice of witchcraft should be regarded as an offense against the Church or an offense against the state. However since the Lombards did not have much clear conception of the idea of "state," the laws on witchcraft have been rather arbitrarily included here in the section on offenses against the Church. At any rate, it is undoubted that the Church had some influence on the general condemnation of the practice which is found in the laws.

From the tone of the laws, it would seem that at one time a belief in witchcraft had flourished among the Lombards, but now, probably because of Christian influences, its efficacy is denied, but perhaps the denial is without real conviction, for laws are then enacted to suppress it. A law of Rothair indicates that the belief in witches is fallacious and provides that if a woman’s mundwald falsely accuses her of witchcraft he must take solemn oath with his twelve oath-takers that he accused her in anger, but not from knowledge: if he can so swear, a fine should be imposed. If a man should persist in his accusation, however, he is to prove his case by combat. If combat proves the charge against the woman, she is to be punished "according to the law"\textsuperscript{23}—but this law is lacking in the Code’s present form.

That superstitious beliefs were still current among this people is also clear. One law provides that those who are to fight a judicial combat may not have upon themselves anything belonging to witches or similar objects. If it is suspected that one of those engaging in the combat has such upon himself, he is to be searched by the judge, and if effica-
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cious objects are found, they are to be cast out and the man who had them upon himself must offer oath that he has nothing further of such kind upon his person.24

There is another curious law which reflects the influence of Christianity to the extent that it denies the efficacy of witches, but the very wording of this law gives a clue to what the people actually thought. The case concerned is that of another man's maidservant or *aldia* who is thought to be a witch. No one is to presume to kill such a person "because it is nowise to be believed by Christian minds that it is possible that a woman can eat a living man from within."25

Aside from these laws of Rothair, witchcraft appears once again in the laws of Liutprand, where not only is a secular punishment provided for those convicted of having consulted a soothsayer, but also the ecclesiastical nature of the offense is indicated by the statement that penance must also be done according to the established canon.26

The last law on the subject establishes heavy penalties for those officials who know of witches and soothsayers and neglect to seek them out and expel them from the community.27 Thus, although the laws against witchcraft may have originally been the result of ecclesiastical influences, it is the state which enforces them and collects the fines imposed for violations.
MARRIAGE and betrothal.—A legal marriage among the Lombards was essentially a contract whereby the parties to the agreement obligated themselves to the payment of certain sums and the performance of certain duties. The primary feature of such a contract was the payment for and the handing over of the *mundium* of the woman from her father or other mundwald to the new husband. A recognized marriage might occur without such an exchange of the *mundium*, but this was not a fully perfect marriage for the woman's mundwald remained her legal representative and was her heir. We will consider here only the perfected marriage contract.

Betrothal took place as much as two years before the marriage proper, but the betrothal itself was a binding legal contract and during the period of betrothal both the man and woman were regarded as married so far as entering into another marriage and so far as their personal relations with the other sex were concerned. The betrothal agreement was entered into between the husband-to-be and the relatives of the bride. The woman's consent was not necessary for these proceedings unless her mundwald was someone other than her father or brother, in which case her consent was required. At the time of the betrothal agreement, the man paid or promised to pay a certain sum known as the *meta* to the relatives of the girl, and if the actual payment did not take place, he must furnish a surety to guarantee his ultimate payment. Upon acceptance of the *meta*, the relatives (usually the girl's father) promised to present the girl on the ap-
pointed marriage day. A period of two years after the betrothal was allowed for the performance of the marriage before the contract was regarded as being impaired by the reluctance of one of the parties. Certain extenuating circumstances, however, might permit the breaking of the betrothal contract without penalty. If the woman involved was accused by her betrothed of having committed adultery (and it was called adultery even though the marriage ceremony itself had not taken place), and her relatives could not clear her of the charge, the man was to receive back the *meta* and be released from his part of the bargain. Or if the woman concerned became the victim of some foul disease such as leprosy, the man did not have to fulfill the betrothal agreement and presumably received back the amount of the *meta*. Furthermore, if the woman died between the betrothal and the marriage, the *meta* was to be returned to the man who betrothed her. And finally, if the families of the betrothed became involved in a feud, then the betrothal might be broken by a simple return of the amount which had been paid by the man when the agreement was reached.

The Laws do not indicate what constituted the actual marriage ceremony. The girl must be twelve years of age (unless the marriage were arranged by her father or brother, in which case the girl might be any age); the boy must be thirteen. At the time of the marriage, the father of the bride gave all or part of the *meta* to the girl as the *metfio*, and this became part of the property which she retained in her own name during the marriage relationship, although it was administered by her husband as her mundwald during his lifetime. In addition, the father seems also to have given the couple a gift known as the *faderfio*, and this presumably might or might not be a substantial gift at the father’s dis-
For purposes of inheritance, the *metfio* and *faderfio* seem to have been lumped together under one name or the other. The husband, in his turn, was also expected to make a gift to his wife. This ordinarily took place on the morning following the marriage night and was consequently known as the morning gift, the *morginegiva* or *morgincap* of the Lombard Laws. The morning gift also became part of the woman's independent property.

Upon her marriage, the woman passed into the legal power of her husband and as her legal representative he administered her property although he might not dispose of it without her consent. If the husband predeceased his wife and they had had no children, it was possible that upon a payment to the relatives of the husband to secure the release of her *mundium*, the woman might go to another husband or return to her relatives together with her *metfio* and morning gift and any other property which she may have inherited in her own right. If the wife predeceased the husband, he was her heir in all things unless she, innocent of crime, had been killed by her husband, in which case it is the children or the woman's relatives who were her heirs. If the marriage had resulted in children and the husband predeceased the wife, the wife remained in the *mundium* of her son or sons unless they were minors, in which case she and her children presumably remained under the tutelage of her husband's brothers or other near male relatives.

Ordinarily marriage took place only with the prior consent of the woman's relatives. If, however, the woman were seized and married without her own or her relatives' consent, the man was liable to the excessively high nine-hundred-solidi-composition fine. Nonetheless, if the composition were paid and the woman consented, the man might then enter into
negotiations with the woman’s relatives for the acquisition of her *mundium*. If the negotiations succeeded, he might then receive her *mundium* upon payment of the *meta*. On the other hand, if the wife died before the payment was complete and the *mundium* acquired, her husband must pay a “wergeld” for her to her relatives.\(^{15}\)

In still another instance, if the marriage took place with the woman’s consent, although without that of her relatives, and if the man was legally acceptable (that is, a freeman), the man must make a composition of twenty solidi for his failure to proceed properly and another twenty solidi to avert the *faida*. After that, he might acquire the woman’s *mundium* if that could be arranged with her mundwald. Otherwise, the *mundium* remained with its original holder and upon the death of the woman passed back to him and not to her husband.\(^{16}\)

A similar provision held in case a man took to wife with her consent the girl or widow betrothed to another man. He was required to pay twenty solidi for his guilt plus another twenty to avert the *faida*; then he might attempt to acquire the *mundium* of his wife through negotiation with her mundwald. In addition to this, he was required to pay the original man to whom the girl was betrothed an amount equal to twice the amount which that one had paid for the *meta* of the woman; but further than that, the man who was originally betrothed to the girl was not indemnified, nor might he bring action against the husband of the woman.\(^{17}\)

The situation was much different in case of the rape of a woman betrothed to another. In this case, the guilty man was required to make a composition of nine hundred solidi, half to the mundwald of the girl and half to the king, although if it were agreeable to the girl’s mundwald, the man who
raped her might still acquire her *mundium* and thus have the woman as his legal wife. Once again, the man to whom the woman was betrothed had to be content with a payment equal to twice the *meta* which he had paid for the girl, the important thing being that the girl's relatives still held her *mundium* and it was they who were regarded as having sustained the greatest property damage. On the other hand, if the relatives of the girl were responsible for her marriage to another or for her rape by another, it was they who had to make the payment of the double *meta* to the man who had betrothed the girl.

If the girl's mundwald gave the girl to another man after he had already betrothed her to one, or if the mundwald consented to her rape by another, then in addition to the double *meta* price, it was further provided that the mundwald must pay his wergeld in composition to the king, whereas the man who took her must also pay his wergeld to the king. If the girl were taken without the consent of her mundwald, it is the man who took her who must pay the double *meta* in addition to the composition of his wergeld to the king; and if the girl herself had consented, she was to lose her right of succession to the property of her relatives.

A second husband must also purchase the *mundium* of the woman he wished to marry by making a payment of the *meta*. This second *meta* was said to be half the amount of the first one, and was to be paid to the nearest heir of the dead husband, who presumably had inherited the *mundium* of the woman. If the heirs of the dead husband refused their consent, it seems that the *mundium* of the woman automatically passed back to her relatives, and the second husband must enter into an agreement with them concerning it. In the meantime, the woman was allowed to take with her her
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own property, that is, her morning gift, the faderfio, and any other property which she held in her own name (the administration of this property had passed to the heirs of the dead husband and might account for their reluctance to recognize a second marriage for the widow). Even if there were no negotiations for a second marriage under way, the woman might still return to her own relatives (or if there were no relatives to the court of the king) in the event that the relatives of the dead husband mistreated her.²¹

Marriage between an aldius and a free woman was possible, and even her mundium might be acquired. However it was the aldius' lord who made the payment for the woman's meta, and so it was he consequently who held her mundium while she was the wife of his aldius. If the aldius predeceased his wife, the relatives of the woman might return to the lord the sum which he had given for the meta of the woman, in which case the woman might return to the home of her relatives with any property which she might have taken with her, but without the morning gift which she had received while wife of the aldius and which presumably belonged ultimately to the lord. The children of the aldius and the free woman remained the aldii of the father's lord, but the relatives of the woman might also secure their release by making a payment equal to the woman's mundium for each of them.²²

Unequal marriage might also take place between aldiae and slaves. In such a case, the aldia seems ordinarily to have been reduced to the status of her husband and their children became slaves, although this did not always happen. At any rate, if the woman were not reduced to servitude, she and her children might leave her husband's house upon his death together with any property she might have brought with her.²³
So it is clear that marriages among those of the semi-servile and servile classes were also recognized and partook of the contractual nature of free marriages. Presumably no contract was required if the marriage was between the slave and maidservant or *aldisus* and *aldia* of the same lord, or even in case the marriage were unequal as regards the two classes, provided both the man and woman belonged to the same lord.

In case the marriage were between servants of two different lords, however, a contractual agreement might be required by the lord of the woman, for he would presumably lose her services during the period of the marriage. If the woman were an *aldia*, then the lord of the man to be her husband would make a payment to the woman's lord for her *mundium*, at which time she went to the house of her husband and was under the legal protection of his lord. In such a case the children of this marriage were also under the patroncinium of their father's lord, while if the *mundium* had remained with the mother's lord, it seems likely that they would have been under the patroncinium of their mother's lord. In the case of a maidservant who wished to marry the slave or *aldisus* of another lord, the man's lord would pay her value or *pretium* to her lord, whereupon the maidservant entered the estate of her husband's lord, their children were his slaves, and upon the death of the husband, she had to remain there.24

In addition to the provisions for legal marriages found in the Lombard Laws, there are also provisions to be applied in case of illegal marriage. A marriage was illegal, of course, if one of the parties was already married.25 Marriage between a slave and a free woman was prohibited by law.26 Marriages within the prohibited degrees of relationship were illegal marriages. In addition to those relationships ordinarily
included under this ban (relationship within the seventh degree), the laws prohibited a number of other marriages as incestuous: marriage between a man and his step-mother, his step-daughter, or the widow of his brother;\textsuperscript{27} marriage with the widow of a cousin on the father’s side, or with the widow of a cousin on the mother’s side;\textsuperscript{28} or marriage with one’s godmother, with his goddaughter, or marriage between the children of these.\textsuperscript{29} The children of such illegal marriages were not legitimate or even natural and could not succeed to the property of their parents.

Inheritance.—The basic inheritance laws are set forth in the Edict of Rothair, although there are some supplementary laws issued by Grimwald and quite a number by Liutprand. In their entirety they represent a well-formulated and worked-out procedure for the inheritance of property, although it is also clear that the system is undergoing some modification as the result of Roman influence.

Under special conditions which will be considered later, it seems that part of a Lombard’s property might be disposed of by a will or testament. However, this was not the usual condition, and ordinarily a man might not dispose of his real property for this was subject to more or less arbitrary rules of inheritance in order to preserve it within the family group. Still, a man might dispose freely of his personal or moveable property.

Property passed within a rather expanded family group, the law stating that persons within the seventh degree of relationship (from a common male ancestor) might be considered for the inheritance in the absence of more immediate heirs.\textsuperscript{30} A man’s direct heirs, of course, were his children, and here we must note a curious distinction between legitimate, natural, and illegitimate children. The legitimate chil-
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dren were those born of a man and his legal wife, that is, of the man and a free Lombard woman for whom he had entered into a legal contract with her relatives. However, a man might also have children by another union which, although it did not constitute a legally perfect marriage, was still tacitly recognized in the laws, especially in the earlier ones before the influence of the Catholic Church began to be felt. The children of such a union were described as natural children and the natural sons at least were entitled also to a share in the inheritance, although their collective share was only half as large as that of each legitimate son. Illegitimate children, however, might not inherit from their parents—illegitimate children were the offspring of a proscribed marriage such as the marriage of a free woman with a slave or marriage within the proscribed degrees of relationship. Such technically illegitimate children were barred from the inheritance and in the absence of other near relatives the succession passed to the court of the king, as it did also in other cases when there were no direct heirs or near relatives to claim the inheritance.

The Lombard inheritance laws ordinarily envisaged a situation in which the inheritance was shared equally among a man's legitimate sons, and such is the only provision of Rothair's Laws. By the time of Liutprand, however, certain modifications had taken place, however, perhaps under the influence of contact with Roman laws of inheritance. As we shall have occasion to note, the heritable position of women improved considerably in the later laws, and the restriction upon bequests which might remove property from the family's control was relaxed for the benefit of the Church. The law also changed somewhat with regard to the shares inherited by the legitimate sons and in Liutprand's laws we
find provision that if a father felt that one of his sons had
served him better than the others and should be rewarded
somewhat more for his services above the others, he might
reward him by leaving him a share which would be twice
that which it would have been if there were an extra child
in the family. The same law further provided that if a man
had children by a second or third marriage, he might not
especially favor a child of a later marriage while the mother
was still alive so that it might not be said that he did it under
the influence of the child’s mother and to the detriment of the
children of the first marriage. 31

The position of women as heirs was inferior to that of the
men presumably because, being unable to raise the faida
because of their weak sex, it was felt that they were unable
adequately to protect the family interest. Ordinarily, if there
were direct legitimate male heirs, women were excluded from
the inheritance for it was felt that the brothers would care
for them. However, if there were no legitimate male heirs,
but there were legitimate daughters, the daughters suc-
ceded to a share of the inheritance even though there might
be natural sons and legitimate brothers. 32 A woman could not
inherit all or part of her own or any other’s mundium. This
property right could be inherited only by males, although
again, the natural sons shared with the legitimate sons in the
same proportion as other property was inherited—that is, the
natural sons together received half the share of each legiti-
mate son. 33

The laws of Liutprand improved the position of women in
this matter of inheritance. It is here provided that if a Lom-
bard dies without legitimate sons and there are daughters,
then the unmarried daughters are to succeed as his heirs just
as if they were legitimate sons (thus modifying an earlier law
of Rothair which allowed them one-half of the property at most). In one instance, however, women are still excluded from the inheritance. If a man with no sons, only daughters, is killed, the daughters are not to share in the composition paid for the death of their father—since they could not raise the *faida*—but rather this composition is to go to the nearest male relatives. Only if there are no male relatives within the recognized degree do the daughters get one-half of the composition, the other half going to the king. If a man were to die leaving neither sons nor daughters, then his sisters—both those who were married and those who remained unmarried—succeeded to the property.

When a widow whose *mundium* was held by her sons entered a monastic establishment, she was allowed to take a third part of her own property with her, and upon her death, this part of her property became the possession of the monastery. Furthermore if the widow had neither sons nor daughters, she might enter the monastery with a half of her property and, upon her death, this also became the property of the monastery. Moreover even if the widow did not enter a religious house, she had the right to judge concerning a third portion of her property “for the good of her soul,” which simply means that she could leave it to the Church. The rest of her property remained in the power of her *mundwald*.

From the above laws, it is clear that the legal powers of women must have been increasing between the time of Rothair and the time of Liutprand. Still, however, lest it be felt that women were acquiring the power of discretion, a law in the same series states that if either daughters or sisters leave the house of their father or brother without his consent then the father or brother has the right to dis-
pose of their property in any manner which he desires.\textsuperscript{41}

The position of women as heirs is now partially recognized even if there were legitimate sons, for one of Liutprand's laws provides that a man might bequeath by testament to his daughters collectively one-third as much of the inheritance as would be received by each of the legitimate sons.\textsuperscript{42}

By the time of Aistulf, the position of wives as heirs is somewhat improved over their earlier condition where they seemed completely dependent upon whoever inherited their mundium. At any rate, the former rule which allowed the widow no property except that which she had been given in the morning gift and \textit{meta (faderfio)} is relaxed and her husband now might provide for her the usufruct of a share of his property equal to the share of one of her children. After her death the property of which she had enjoyed the usufruct passed to the heirs of the husband in accordance with the rules of succession.\textsuperscript{43}

Such are the general rules of inheritance, but they were subject to a number of modifications either because of the presence of natural children or of a testament made by the deceased. As mentioned above, a man's property was normally divided between his legitimate sons and his natural sons in a ratio which gave each legitimate son a share twice as large as that of the natural sons, regarding the latter as constituting one unit.\textsuperscript{44} However, a father might raise his natural sons to equal status with his legitimate sons, although only if the legitimate sons gave their consent to this action after they reached the legal age of twelve years.\textsuperscript{45}

Ordinarily a man's child by the maidservant of another man remained the slave of its mother's lord. However, if the father purchased his child's freedom from the lord, he was regarded as a freeman and the natural child of his father,
and as such might be the legal recipient of property gifts from his father. If a man emancipated his maidservant and then married her, she became a free and legitimate wife, and the children born of her became the legitimate heirs of their father.

Ordinarily succession in the Lombard state was not a matter of will or testament—heirs were born and could neither be made nor unmade except in specified legal cases. The laws say that a man may not disinherit his son without legitimate cause, nor may he alienate any part of the property which should eventually pass to the son. The legitimate causes for disinheriting a son are defined to be those cases where a son plots against the life of his father, or the son strikes his father voluntarily, or commits adultery with his step-mother. In the same manner that fathers were not allowed to disinherit their sons without due cause, sons were also not allowed to alienate property while their father was still alive, except in the case of their own death when they might legally provide for their children.

In the case where a man had given up hope of ever having an heir and consequently made a formal testament (thinx) providing for the disposal of his property on his death, and afterwards he had children, the bequest (thinx) was broken to the following extent: if there were legitimate sons (regardless of whether or not there were daughters) the thinx was broken in entirety and the inheritance passed to the sons. If there were no sons but there were legitimate daughters, the daughters were to receive half of the inheritance in accordance with the earlier rule of succession, and the remaining half passed to the recipient of the thinx.

The privileged position of the court of the king in the matter of succession has been indicated a number of times above,
for in the lack of legitimate heirs—whether for lack of anyone within the prescribed degree or of legitimate children—the court of the king claimed the succession. When a private citizen inherited, he inherited the debts which went with the inheritance, at least to the amount of the property inherited. But when the king’s court—or rather the public fisc—claimed the inheritance, it admitted no debts or claims against the property. Another case in which the inheritance might be claimed by the king’s court was in certain types of manumission when the manumitted slave left no direct legitimate heirs. The type of manumission which made the former slave *amundius* and folkfree cut any ties with the former lord, as the result of which the former lord did not take the position of patron upon the death of his former slave and succeed him as his legal protector, but rather the succession passed to the royal treasury. If the freedman had legitimate children, however, they succeeded him as his heirs.

Certain offenses also affected the right to inherit. In the case where a brother deliberately killed his brother, he forfeited his own property in the following manner: an amount equal to the composition for the dead man went to the dead man’s children, while that which was left over and above this amount went to the other brothers if there were any, if not, then to the dead man’s children. If there were no brothers or children, the property of the homicide passed to the near relatives, and if there were none of these, it went to the court of the king.

If a man in the course of his business remained outside the country for more than three years without sending due notification of his legal detention to his judge, he forfeited his property and this passed to his legal heirs just as if he had died—and furthermore, he might not be reinstated in this prop-
Bequests, conveyances, and contracts.—In the Lombard Laws, the problem of wills and gifts is closely bound up with the laws of inheritance because a man's right of disposal of his property was extremely limited. This condition probably goes back to an earlier period when, as seems to have been customary among the primitive Germanic tribes, individual ownership of property was unknown but rather ownership was vested collectively in the expanded family group. At any rate, the chief principle followed among the Lombards is that, under ordinary conditions, a man may not dispose of his real property and its succession shall pass on his death to his heirs in a predetermined manner, thus insuring that the property will remain within the family. By the period of the Lombard Edict, wills and gifts were not impossible, however, and there is an obvious development of the idea between the time of the issuance of the first laws under Rothair and the later laws of Liutprand and Aistulf. The idea of a will or gift is already so well-developed in Rothair's laws, however, that it does not seem possible that the adoption of this legal form was due entirely to the contact of the Lombards with Roman Law after they entered the peninsula of Italy. It might well have been, of course, that they developed such a procedure during the several centuries when they lived in the region of the Danube just north of the Roman world and when they must have had some contractual relations with the population of the East Roman Empire. However the procedure in this matter is so primitive that it seems more likely that the practice of making wills and gifts arose independent of outside influence. If we seek an internal reason for its development, it might well have been due to those cases where a man was survived by no heirs to inherit his property,
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in which case an adoption might occur to prolong the family artificially. Adoption proceedings would constitute essentially a contractual agreement equivalent to a will—adoption would simply overcome the disadvantages of leaving the property outside the family.

It would seem that the procedure followed in making a gift or a will went back to a prehistoric time because its very name, gairethinx ("spear assembly"), is reminiscent of a time when the tribal assembly met and before it were transacted all judicial and contractual proceedings. The problem of whether or not the Lombards still held tribal assemblies after they entered Italy has never been solved, but it is most unlikely that they did since the population of the nation was widely scattered in settlement. This of course would not make it impossible for regional assemblies to be held, and it is possible that there were such regional assemblies which met at stated times during the year. But regardless of whether or not there continued to be "popular" assemblies, the will or gift which at one time was valid only when made before the spear-assembly of the nation, was by the time of the Lombard Edict valid when made according to a set form in the presence of several free witnesses. The idea of publicity is the important element in the act, however, for it is continually stressed that a man can hope to substantiate any claim he may make only if he can produce witnesses to the act.\textsuperscript{59}

The gairethinx or thinx was not necessarily a will or a gift—it might simply be a legal proceeding which was conducted in the formal manner prescribed. Thus a man might "thing" his slave free in addition to "thinging" away his property.\textsuperscript{60} Perhaps originally there could be no gift unless a contractual arrangement was involved. Thus every gift required its
countergift or launegild—at one time presumably something approximately equal in value to that which had been given. However by the time of the Edict such an equal exchange had seemingly fallen out of use and was represented by a token payment or symbolic “return-gift.” Nonetheless occasionally a real launegild was still required.

This method of procedure is not clearly stated in any of the laws and must be inferred from their cumulative number. Let us consider, however, the thinx which was essentially a bequest. At the time of Rothair, this particular form of conveyance—which was much like a testament—could be used only if there were no legitimate heirs available for the inheritance. In such a case, a man might designate in the formal manner before appropriate witnesses him whom he designed to have his property; in return he seems to have received some token or symbol of an “exchange gift” or launegild. This form of conveyance differed from the gift in that it did not come into effect until the death of the donor, and it would never come into effect if legitimate sons were born following the making of the thinx, or it came partially into effect if legitimate daughters were later born.

Once the thinx had been made, the recipient-to-be was protected against subsequent conveyances of the property to someone else. The recipient was not only protected against conveyance to someone else, but he was even protected against unusual wasting of the property by its original owner. Upon death of the original owner, the receiver of the thinx came into possession of the property left him, inheriting the debts and obligations against the property as well as the property itself.

At the time Rothair’s laws were issued, it was impossible to convey any of the inheritance outside the family so long
as there were legitimate heirs available. This prohibition on bequests was relaxed in Liutprand's laws (as well as in the laws of the later Lombard kings) to make it possible for both men and women to leave portions of their property to the Church or to some specific ecclesiastical establishment even though legitimate heirs were available. Such bequests to the Church did not have to be made in the formal manner before witnesses, and they might be made even on the deathbed; furthermore, no return gift or launegild was required. In like manner, the formal thinx-procedure of manumission had been modified to the extent that now a slave could be freed by the simple process of handing him over to a priest before the altar. It was later provided, moreover, that a man on his deathbed might free his slaves by merely designating to a priest those slaves whom he wished to emancipate.

Such considerations were applicable in the case only of bequests made by a freeman in direct possession of his own property. The problem was somewhat different in the case of women and minors, since both were essentially wards of some guardian. The woman's right to make bequests was always extremely limited and never extended to the whole of her "separate" property (including the meta and faderfio as well as her morning gift). Nonetheless, if a widow had no children (who were ordinarily her heirs), she might enter a nunnery and take half of her property with her, the property going to the Church at her death. Or if the widow did not choose to enter a religious house, she might leave one-third of her property to the Church. Women seem to have been unable to make any other type of bequest.

The position of minors was essentially the same as that of women. A minor could, in expectation of early death, leave
part of his property to the Church as a bequest. The exact portion of the property so left was not limited by law, but the position of the Church was further indicated by the provision that should the minor recover from his "mortal" illness, the gift to the Church remained valid.\textsuperscript{73}

That contracts and sales were well known among the Lombards is clear from the Laws, for there are a large number of indirect references to such proceedings in addition to some laws dealing with the subject specifically. However, there is not enough material to give one any complete picture of the process, and difficulty of terminology makes it almost impossible to interpret those laws which do concern it.

It would seem that a sale was regarded as essentially a contract, a contract between buyer and seller. Sales and other forms of contracts followed more or less the same rules of procedure which governed making the \textit{thinx}, the testament or gift described above. Once again the two main considerations were the observation of certain legal formalities and the presence of witnesses to the act.\textsuperscript{74}

Associated with the question of contracts and sales was the matter of prescription, that is, the means by which possession could be established without a formal notice of sale or charter. In the matter of prescription with regard to real property, the Lombard Law, perhaps influenced by Roman Law, set up a period which varied from five\textsuperscript{75} to thirty\textsuperscript{76} to sixty years,\textsuperscript{77} depending upon the period when the law was issued and the status of the land under consideration. But ownership of other property which was found without an evident possessor was also provided for. Accordingly specific provisions were given for the establishment of ownership over domestic animals which had entered another
man's property and which were apparently without an owner, over property found along a road, or over an animal which had been wounded and left by a hunter.

It is also clear that property might be held by another title than that of ownership, but the laws are not very clear on this subject. A study of the charters of the period might shed some light on the subject, but the Code itself takes actual arrangements for granted. The ultimate problem goes back to the fact that it has never been definitely determined just what method of distributing land in their new home was followed by the Lombards when they arrived in Italy. Whatever the method followed, it is clear that most free Lombards actually owned as well as possessed their lands. But the fact remains that the actual cultivation of the land was not always done by the owner, and presumably the servile population which the Lombards brought with them, in addition to the semi-free Roman population already there, were given land to work, although of course this was not given in full ownership. Still, however, there are hints in the Laws that not all free Lombards owned their own land, but rather that some held land upon terms involving rents or services to its owner. We are indirectly told in the laws that the man who holds by book or charter (livellario) is subject to a lord; but the laws do not reveal how such an arrangement was made.
NOTES

Introduction


5. The material for the political history of the Lombard kingdom can be found chiefly in L. M. Hartmann, *Geschichte Italiens im Mittelalter* (Gotha, 1897-1911), 4 vols.

Chapter 1—The Lombard Legal and Judicial System


2. This tendency is represented by such instances as the following. Where the relatives fail to punish according to the law a free girl who has married a slave, the state intervenes in the person of one of its officials and places her in servitude at one of the royal courts (Rothair 221). Similarly in the case of soothsaying and witchcraft, the initiative was taken by officials of the state who were expected to seek out persons guilty of such practices and expel them from the community (Liutprand 85).

3. The medieval *civitas* was a direct adaptation of the Roman *civitas* which formed the basis of the Roman municipal system. This Roman unit of local government included the city proper (the urban center) plus a considerable amount of surrounding territory. The entire countryside could thus be divided into smaller or larger *civitates*. 

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4. W. K. Williams, *The Communes of Lombardy from the VI. to the X. Century*, Johns Hopkins University Studies in Historical and Political Science (Baltimore, 1891), 41-42, differs from this interpretation by identifying the *judex* and the *dux*. Aside from this fact, however, which is only subordinate to Williams' main thesis with regard to the position of the *civitates* in the Lombard kingdom, his work presents what seems to be a well-supported account of the role of these administrative units:

"What is of the greatest importance to us, however, in bringing out the relations of the cities to the rest of the community in Lombard and Frankish times, is the position of the *judex* as duke and as count within his own *iudiciaria*, that is, within the *civitas* of which he was both lord and judge. It was through him, or perhaps I should say chiefly through him, that the city was at this period connected with the state; and it was principally by the exercise of the functions of his office that the city formed a part of the state. His official residence, in the majority of cases, and his courts, were situated within the city's limits; thus making the official machinery of government a part of the city life, and causing the city to become an actual if not a legally recognized part of the constitution of the state. As far as this investigation is concerned, this represents the prominent feature of the power and position of the head of the *civitas*. We must be careful, however, to avoid confusion of ideas as to the importance which it gave to the city as a municipal unit or as a corporation. It was in no way what we could call a municipal government, even admitting a rather loose interpretation of the term, as the supporters of the theory of the survival of the Roman curial system would have us believe [Savigny]. The *judex* may be called 'the highest municipal officer among the Lombards,' and this designation still be correct, though perhaps misleading. He was the highest officer of the locality, and his official duties were for the most part carried on within the city; but the leading fact we must keep prominently before us is, that he was the head of the whole *civitas*, and not in any sense of the city as such: and further, that his powers over the rural portions of the *civitas* were in no sense added to any purely municipal powers he may have possessed; but, on the contrary, if we are to draw any distinctions, the municipality formed a part of the land division. That the whole *civitas* was commonly named after the largest town contained within its borders, and that the seat of power was generally placed within the city walls, are facts too evidently brought about by motives of convenience and expediency and by the force of old association, to lead to any confusion in
appreciating the proper place of the city. Where there were to be found buildings suitable for the residence of the dux, and where was located the largest collection of individuals, was manifestly the most appropriate place for holding the courts and settling the disputes of the inhabitants of the whole civitas, and this formed a natural centre for the machinery of government. But every inhabitant of the civitas had equal rights with the townsman proper, and, as in the old Greek πόλις, the most remote countryman dwelling on the borders of the civitas, if he possessed the franchise, was as much a citizen of Padua, Siena or Milan, as if he dwelt within the walls of the city which gave its name to the whole civitas.”


6. Liutprand, Prologue to the year 726.

7. Liutprand 28.

8. Ibid.

9. Liutprand 25, 26, 27, 28; Ratchis I, 2.

10. As in the case of most systems of compurgation, the charge was considered proved against the accused man when the oath of the accused and his oath-takers is imperfect or broken. Title 363 of the Edict of Rothair clearly states how such an oath can be “broken”:

   “Concerning the oath which has been broken. An oath is known to be broken when, having been presented on the holy gospels or on consecrated arms, he who is accused has joined with his oath-takers and has not dared to swear, or either he or one of his oath-takers has withdrawn himself; then the oath is known to be broken.”


12. Rothair 184, 165, 166; Liutprand 71, 118. We might note especially Liutprand 118:

   “... it seems to us to be a brave cause that a man should lose his entire substance by combat under one shield. And therefore we have taken foresight to establish that if in the future such a case arises, he who wishes, in case of the death of his relative, to establish by combat that he was killed by poison, those things having been observed which we have prescribed in an earlier edict, let him confirm on the gospels that he does not seek this case with evil intent, but upon a certain suspicion: then let him have the right to seek by combat as has been established before. And if the blow falls on him to whom the offense was imputed or to the camfio whom he had secured, let him not lose all of his substance, but let him make composition to him according to the quality of the
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person just as the earlier law of compositions has it. Because we are uncertain concerning the judgment of God, and we have heard that many without justice have lost their cause through combat; but on account of the custom of our nation of the Lombards we are unable to abolish this law.”

13. Rothair 164, 165, 166, 179, 198, 202, 360; Liutprand 61.
14. Rothair 359: “Concerning oaths. If in any cause between freemen an oath is to be given, if it is a case involving twenty solidi or more, let him swear on the holy gospels with his twelve aids, that is oath-takers, in such a manner that six of them are named by that one who brings the case, and he against whom the case is brought is the seventh, and let him name five such freemen that there will be twelve. But if it is a lesser case than twenty solidi, down to twelve, let six men swear on consecrated arms; let three be named by him who brings the case and let two freemen be chosen by him against whom the case is brought such as he wishes; and let him himself be the sixth. And if it is a case of less than twelve solidi, let three swear on their arms: one named by him [who brings the case] and one sought by the other [against whom the case is brought], and let the latter himself be the third.”

15. Rothair 164, 165, 166.
17. Rothair 198, 228.
18. Rothair 368.
19. Liutprand 50, 56. Note this latter law which indicates some doubt that the means of proof in use always provided justice:

“If anyone accuses another of theft and overcomes him in combat or perhaps the theft has been manifested by torture by a public official and the composition has been made, and afterwards that theft was found to be by another man and it appears certain truth that he who first made the composition had not stolen the property: let him receive all those things which he had compounded from him to whom he compounded them, and let that one make composition who afterwards was found to be the thief. . . .”

20. Distraint of goods is a characteristic Germanic institution, and the Lombard practice as compared with that of the other Germanic nations is noted by Rudolf Ruebner in his A History of Germanic Private Law:

“Private distress, in which a right of pledge was created by the independent power of the creditor, was an application of the right of self-help, which owing to the inadequate supply of money long continued to be practiced (although only within definite limits set by the law) even after the state assumed the
administration of justice. The name ‘pledge’ (‘Pfand’: basic meaning ‘includere,’ at first applied to impounded cattle) was commonly used in the Middle Ages solely for this ‘taken’ (‘genommenes’) pledge. Private distraint occurred in two forms:

“As distraint for the satisfaction of contractual debts. Although according to the most ancient sources, those of the Lombards, this was generally permitted when a debtor did not perform an obligation assumed in a duly legal manner, in the other folk-laws it was already permitted only upon the basis of a judicial authorization. In accord with this principle it was repeatedly laid down in later Territorial Peaces that nobody might enforce his rights himself, ‘sine auctoritate iudicis,’ by taking a pledge. At the same time, however, it continued to be recognized that the debtor might by means of a clause of distraint subject himself contractually to an extra-legal distress, —a distress ‘with or without right’ (‘mit and ohne Recht’),—in addition to the judicial; and such clauses, which were explicitly safeguarded in the Territorial Peaces, remained in exceedingly common use throughout the Middle Ages.” Rudolf Huebner, A History of Germanic Private Law, The Continental Legal History Series (Boston, 1918), trans. by Francis S. Philbrick, 441.

22. Rothair 249, 250, 252; Liutprand 109. In no place is the whole action of distraint described so completely as in Rothair 252:

“To no one is it permitted to take a house owing tribute (casa ordinata tributaria) in place of a pledge for any debt, only slaves, maidservants, cows, or sheep; indeed let the pledge which he has taken be safe in his care for the established (praefinitum) time, just as is added below: that is, twenty days [in cases] between those persons who live within a hundred miles of one another. And if within these twenty days he has not freed the pledge [of that one] doing him justice and returning his debt, and after the twenty days have passed if it happens that one of the pledges, the bondsman or any domestic animal, has died or committed homicide or done damage or gone elsewhere, then let the debtor repute the damage to him who neglected to free his pledges. And if within these twenty days the slave or maidservant has died or the domestic animal perished or committed homicide or done damage, let him who received the pledges be responsible for the damage and make satisfaction to the proper owner [lord]. And if the creditor and debtor live more than a hundred miles from one another, then let a time of sixty days be observed in the above-written punishment.”
23. Rothair 249, 250.
25. Liutprand 15, 36, 37, 39, 40.
26. Liutprand 38, 128.
27. Cf. Rothair 45: "Concerning the composition for strikes and blows which occur between freemen, let composition be made by this procedure just as is added below, the faida, that is the enmity, ceasing."
28. Cf. Rothair 74: "In all these blows and strikes which have been mentioned above, they are those which occur among freemen, and therefore we have set a higher composition than our ancient custom (antiqui) in order that the faida, that is the enmity, may be postponed after the abovementioned compositions have been accepted, and more shall not be required and a grudge shall not be held; but let the case be finished and let friendship remain. . . ."
30. Rothair 45, 74, 162, 326, 387.
31. Rothair 75, 138. Cf. Rothair 143: "Concerning him who avenges himself after having accepted composition. If a freeman or slave has been killed and composition has been made for the homicide and oaths have been offered for wiping out? (ampotandam) the enmity, and afterwards it happens that he who received the composition in avenging his case has killed a man from the [other] party from whom he had received composition, we order that he return the composition twofold to the relatives or to the lord of the slave. In a like manner concerning him who has tried to avenge himself after receiving composition for strikes and blows, let him restore what he has received in double; and in addition let him make composition as above if he has killed the man."
32. It appears that the faida often arose in connection with breach of the property agreements made at the time of betrothal. Cf. Rothair 190, 214.
33. Most of the titles referring to the faida come from Rothair's Laws. Two very interesting ones, however, were issued by Liutprand. We might note these here:
   "If any Roman takes a woman of the Lombards and acquires her mundium, and after his decease she goes to another husband without the consent of the heirs of her first husband, let faida and anagrip not be required, because after she has joined herself to a Roman husband and he has acquired her mundium, she has become a Roman and the children who are born of such a marriage shall be and shall live according to the law of their Roman father; therefore he who takes her afterward ought
to compound for the *faida* and *anagrip* not at all just as he would not for another Roman woman." [Liutprand 127]

"Indeed it has been announced to us that some perverse man, while a certain woman was bathing in the river, took all of her clothes which she had there, and she remained nude and those who walked or passed through that place saw her shame as if for her sins; moreover she was not able to remain forever in that river and blushing with shame returned nude to her home. Therefore we have established that he who commits such an illegal presumption shall pay his wergeld in composition to that woman to whom he did this shameful thing. We have said this because if the father or husband or near relatives of that woman had found him, they would have committed *scandalum* with him, and he who was able to overcome would have killed the other. Therefore it is better that he, living, should pay his wergeld in composition than that *faida* over a death grow up between relatives and the composition be greater." [Liutprand 135]

The first of these laws bears out the assertion that the right to participate in the *faida* was considered somewhat as a legal right for in this case marriage with a Roman meant that this Lombard woman lost the right to be judged by her tribal law. This meant not only that her family was no longer obligated to carry on the *faida* in her behalf in case of some injury to her, but also they would receive no composition in a case involving injury to her. The second example is interesting only because it presents something approaching a philosophical justification for the imposition of a composition: if the composition were not paid, the kinsmen of the woman who had been disgraced would assuredly have sought out that man who had perpetrated this evil deed and such an encounter might result in the death of one of the two parties. Hence it is better that the composition be paid than that a *faida* grow up between the relatives of the two parties, for such would involve further deaths and even greater compositions.

34. The Lombard monetary system was based on the Roman solidus, a gold coin minted by the East Roman Emperors from the time of Constantine. The original solidus was equivalent in value to about twenty-five denarii ("pennies"), but it was constantly debased and eventually passed out of use in Western Europe except as a money of account; it was then worth twelve denarii. Just what the value of the Lombard solidus was and how long the Lombards continued to use gold coins is not clear, but it seems certain that the Lombards continued to use a system based on the gold solidus even after the solidus virtually disap-
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peared. For a consideration of a possible decimal or duodecimal system in use among the Lombards, see Carlo Calisse, op. cit., 290-292.

35. Although this principle of debt slavery is implied in several of the laws, it is most clearly put in Liutprand 152:

“If any man who is prodical or ruined (naufracus), who has sold or dissipated his substance and does not have that with which to make composition, commits theft or adultery or scandalum, and inflicts blows on another man, and the composition for this is of the value of twenty solidi or more: the public agent ought to give him to the hand of him who suffered these illegal things, and he may have him for a slave. If moreover this composition is for less than twenty solidi, if as it often happens it is for from six to twelve solidi, then the public agent ought to give him into the hand of him who bore this deed to be a slave in this manner, that he may serve him for so many years that he is able to redeem his guilt, and afterwards he may go absolved where he wishes.”

36. The law specifically provides temporary servitude only in the case of inability to pay compositions of from six to twelve solidi. Since the law is silent regarding penalties falling between twelve and twenty solidi, we have assumed that the same provision applies. Note Liutprand 152 cited in note above.

37. The aldii were persons whose status lay somewhere between that of the freemen on the one hand and the slaves on the other. See Section (4) below.

38. This mundium idea has parallels in the other Germanic laws and is also analogous to some of the conceptions of Roman Law. Huebner in A History of Germanic Private Law considers the institutional and etymological analogy of this word:

“During the dominance of the patriarchal system the family constituted a circle of persons all of whom were absolutely subjected to the power of the house-lord, the patriarch, and were united by this common bond of subjection into a social group. They participated in legal life solely through the mediacy of the ‘house father’; he was their representative outside the group. The Germanic languages and the Latin both took the name for this power of the house-lord from the most striking symbol of power, the hand, and named it therefore ‘mund’ (Old High G. ‘munt’; North Germanic and Old Norse ‘mund,’ Latinized ‘mundium’). For the primary meaning of this word is ‘Hand’; the Germanic ‘Munt’ corresponds, etymologically and in meaning, to the ‘manus’ of Roman family law. ‘Mundium’ was originally a very broad conception, under which there seems to have been classed, in accord with the one-time actual
extent of house-hold authority, all possible relations of personal
dependence; and which points backward to conditions when
no public authority was recognized alongside of or superior to
the authority of the family head. . . . Its original character was
that of an unlimited authority of the mundium-holder
('Muntherr') over the persons subjected to his power. At an
eyearly day, and thereafter with increasing clearness, there were
grafted upon this original concept of almost unlimited authority,
first moral and then legal restrictions, which recognized a duty,
in addition to the right, of the master. And thus 'there already
appears in our earliest source of information, the meaning of
'protection,' or 'peace.' The house-lord became a lord-protector,
a 'mund-poro,' 'foramundo,' 'mundoaldus,' 'Muntwald,' of the
person subject to his control. Nevertheless the mundium of the
house-lord, even in this mixed form of right and duty that was
characteristic of the Middle Ages, long continued to signify 'a
power which we, according to our present views, would call
one of public law'; it continued to embrace a field into which
no public authority penetrated. For the state only the house-
lord existed, to him alone its commands were directed; he
alone long continued responsible under the criminal and private
law for everything that happened within his house and through
the members thereof.' Huebner, op. cit., 585-87. Note that al-
though it is not definitely stated so in the Lombard Læges, the
position of a lord toward his slaves and allii, as well as toward
women and wards, is essentially that of a mundwald.

40. Liutprand 31, 120.
41. Rothair 204.
42. Rothair 202; Liutprand 93.
43. Liutprand 22, 29.
44. Liutprand 146.
45. Grimwald 7.
46. Liutprand 31.
47. Rothair 105, 142, 376; Liutprand 124.
48. Liutprand 87, 97.
49. Rothair 216.
50. Rothair 235.
51. Liutprand 68, 97.
52. Liutprand 23.
53. Rothair 235; Liutprand 87.
54. Rothair 258, 376; Liutprand 124.
55. Rothair 208.
56. Rothair 208.
57. Rothair 216.
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58. Liutprand 19, 58, 99. But note the somewhat more lenient provisions of Liutprand 149, and the exception that marriage contracts might be entered into before the boy was eighteen (Liutprand 117).

59. Liutprand 58, 74, 75.

60. Liutprand 112.

61. Ratchis 3.

62. Ratchis 11.

63. Ratchis 11.

64. Rothair 226.

65. Rothair 224, 225.

66. See "Bequests, conveyances, and contracts" below.

67. Rothair 224.

68. Liutprand 23, 55; Aistulf 11.

69. See "Bequests, conveyances, and contracts" below.

70. Liutprand 140.

Chapter 2—The Personal Element in the Law

1. Titles 41 through 74 of Rothair's Edict deal with injuries inflicted upon freemen, Titles 76 through 102 with injuries to aldii and servi ministeriales, and Titles 103 through 125 with injuries to servi rustici.

2. Rothair 14.


4. Rothair 201.

5. Rothair 10, 11, 12.

6. Rothair 139, 140, 141.

7. Rothair 143.

8. Liutprand 17.


10. Liutprand 138 is a case where what seems to be a judicial decision is set down as a legal precedent. Here it is the case of a man who advised a slave to go and kill his lord, and furthermore was on hand to see that he did, and continually urged the slave on until so many blows were struck that the lord was dead. How much composition was to be imposed upon the man who had urged the slave on? The law states that the counsel for the defense argues that the composition for the counsel of death (Rothair 10: twenty solidi) should be imposed. "But this is in no way pleasing to us since the counsel of death was arranged in secret and sometimes carried out and sometimes not carried out: but this homicide was done in his presence and we say that this is not counsel when a man points out
another man with word and of his own free will and says: 'Strike this man.' And therefore he who commits such an evil deed and it is proved, let him not make composition for the counsel of death, but let him make composition as we have added to the edict in our time, and let him lose all of his substance and the heirs of the dead man shall receive half of it and the court of the king half...."

11. Rothair 75, 138, 144, 145, 387 (the general law on the subject); Liutprand 13, 62, 136, 137. These latter two laws are very interesting. Title 136 provides for the case where a man was standing under the lift or weight attached to the bucket of another man’s well. While he was standing there, a third man came along to draw some water and incautiously released the lift so that it came down on the head of the man standing under it and he was killed. The question was, who was to pay the composition? The reasoning of the lawgiver here is that since the man who was standing under the lift was a rational being, he should have been more careful about where he was standing. Therefore two-thirds of the composition is to be imputed to the dead man, and the other third is to be paid by the man who released the weight. “Moreover that one whose well it is should have no blame because if we placed the blame on him, afterwards no one would permit [others] to raise water from their well, and because all men are not able to have a well, the rest who are poor would die, and also the necessity of those traveling would suffer.”

The case provided for in Title 137 is that of a man who had borrowed a horse to pull his cart, and the horse’s colt followed along after. While the party was thus proceeding along the road, it happened that a child was struck by a blow from the hoof of the colt and was consequently killed. Who was to pay the composition for the child? An earlier law had stated that the owner of the horse is to pay composition for any damage caused by it, but here it is decided that since the horse was borrowed and he who received it in loan was a rational being and was able to warn the child out of the way, the owner of the horse is to pay two-thirds of the composition while the man who had borrowed the horse is to pay the other third.

12. Perhaps this word (arga) should be translated “coward.”

13. Rothair 381. Likewise we might note Grimwald 7 which provides for a case of malicious accusation. Here, if a man without legitimate cause has accused his wife of having committed adultery or of having plotted against his life, then the woman is to clear herself by the oath of her relatives or by combat.
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However, if she can thus clear herself of the charge, the husband must offer oath with his legitimate relatives that he accused her of the offense neither with evil intent nor maliciously; otherwise, if he does not dare to take such an oath, he must compound the wergeld of that woman in such amount as if he had killed her brother, half of the composition to go to the king and half to the relatives of the woman.

15. Rothair 42.
17. Liutprand 17. Aistulf 15 provides for the case where a rather obscene practical joke has been played on the members of a wedding party. In setting the penalty in this case, the lawgiver says that, lest any scandalum or homicide arise from this cause, a composition of nine hundred solidi is to be made, half to the king and half to the mundwald of the woman involved.

18. Rothair 15.
21. Rothair 27.
22. Rothair 28.
25. Rothair 32.
26. Rothair 33. In somewhat the same vein is Title 34. Here if anyone in anger has shot an arrow or hurled a lance into another's courtyard, or has beaten another outside the wall, he must make a composition of twenty solidi in addition to a composition for any injuries which he may have caused.

27. Rothair 277. Rothair 278 further describes this offense known as oberos or breach of the courtyard. Here it is said that "a woman is not able to commit breach of the courtyard, which is hoberos," for "it seems absurd that a free woman or a maidservant could commit forceful act with arms as if she were a man."

29. Rothair 189.
30. Here it is not clear whether the aldius or his lord was expected to make the composition. Ordinarily it would be the lord, but it is not impossible that aldii were able to obtain some money for themselves and hence be liable for at least a portion of their compositions.

31. Liutprand 60.
32. Rothair 212.
33. Rothair 213.
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34. Liutprand 122.
37. Liutprand 76.
38. Liutprand 121.
40. Rothair 378; Liutprand 123.
41. Rothair 186.
42. Rothair 187.
43. Rothair 191. A later law (Liutprand 31) adds something to the way in which the penalty of nine hundred solidi is to be divided: half goes to the king and the other half is divided between the woman and her mundwald. If the man who has her mundium is someone other than her father or brother, themundwald is to receive one hundred fifty solidi while the woman herself is to get the remaining three hundred. However if the woman is under the protection of her father or brother, then the two of them together shall decide upon the disposition of the composition, which probably meant that it remained in the control of the father or brother.
44. Rothair 195-198.
45. Liutprand 120. We might note three curious laws on this general subject. According to Liutprand 125, if anyone strikes a free woman or girl upon an exposed portion of her body while she is crouching because of natural necessity, he is to pay eighty solidi compensation to her mundwald. If it is an aldius or slave who does this, his lord is to pay sixty solidi compensation to the mundwald and the servant is to be handed over too. Note however that this eighty solidi composition is hardly consistent with that of nine hundred solidi provided in the laws of Rothair for violence, not necessarily physical, to a woman (Rothair 378). Liutprand 135 discourses to some length upon a certain case where a woman was bathing in the river, and while she was there, a man came along and made off with her clothes, as a result of which the woman, since “she was not able to remain forever in that river . . . blushing with shame returned nude to her home.” The doer of such a deed is to compound his wergeld to the mundwald of the woman in order to prevent the relatives of the woman from committing scandalum when they come upon the guilty man. The last of these laws, Liutprand 146, provides for the case where a man has found a woman walking across his sowed field. In such a case, if he binds or manacles her, he is to make a composition of one hundred solidi, half to the king and half to the mundwald. However, the man may bring suit against the
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mundwald claiming that he deliberately sent the woman across the field, and if he wins this case, a composition of six solidi to be made by the mundwald is to be subtracted from the hundred which the aggrieved man has to pay.

46. Rothair 17, 18: if the enemies of such a person fall upon him in order to avenge some injury or fault while he is on the way to or from the king, they are liable to a composition of nine hundred solidi, half to the king and half to the man who bore the injury.

47. Rothair 19: the composition is nine hundred solidi, half to the king and half to the man who suffered the injury.

48. Rothair 279: again the composition is nine hundred solidi, half to the king and half to him against whom the band was directed.

49. Rothair 319, 320.
50. Rothair 8.
51. Rothair 36.
52. Rothair 37.
53. Rothair 38.
54. Rothair 39.
55. Rothair 40.
56. Rothair 353.
57. Rothair 378.
58. Liutprand 37.
59. Liutprand 134.
60. Liutprand 135.
61. Rothair 378; Liutprand 141.
62. Aistulf 15.

63. For an excellent treatment of this problem in the barbarian legislation, see Floyd Seyward Lear, "Treason and Related Offenses in Roman and Germanic Law," The Rice Institute Pamphlet, XLII, 2 (July, 1955).

64. Rothair 13.
65. Rothair 1.
66. Rothair 3.
67. Rothair 5.
68. Rothair 6.
69. Liutprand 35.
70. Ratchis 12.
71. Ad iustitiam.
73. Rothair 21.
74. Ad iustitiam persequendam.
75. Rothair 22.
76. Rothair 374.
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77. Liutprand 62.
78. The *gasindii* were those followers of the king who were bound to him by an oath of loyalty. The Lombard Laws do not make clear the nature of this relationship, but by analogy we may conclude that the *gasindii* were the descendants of the *comites*, the members of the early Germanic military band, the *comitatus*. Cf. Edgar Holmes McNeal, *Minores and Mediocres in the Germanic Tribal Laws* (Columbus, Ohio, 1905), 72-79. See also K. F. Drew, “Class Distinctions in Eighth Century Italy,” *The Rice Institute Pamphlet*, XXXIX, 3 (October, 1952).


81. The meaning of the Lombard expression *fegangit* or *fegangi* is not clear. Carlo Calisse, *A History of Italian Law*, favors the interpretation that it corresponded to the Roman *furturn manifestum* as opposed to *furturn nec manifestum*, and that it is related to the customary proceeding of “outlawry” which had already passed out of the Code by the time the *Leges* were reduced to writing. In this earlier period before the written *Leges* and before any police power was claimed and asserted by the state, a man might kill him whom he surprised in the act of theft. By the period of the *Leges*, however, this has been modified to allow the thief to purchase his life (eighty solidi in the case of a freeman and forty solidi in the case of a slave) in addition to making a ninefold payment of the thing stolen. A woman was defined as not being able to be *fegangi* (Rothair 257), so her penalty would not include the redemption payment in addition to the ninefold payment (cf. the fact that a woman also could not be outlawed according to Germanic custom), and slaves of the king also could not be *fegangi*. Furthermore the object stolen must be above the value of six solidi to justify the imposition of the *fegang* fine (Rothair 291), and in addition, the object stolen had to be of a value of ten siliquae or more to justify the payment of the ninefold composition (Rothair 253). Cf. Calisse, *op. cit.*, 342-43. Cf. also Huebner, *op. cit.*, 410-411, and Osenbrüggen, *op. cit.*, 118-124.

82. Rothair 288, 320, 342, 351.
83. Rothair 32.
84. Rothair 33.
85. The *proditor* seems to have been a semi-official informer or “way-pointer” whose services were rendered chiefly in connection with strayed livestock. Among some of the barbarians this individual seems to have been almost a diviner. That the *proditor*’s
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86. Rothair 255.
87. Rothair 256, 262, 269; Liutprand 11, 64, 147; Aistulf 9.
88. Rothair 264.
89. Rothair 265-268.
90. Liutprand 44; Aistulf 9.
91. Rothair 126, 127, 128, 194, 205, 206, 352, 377; Liutprand 124, 139.
92. Rothair 14. According to Rothair 129, the *pretium* of the *alditus* who has been killed is sixty solidi; that of the household slave (*servus ministerialis*) according to Rothair 130 is fifty solidi; that of a subordinate *servus ministerialis* is twenty-five solidi (Rothair 131); that of the *servus massarius* is twenty solidi (Rothair 132); that of an ox plowman (*servus bovulco*) is twenty solidi (Rothair 133); that of the *servus rusticanus* who is under the *massarius* is sixteen solidi (Rothair 134); that of a master swineherd is fifty solidi, of a less important swineherd, twenty-five solidi (Rothair 135); that of a master cattleherd, goatherd, or oxherd is twenty solidi, of a pupil of one of the above, sixteen solidi (Rothair 136); that of a child of a *massarius* is to be adjudged according to his age or what profit he was able to produce (Rothair 137).
93. Rothair 376.
94. Rothair 28.
95. Rothair 140, 141, 334, 370; Liutprand 21, 60, 125.

Chapter 3—The Church in the Lombard Kingdom

2. *Pauli historia Langobardorum*, Book IV, Chap. XLII.
3. Rothair 363.
3a. Liutprand 33.
4. Liutprand 153.
5. Rothair 35.
6. Liutprand 143.
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7. Liutprand 102, 113.
8. Liutprand 73. See “Bequests, conveyances, and contracts” below for a discussion of the *thinx* and *laungild*.
9. See below, “Bequests, conveyances, and contracts.”
10. Aistulf 11.
11. Aistulf 12.
14. Liutprand 76.
15. Liutprand 95.
16. Liutprand 101.
17. Liutprand 100.
18. Liutprand 53.
19. Liutprand 32, 33, 34.
20. Aistulf 17.
22. Aistulf 23.
23. Rothair 197.
24. Rothair 368.
26. Liutprand 84. Since this law is the most complete on the subject and includes references to pagan survivals among the Lombards, it is quoted here:

“If anyone, unmindful of the fear of God, goes to soothsayers or witches for the purpose of receiving any divinations or any replies whatsoever from them, let him pay half his wergeld in composition to the sacred palace, and in addition, let him do penance according to the established canon. In a like manner, he who, like a rustic, calls to a tree as sacred, or adores springs, or who makes any sacrilegious incantation, shall pay a similar half of his wergeld in composition to the sacred palace. And if anyone knowing of soothsayers or witches does not reveal them or hides them, he who goes to them and does not reveal it, let him be subjected to the abovewritten punishment. Moreover he who sends his slave or maidservant to such soothsayers or witches for the purpose of receiving any responses from them, and it has been proved, let him make composition according to the abovementioned payment. If indeed the slave or the maidservant goes to the soothsayer or witch without the consent of his lord and so without his authority, likewise for the purpose of receiving any responses, then his lord ought to sell him outside the province. And if his lord neglects to do this, let him be subjected to the abovewritten punishment.” Cf. Osenbrüggen, *op. cit.*, 161-162.

27. Liutprand 85.
Chapter 4—Family Institutions

A picture of the customary Germanic marriage ceremony—parts of which might well apply to the Lombards since the wedding arrangements mentioned in the *Leges* are all Germanic in form—is given in Huebner:

"The nuptials ('trauung').—The betrothal was followed, when the day agreed upon arrived, by the delivery of the bride from her mundium-holder to the bridegroom. This was the 'traditio puellae' (A. Saxon 'gifta'), which, as already remarked, exactly corresponded in legal significance and outward form to the investiture in a conveyance of land. It was performed as a public and solemn act in the bride's home in the presence of the kindred of both parties. It was accompanied by the marriage feast. The legal formalities observed in this connection were long the same as those that once accompanied the original simple act by which the marriage was consummated. They corresponded, in part, to the usages customary in adoption. Along with the bride there were delivered to the bridegroom certain symbols of espousal—preferably a spear, as the token of the mundium that passed therewith to him for the future; the hair of the bride, which she had until then worn loose, was done up, her head was veiled, a mantle was thrown about her, and so on; the bridegroom grasped her hand, and probably stepped upon her foot, or set her upon his knee as if she were an adopted child; frequently also, he delivered to her a present. The final act, afterward as before, was the festive leading of the bride home to the bridegroom's house, where, at least in the North, a common cup once more rejoiced the entire marriage company. . . ." R. Huebner, *op. cit.*, 600-601.

8. Liutprand 12.
9. Liutprand 129.
12. Rothair 199.
13. Rothair 200. On the other hand, if it were the woman who had advised in the death of her husband, it was up to the husband to do with her whatever he wished, and the same thing was to
apply to her property. If such collusion was denied by the woman, her relatives might clear her of the charge either by oath or by combat (Rothair 202). If the woman herself had actually killed her husband, she was to lose her life. The property of both herself and the husband passed to the children, or if there were no children, it passed to the relatives of the husband (Rothair 203).

15. Rothair 187.
16. Rothair 188. If a girl goes to a husband without the consent of her relatives and consequently a *meta* has never been given for her and the husband has thus not acquired her *mundium*, the woman, upon the death of her husband, has no claim on the property of her husband for the amount of the *meta* which had never been given since she married him without the consent of her relatives (Liutprand 114).

17. Rothair 190.
20. Liutprand 119. Cf. Grimwald 6, 8; Liutprand 122.
22. Rothair 216.
23. Rothair 217.
25. Rothair 211 provides death for both the man and woman involved in the second marriage.

26. The slave who married a free woman was to be killed; the girl was to be killed by her relatives or sold into slavery outside the country—should the relatives fail to punish the girl so, she was to be seized by the agents of the king and become a slave to the king (Rothair 221). This provision is supplemented by a later law which concerns the case where the marriage is not detected until children have been born, in which case the woman and her children are to become slaves of the king and the man is to be put to death by the king’s agents (Liutprand 24).

27. Rothair 185.
28. Liutprand 33.
29. Liutprand 34.
30. Rothair 153. For the counting of generations, see R. Huebner, *op. cit.*, 712-17.

31. Rothair 154, 161. If a man had one or more legitimate sons (regardless of whether there were natural sons also or not) and one of the legitimate sons died before his father, then the son’s children succeeded to such a portion of their grandfather’s
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property as their father would have had if he had lived. By the time of Grimwald, it would seem that the children of natural sons also had this right to succeed in case of the death of their father before a division of the inheritance was brought about by the grandfather's death (Grimwald 5). Cf. Rothair 157.

32. Although illegitimate children could not inherit, they could receive valid gifts from their legitimate brothers. Liutprand 105.

33. Ordinarily it would seem that property was divided upon a man's death among his heirs and not held in common by the surviving family. That occasionally some property was still held in common is indicated in Rothair 167 and Liutprand 70.

34. Liutprand 113.

35. If the deceased man left no legitimate sons, but there was a legitimate daughter and one or more natural sons, then the inheritance passed in the following manner: the daughter received a third of the property, the natural son or sons one-third, and the remaining third passed to the near relatives, or if there were no relatives within the seven degrees of relationship, this last third passed to the court of the king (Rothair 158). If there were two or more legitimate daughters in this type of case, then the daughters received one-half of the property, the natural sons continued to receive one-third, and the near relatives (or the court of the king if there were none) received the remaining one-sixth (Rothair 159). These cases were modified, however, if the deceased had left one or more legitimate sisters in addition to the legitimate daughter or daughters. In such a case, the daughters and sisters were to divide equally among themselves the one-half of the property named above, another third still went to the natural sons, and the remaining sixth to the near relatives or the court of the king. The *mundium*, or right of legal protection over these women, however, could be inherited only by men. In such a case, one-third of the *mundium* of the above-mentioned women passed to the natural sons, and the other two-thirds passed to the near relatives, or in their lack, to the court of the king (Rothair 160).

36. Rothair 161. If a woman's husband died, it seems that her relatives (usually her father or brother) might repurchase her *mundium* from the relatives of the woman's dead husband, and in such a case, the widow returned to her early home. Furthermore, upon the death of her father or brother, she is to share the inheritance with her sisters in the following manner. She is allowed to keep the morning gift which had been given her by her husband, and of the remaining property she is to receive an equal share with her sisters from which an amount has been subtracted equal to the *faderfio* which the father gave to the
woman at the time of her marriage plus the repurchase price of the *mundium* (Rothair 199).

37. Rothair 158, 159; Liutprand 1, 2.
40. Liutprand 101.
41. Liutprand 5.
42. Liutprand 102.
43. Aistulf 14.
44. Rothair 154.
45. Rothair 155.
46. Rothair 156.
47. Rothair 222. Note, however, that it is specifically stated that a man's children by a female slave can in no case become legitimate or natural if the female slave has a husband. Liutprand 66.
49. Rothair 169.
50. Rothair 170.
51. Rothair 159.
52. Rothair 171; Liutprand 65.
53. Rothair 365, 385; Liutprand 57.
54. Rothair 223.
55. Rothair 224.
56. Rothair 225.
57. Liutprand 17.
58. Liutprand 18.
59. Rothair 172: "Concerning the *thinx*, which is a gift. If anyone has wished to ‘thing’ his property to another, let him make the *gairethinx* not secretly but before freemen, provided that he who makes the gift and he who is the witness (gisel) are free and that no contention may be raised in the future."
60. Rothair 156, 157, 222, 224, 225; Liutprand 9, 55.
61. Rothair 184.
62. Rothair 172, 175; Liutprand 73.
63. Rothair 159.
64. Rothair 171; Liutprand 65.
66. Rothair 173.
68. Liutprand 6; Aistulf 12, 16.
69. Liutprand 73.
70. Liutprand 9, 55.
71. Aistulf 12.
72. Liutprand 101.
73. Liutprand 19.
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75. Rothair 227, 228.
76. Grimwald 2, 4; Liutprand 70; Aistulf 18.
77. Liutprand 78.
78. Rothair 343; Liutprand 82.
79. Rothair 312.
81. Liutprand 92, 133.
II. LOMBARD LAWS AND ANGLO-SAXON DOOMS
Lombard Laws and Anglo-Saxon Dooms

It has been noted by a number of competent authorities that there is a peculiarly close relationship between the laws of the Lombards in Italy and those of the Anglo-Saxons in England. Frequently no specific reason is given for making such an assertion, although Heinrich Brunner in his Deutsche Rechtsgeschichte notes the etymological analogy between the Anglo-Saxon ealdorman and the Lombard gastaldius, the like manner of counting degrees of relationship, and a similar practice of distraint of goods by the two peoples. However, after studying the two sets of laws, one finds it hard to retain the conclusion that there is a relationship which is peculiar to these two codes; furthermore there are some differences in the institutions revealed in the codes which seem as significant as the similarities.

Before attempting to demonstrate this conclusion we might begin with a statement with regard to barbarian law in general. It is easily noted that all the barbarian codes—whether one is speaking of the early codifications of the Visigoths and Burgundians, of those of the Franks, Anglo-Saxons, and Lombards, or of the later compilations of the Scandinavian peoples—have in common to a greater or lesser degree a number of characteristically Germanic institutions. Hence demonstrating that a particular institution was common to two barbarian peoples does not necessarily indicate that it was peculiar to those two peoples. Consequently, although some close similarities between the laws of the Anglo-Saxons and Lombards can be seen, it might well be that a careful study of the other barbarian law codes might demonstrate a closer relationship between another set of peoples, as for example, the Lombards and the Burgun-
dians. However, since such an attempt is beyond the scope of this study, the remainder of this section will be devoted to an attempt to compare very briefly the chief institutions of the Anglo-Saxons and of the Lombards as revealed in their law codes.

In the first historical references to the Lombards and the Anglo-Saxons (such as the references made by Tacitus, Ptolemy, and Velleius Paterculus in the first and second centuries after Christ), these peoples dwelt in neighboring regions south of the North Sea around the mouth of the Elbe River and in the lower Cimbric peninsula, regions which might even have been adjoining. At this time, both peoples were heathen, presumably under the rule of kings, and quite possibly their institutions and language were closely related. For how many centuries these nations dwelt in such close proximity it is impossible to say. Presumably the Anglo-Saxons remained there, or in territory slightly further to the west in the region of the Rhine, until the time of their migration to Britain beginning in the second half of the fifth century. How long the Lombards remained in the region is a more difficult matter. We cannot locate them definitely from the second century until the fifth, at which time they were dwelling to the south and west of the bend of the Danube.

Whatever may have been the original relationship between the Anglo-Saxons and Lombards, it is clear that a number of significant changes took place in the institutions of the Lombards in the century and a half or more during which they lived in the Danube region. In the first place, they were converted to Christianity of the Arian type. In the second, they were exposed to political and commercial contacts either with the Roman Empire itself, or with other peoples who
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had been influenced by Rome. Whatever these institutional changes were, they had become a part of the Lombard customary law by the time the Lombards entered Italy. As a result, the first reduction to writing of the Lombard law by King Rothair in the seventh century was little more than a codification of the Lombard customary law in an attempt more or less to stabilize it for a people who had been widely scattered in the occupation of Italy. In the Edict issued by Rothair, there seem to be few laws which were brought forth by specifically new situations raised by the settlement in Italy. Furthermore, beginning with the law issue of Rothair, the Lombard *Leges* seem to be an attempt to set down in writing the entire system of Lombard law, and although these laws seem singularly incomplete to us with our lack of knowledge of Lombard institutions, they are extremely full when one compares them with the relatively brief issues of the earliest Anglo-Saxon kings.

When the Anglo-Saxons invaded Britain, they were still heathen and remained so in spite of some contact with the former British Church. They were converted to the Athanasian (Roman Catholic) form of Christianity beginning at the close of the sixth century with the mission of St. Augustine to Kent. The introduction of Christianity in Kent, the southeasternmost of the English kingdoms, meant the introduction of an institution for which there were no regulations in the customary law of the people. Consequently the primary motive of the Anglo-Saxon kings in issuing their laws was an attempt to establish protective regulations for this new institution, the Church. Hence from the first, ecclesiastical motivation ranked large in the Anglo-Saxon laws, and this influence was to continue throughout the Anglo-Saxon period in sharp contrast to the situation in the Lombard state where
the Church as an organized institution had practically no influence on the Lombard laws except in the matter of alienation of property. ¹

In all the prologues prepared by the various Anglo-Saxon kings to issues of their laws, there is prominent notice given to the advice of churchmen. Aside from the purely customary regulations with regard to the social and economic position of clergymen which one finds in their laws, one might reasonably expect to find a considerable Roman influence when one notes the fact that Augustine and his followers and the later Archbishop Theodore were all Rome-trained and presumably had a more or less extensive knowledge of a kind of Roman Law as it had been adapted to canonical uses. ² Such, however, is not the case and aside from the fact that the Anglo-Saxon lawgivers seem to recognize that a written law would be better for their people, there is no indication of any influence of Roman law. The Lombard laws, on the other hand, show considerable Roman influence in spirit, administration, and legal forms.³ Since this Roman influence has already been so completely integrated with what might be termed the native Lombard institutions, there seems to be no other explanation than to say that this Roman influence began to be felt before the Lombards entered the Italian peninsula.

The Lombard and the earlier Anglo-Saxon Laws were set down in writing at approximately the same time. The Laws of Aethelbehrt of Kent (601-04) precede somewhat those of the Lombard Rothair (643) and Grimwald (668). Likewise the laws of Hlothære and Eadric (685-86) and Wihtraed (695-96) of Kent, and Ine of Wessex (688) come somewhat before the Laws of the Lombard Liutprand (715-35), Ratchis (745), and Aistulf (755). Whereas the Lombard Laws are
more or less complete in these five issues, the Anglo-Saxon Laws represented herein are extremely brief and for the most part set up what would be essentially new regulations outside the bounds of their normal customary law. It is only with the later Anglo-Saxon issues that one sees something more of the basic system, and these later laws were not reduced to writing until the time of Alfred at the close of the ninth century, and later. Alfred’s Laws seem to mark a new period in the history of English Law, and he and his successors went to great lengths to codify the law of their consolidated kingdom. Consequently it is almost impossible to compare the Lombard Laws with those of the almost contemporaneous Kentish and Westsaxon monarchs of the seventh and eighth centuries, but rather the comparison, if one is to be made, must be the more strained one with the English Laws of the kings of England of the tenth century. However it should at least be noted that in making this comparison with the later issues of the Anglo-Saxon kings, there is a considerable possibility that contact with the continent and with Italy had had some influence upon the Anglo-Saxon lawgivers, and hence such similarities as there were may have been due to a later period of contact rather than to an intrinsic kinship between the two laws.

We might begin our comparison by a consideration of judicial procedure, of methods of proof, and of law courts. Generally speaking, the Anglo-Saxon and Lombard systems are alike in their attempt to substitute a system of state-regulated compensation in the form of compositions and wergelds for the older principle of justice enforced by the family, although the Lombard Law attempts to abandon this principle more completely than the Anglo-Saxon. This reign of law is implemented by modes of judicial proof such as ordeal and
trial by combat. The Lombards and Anglo-Saxons would agree generally upon the types of cases involving composition and the payment of wergelds, but they differ in the mode of compurgation and proof. To understand this difference, we need to note the difference in their courts. Presumably the Anglo-Saxon courts, although presided over by the king's official or the official of the lord of the territory where the court was held, were composed of the local landholders of the community who might reasonably be expected to know the character and reputation of those brought before it. On the other hand, the Lombard court seems to have been strictly magisterial, held by an official of the king who interpreted the law. The Anglo-Saxon case was brought to court by means of a very formal oath of accusation, replied to by just as formal an oath of denial by the defendant. It was then up to the court to decide which of the two parties would be required to furnish proof. If the party to furnish proof were of good reputation, the means of proof would be compurgation. In such a case, the court would further prescribe the strength of the oath, whereupon it was up to the party furnishing proof to secure the required number of oathhelpers—and here it should be noted that not every man's oath had the same value, but rather its value varied with the rank of the person involved. On the other hand, if the party furnishing proof were not deemed to be of good reputation by the doomsmen, he might be required to present proof by ordeal, ordinarily the ordeal of fire or water.

The Lombard presented his case before the sculdahis or judge. It is not clear whether the accuser was responsible for bringing the accused to court, or whether such a procedure was part of the responsibility of the minor judicial officers (it was probably the latter). The accusation was made
in the form of a solemn oath, and the accused party would have to present his oathtakers according to the nature of the offense of which he had been accused, and the judge should decide whether this oath was perfect or broken, and issue judgment accordingly. Here we should note that every freeman's oath among the Lombards had the same value. The justice of each of these situations seems to be that in the case of the Anglo-Saxons, the doomsmen of the community would be well-enough acquainted with the character of the parties to the suit that they would be allowed some discretion in deciding which party would be required to present proof (for the advantage lay with him who was not required to present proof). On the other hand, among the Lombards, the number of oathtakers and who was to present them were fixed by law, but a man's oathtakers consisted of his relatives and those who lived in the neighborhood and presumably such persons would be willing to take solemn oath only when they felt that their party was innocent. In either case, it must have been a workable system. In some extremely serious cases, the Lombard Law allowed proof by combat, although the laws seem to try to avoid this remedy. Furthermore, the proof by ordeal was extremely rare or not used at all by the Lombards (perhaps only in the case of the unfree), another point at which their law differed from that of the Anglo-Saxons.

There is a graded social hierarchy provided for by the laws of both the Lombards and the Anglo-Saxons, although the ranks of this hierarchy are not the same. Both present several ranks of freemen, although these ranks are not so clearly distinguished by the Lombards. In both cases we seem to find a nobility of birth and a nobility of office. Among the nobility of birth, we find among the Anglo-Saxons the distinc-
tion between the *twelfhynde* and *twhynde* man,\textsuperscript{11} whereas the Lombards distinguished between the man whose wergeld was three hundred solidi and him whose wergeld was one hundred fifty solidi.\textsuperscript{12} Enjoying a privileged position aside from their position by birth were the Anglo-Saxon officials and the king's thegns;\textsuperscript{13} and among the Lombards the royal officials and the *gasindii*.\textsuperscript{14} The Lombards recognized a class between the freemen and slaves, a class known as the *aldii*.\textsuperscript{15} The Anglo-Saxons generally had no such semi-free class, although in Kent there was such a semi-free class known as the *laets*.\textsuperscript{16} In addition, the position of the Welshmen in Anglo-Saxon law may possibly be compared to that of the *aldii*. At least it is true that the Welshmen enjoyed a wergeld which was much less and possessed an oath of less value than that of the Anglo-Saxon freeman. In contrast to the 200- and 1200-shilling men of the Anglo-Saxons, the Welsh wergelds were 120 and 600 for freemen and 50 to 60 slaves.\textsuperscript{17} Both Lombard and Anglo-Saxon laws recognize various ranks of slaves, although the Anglo-Saxon does not go to such lengths in differentiating between the various occupations of slaves with a corresponding difference in value as does the Lombard.\textsuperscript{18}

In both laws, compositions and wergelds can be paid for and collected only by freemen. In case the composition or wergeld (or rather *pretium*) is assessed because of an injury to an unfree person, it is the unfree person's lord who collects the money, whereas if the offense is committed by an unfree person, it is that person's lord who pays. In this respect, the Lombard Law is more logical than the Anglo-Saxon, or perhaps it had just not been so deeply influenced by the Church. At any rate, it does not seem to have been possible for a Lombard slave to earn money for himself with which he might eventually purchase his freedom, and the
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Lombard Law recognized nothing like the principle of noxal surrender whereby if the object which caused the damage were surrendered, no guilt accrued to the owner. It is true that the Lombard lord sometimes had a choice between paying a heavy fine or surrendering his slave to be killed in the case of certain grave offenses committed by his slave, but the ordinary composition still had to be paid to the injured party.

It has been said before that both the Anglo-Saxon and the Lombard Laws are attempts to get away from the blood feud or faida and substitute a peaceful method of settlement. Such an attempt deemphasizes the kindred who in an earlier time must have taken upon themselves the responsibility for enforcing justice for injuries to members of their family group or maegth. Still, however, the Anglo-Saxon Laws recognize the expanded family group for some purposes, especially with regard to the liability of its members for offenses committed by one of them. Perhaps such a recognition is simply taken for granted in the Lombard Laws, but only in case there is no immediate kin to assume responsibility. The Anglo-Saxon Law definitely states that the maternal kin is expected to pay so much of a composition, and the paternal kin so much; likewise, the two kins are to receive compositions in the same proportion. The Lombard kin inherit property and composition only if there are no eligible immediate heirs, and presumably the same system would apply in the matter of the payment of composition. All in all, the family group is much stronger among the Anglo-Saxons than among the Lombards.

The Lombard Law draws a finer distinction with regard to the matter of extent of liability than does the Anglo-Saxon. Theoretically, whether a man slays by accident or in self-defense is not carefully defined in Anglo-Saxon Law.
important consideration is whether the homicide were committed by means of the use of sorcery or poison—in such a case, the penalty is death or exile. In almost all other cases, the homicide brought only the payment of the dead's wergeld. For the Lombards, however, there is a difference between accidental homicide and deliberate murder. Murder brought with it not only the payment of the dead man's wergeld, but the confiscation of the slayer's entire property and the loss of his life. Accidental death or death in self-defense, on the other hand, brought with it only the payment of the dead's wergeld to his family.

Perhaps the largest single group of laws contained in the Lombard Code and not in the Anglo-Saxon are those laws which deal with the inheritance of property. The Anglo-Saxon Law may have been as strict as the Lombard in preserving property for members of the family in a prescribed proportion, but such regulations remained a matter of customary law and were never included in the law code as it was written down. On the other hand, both the Anglo-Saxon and the Lombard laws reveal the introduction of the use of the testament, under the influence of the Church. Both establish regulations for the respecting of wills made in favor of the Church in order that they should not be contested by those members of the family to whom the property would ordinarily have developed. It is also said that the use of the Anglo-Saxon "land book" was due primarily to the influence of the Church. The Church in seeking some guarantee of its rights against future claims by the kindred, might demand a charter or book for the property which it received. This principle being extended, others might also hold land by "book." This simply meant that they held land according to charter rather than according to the customary rules of land tenure. Such
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lands might be disposed of by testament, whereas folkland was governed by the rigid rules of customary devolution. The entire subject of land tenure is treated only in a most indirect fashion in the Lombard Laws. However there are references to land held by book (livellus) and those holding by book (livellarius). The context indicates no ecclesiastical conditions and the relatively slight influence of the Church at this time would argue against this being an ecclesiastical innovation. Lombard bookland then is likely to be a more direct result of the influence of Roman law than of that of the Church, although it is usually said that Anglo-Saxon bookland is the result of clerical influence. At any rate, conveyance of land among the Lombards certainly does not seem to have been limited to bookland (as in the case of the Anglo-Saxons); rather it was limited to those gifts which were made in favor of the Church.

The Anglo-Saxon and the Lombard Laws both recognize the practice of distraint, although its application in the two cases varies somewhat. The Lombard, it seems, could distrain goods (although presumably with the consent of their owner) without any judicial action, whereas the Anglo-Saxon could distrain goods only upon the authorization of the court. The principle is essentially the same, however. If one man becomes indebted to another by some means or another, the creditor is allowed to distrain some article of property of the debtor to hold as a pledge for the ultimate redemption of his debt. Each code, moreover, has its own peculiar regulations with regard to how long such a pledge can be held, under what conditions it must be surrendered, and so forth.

Both sets of laws lay a great deal of emphasis upon the fact that all transfers of property (that is, non-landed property) shall take place before witnesses in order that these
witnesses may be produced later in the case of an accusation of theft. He who is unable to produce such a witness is automatically presumed to be a thief in case such an accusation is brought against him.

The Anglo-Saxons and the Lombards both had a system of vouching to warranty. The Lombard process provided that in case a man who bought property without witnesses is accused of theft, he is to find the man who sold him the article, and this person is then required to furnish proof that he had come by the article legitimately or else be liable to the penalty for theft. It is true that there is no mention of a formal process such as that of vouching to warranty in the Lombard Leges, but the system seems essentially the same as that of the Anglo-Saxons even though there is no mention that this process goes back farther than this one step mentioned above.

Marriage arrangements and provisions for transfer of property at the time of the marriage are much more elaborate among the Lombards than among the Anglo-Saxons, but the underlying principle is the same. Women are not legally competent in either code, and a marriage is essentially a legal contract whereby the bridegroom purchases from her father or other legal guardian the mundium (simply mund in the Anglo-Saxon law) or right to protection over his future wife. Each party to the contract is bound to fulfill his part of the bargain, or the contract is broken and penalties peculiar to the two laws are imposed upon the party responsible. In the main the payments made at the time of the marriage are the same (as they are in all Germanic laws), although their specific names may vary. Consequently the bridegroom makes a certain payment to the bride’s father in order to secure the release of her mundium, and this sum,
or at least a part of it, is in turn handed over to the married couple, and, at least among the Lombards, becomes a part of the inheritable property of the woman. Furthermore, among both peoples (as among other Germanic nations), the husband is expected to make a gift to his bride on the morning following the wedding night, a gift known as the “morning gift” (morgincap or morginegiva among the Lombards, and morgengyfe among the Anglo-Saxons). In the case of both the Anglo-Saxons and Lombards, it has already been stated that women were not legally competent. However, in both laws, a woman might hold property in her own name (although among the Lombards this property must administered by her husband as long as he lived), and this property was not liable for the debts of her husband. In any case, women must always secure the consent of their relatives or guardian before alienating any of their property. However, by the close of the Saxon period it seems that the situation among the Anglo-Saxons had changed and women were the legal equals of men.

The severity of the penalty for rape differed among both peoples according to the social rank of the woman against whom the offense was committed, its seriousness increasing greatly if against a woman consecrated to the Church. However the penalty for adultery differed greatly in the laws of the two people. All adultery in the Anglo-Saxon Laws seems compensatable by some form of money payment, and in the main these payments do not seem very heavy. On the other hand, adultery (on the part of the woman, of course) was an extremely serious offense among the Lombards, and the injured husband was warranted in taking almost any action which pleased him against both the offending parties, even including killing them.
Both the Anglo-Saxon and the Lombard Laws set up regulations for the cooperative apprehension of criminals, although this takes different forms in the two laws. It is the more complete in the Anglo-Saxon Laws, where it seems that the freeman had the right to call upon his fellow freemen to aid him in the apprehension of, specifically, a thief, and his fellow freemen were bound to follow him when he had raised the “hue and cry.” The Lombard does not seem to have depended in such a manner upon his neighbors for the apprehension of thieves, but rather upon the various public officials of the region. However, if anyone knowingly aids a fugitive—who is presumably a thief or other kind of criminal—he becomes liable to penalty as an accomplice. And this regulation applies to such strategically placed persons as boatmen who ferry people across rivers. Both laws hold him guiltless who kills a man who resists capture when he has been caught in the act of theft, or when the ordinary proceedings of pursuit have been instituted.

The Lombard and the Anglo-Saxon administrative systems are alike in some ways and very much unlike in others. For the most part, the difference is due to the fact that at least in theory the Lombard system provides a much more strongly centralized control than does that of the Anglo-Saxon. The only officials who bear any close resemblance are the ealdormen of the Anglo-Saxons and the gastaldii of the Lombards. In both cases, this official is a strictly royal representative as opposed to the various Anglo-Saxon sub-kings and the practically independent Lombard dukes. We might also note that etymologically the words come from the same Old Germanic root. Since their duties are comparable, it might almost be argued that such a representative of the royal government was known to their society before their insti-
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tutions are known to us. To generalize we might say that, roughly speaking, the Anglo-Saxon king was comparable to the Lombard king; the Anglo-Saxon sub-kings comparable to the Lombard dukes; and the Anglo-Saxon ealdormen\textsuperscript{12} comparable to the Lombard gestaldii.\textsuperscript{43} Further down the hierarchy than this, however, the analogy does not seem to hold, for the Lombard officials appear to have been trained in the law and were responsible to a greater extent for enforcing public law and order. Although it is hard to draw any specific analogies between the minor judicial and administrative officials, it might be noted that the lowest member of the Lombard hierarchy, the official known as the deGANUS or centinus who had only police duties and not judicial, in some respects resembles the Anglo-Saxon hundredman.

Both the Anglo-Saxon and the Lombard Laws reveal the Germanic idea of special “peaces,” although the Lombard conception is somewhat more advanced in the direction of a “public” law. The Lombard offense described as scandalum closely resembles that of the Anglo-Saxon Laws known as mundbryce. The word mundium meaning right of protection in the Lombard Laws has been restricted in use to the right of a guardian (mundwald) over the women under his legal protection. Breach of a man’s rights within his physical domain is no longer described as a breach of his mundium, but by the Lombard word oberos. Breach of the peace of a public place such as a town, a church, or the king’s dwelling has become a much more serious offense and is described as scandalum, carrying an especially heavy penalty in case such an offense is committed in the king’s palace or in his presence.\textsuperscript{44} The Anglo-Saxon conception still retains much of the idea of the breach of a man’s personal mundium; in
fact it is described as mundbryce. In the Anglo-Saxon laws it is actually stated that the king (and the church) enjoy a frith or “peace,” but breach of the king’s or church’s frith seems as if it must be identical with mundbryce, and in support of this is the fact that the penalties prescribed in both cases are the same. Hence although the specific interpretation of these ideas has changed somewhat as between the Anglo-Saxon and Lombard Laws, it would seem that at least in origin the Lombard oberos (and for that matter the personal offense known as wegworin) is analogous to the Anglo-Saxon mundbryce in the case of a private person, while the Lombard scandalum is a somewhat more refined version of the Anglo-Saxon mundbryce of king, church, or town.

The idea of the “king’s peace” in both laws has been extended specifically to cover those who are on their way either to or from a conference with the king. Consequently he who attempts to hinder a man who is on his way to or from the king is liable to the extremely high penalty of nine hundred solidi according to the Lombard Laws. Such an offense is a violation of the king’s mund according to Anglo-Saxon law.

Both the Anglo-Saxons and the Lombards recognized the honorable lord-man relationship, a relationship probably going back to the Tacitean comitatus. Such a relationship has tended to supersede what we may consider the original close bonds of the family, and in the Anglo-Saxon Law it is even stated that a man’s first duty is to his lord rather than to his kin. Such a status of affairs is never so completely stated in the Lombard Laws, but the relatively infrequent death penalty is provided for him who kills his lord, there being a similar provision in the Anglo-Saxon law. Here of course such an action constitutes treason or faithlessness to one’s
lord, and involves the same penalty which the Lombard Law provides for treason against the king.\textsuperscript{40} That the lordman relationship involved not only loyalty on the part of the vassal but also mutual obligations on the part of the lord is indicated by the fact that in the later Lombard Laws it is provided that a lord shall seek justice for his “man” when the latter is unable to obtain it for himself from one of the royal judges.\textsuperscript{50}

This brief survey of the relationship between the Lombard \textit{Leges} and the Anglo-Saxon dooms can do no more than briefly indicate what were some of the analogous institutions of these two laws. Without a more thorough and independent study of this relationship, however, it is impossible to draw any definite conclusions as to whether these two peoples and their Codes were intrinsically related. It is clear, nevertheless, that the two peoples were curiously alike in many of their institutions, whether or not these institutions were distinctive to them.

NOTES

1. We might note the following example from the important work on early English Law by Pollock and Maitland:

“But Italy was to be for a while the focus of the whole world’s legal history. For one thing, the thread of legislation was never quite broken there. Capitularies or statutes which enact territorial law came from Karolingian kings of Italy, and then from the Ottos and later German kings. But what is more important is that the old Lombard Law showed a marvellous vitality and a capacity of being elaborated into a reasonable and progressive system. Lombardy was a country in which the principle of personal law struck its deepest roots. Besides Lombards and Romani there were many Franks and Swabians who transmitted their law from father to son. It was long before the old question \textit{Qua lege vivis?} lost its importance. The ‘conflict of laws’ seems to have favoured the growth of a mediating and instructed jurisprudence. Then at Pavia in the first half of the eleventh century a law-school had arisen. In it men were en-
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devouring to systematize by gloss and comment the ancient Lombard statutes of Rothair and his successors. The heads of the school were often employed as royal justices (iudices palatini); their names and their opinions were treasured by admiring pupils. From out this school came Lanfranc. Thus a body of law, which though it had from the first been more neatly expressed than, was in its substance strikingly like, our own old dooms, became the subject of continuous and professional study. The influence of reviving Roman law is not to be ignored. These Lombardists knew their Institutes, and, before the eleventh century was at an end, the doctrine that Roman law was a subsidiary common law for all mankind (lex omnium generalis) was gaining ground among them; but still the law upon which they worked was the old Germanic law of the Lombard race.” F. Pollock and F. W. Maitland, The History of English Law before the Time of Edward I, 2nd ed. (Cambridge, 1898), I, 21-22.


3. A translation of the pertinent parts of each of these writers is given in T. Hodgkin, Italy and her Invaders, Vol. V (Oxford, 1896), 81. Hodgkin there attempts to evaluate each of these statements. For a consideration of the origin of the Lombards, see the monographs by F. Bluhme, Die Gens Langobardorum und ihre Herkunft (Bonn, 1868), and Ludwig Schmidt, Aelteste Geschichte der Langobarden (Leipsic, 1884). Bluhme argues for the Low German origin of the Lombards and for their early proximity to the Saxons. Schmidt denies the position taken by Bluhme and argues for the High German derivation of the Lombards, basing his argument on the similarity of some of the Lombard words to corresponding High German words. Since the usually accepted theory is that the Lombards dwelt for some centuries along the south shore of the North Sea, and for another three centuries or so in Upper Germany somewhere in
the vicinity of the Danube, this circumstance alone would ac-
count for the presence of both Low and High German forms in
the Lombard speech. It should be noted that no work in the
native Lombard language survives if any were ever written—
the only Lombard survivals are the few native Lombard words
used in the Leges Langobardorum and the various Lombard
names which appear in the Lombard histories: the anonymous
Origo Gentis Langobardorum and the Historia Langobardorum
of Paul the Deacon; and in the surviving charters of various
types from the Lombard period. However even upon this
slender evidence, philologists have developed a theoretical
Lombard language and grammar, building upon the fact that
Lombard survivals indicate an excellent example of Grimm’s
law of consonant changes. In this regard, see W. Bruckner, Die
Sprache der Langobarden (1895) and Carl Meyer, Sprache und
Sprachdenkmäler der Langobarden (Paderborn, 1877). Meyer’s
work also includes an edition of the Leges since he does not
always agree with the way Bluhme edited the Lombard words
in his edition for the Monumenta Germaniae Historica. Meyer’s
glossary is interesting for including Anglo-Saxon, Old Norse,
Old Saxon, and various German parallels to the extant Lombard
words. Bruckner does the same but for a larger number of
words. In addition to the notices of Paterculus, Strabo, Tacitus,
and Ptolemy, there is another mention made of the Lombards
in connection with the Marcomannic War of Marcus Aurelius
in 165. This reference, however, comes only from the sixth
century Byzantine historian, Peter the Patrician. Cf. Ex historia
Petri Patricii et Magistri Excerpta de legationibus Gentium ad
Romanos, Corpus Scriptorum Historiae Byzantinae (Bonn,
1829).

4. See chapter 3 of this study.


(Cambridge, 1926), 53-108.

7. The issues of the Anglo-Saxon kings are as follows: Aethelbehrt
(601-04), Hlothhere and Eadric (685-86), Wihtred (895-96), Ine
(888), Alfred (889-93), Edward the Elder (900-25), Aethelstan
(925-39), Edmund (942-46), Edgar (962-63), Aethelred (991-
94), Canute (1020-34). To these should be added several post-
Norman Conquest compilations which were essentially attempts
to state the Anglo-Saxon custom as it had been encountered by
the Conquerors: the “Laws” of William I and Henry I, and
the Laws of Edward the Confessor. The edition of these laws
by F. Liebermann, Die Gesetze der Anglesachsen (Halle, 1903-
16), as well as the translation of F. L. Attenborough, The Laws
of the Earliest English Kings (Cambridge, 1922), and of A. J. Robertson, The Laws of the Kings of England from Edmund to Henry I (Cambridge, 1925) have been used in the preparation of this section. It should be noted in addition, however, that our sources of Anglo-Saxon Law are much more extensive than are contained in these law issues. A great deal is added by inference from the many charters and other types of legal instruments which are extant, and it is upon the basis of these charters and the laws that a more or less complete statement of Anglo-Saxon law has been made. The chief collections of these charters are those of J. M. Kemble, Codex Diplomaticus Aevi Saxonici, 6 vols. (London, 1839-1848); B. Thorpe, Diplomatarium Anglicum Aevi Saxonici (London, 1865); J. Earle, A Handbook to the Land-Charters, and other Saxonic Documents (Oxford, 1888); W. de G. Birch, Cartularium Saxonicum, 3 vols. (London, 1885-1893). A convenient representative collection is found in C. Stephenson and F. G. Marcham, Sources of English Constitutional History (New York, 1937). In general the interpretation of Anglo-Saxon Law followed here is that set forth in F. Pollock and F. W. Maitland, op. cit.; in Volume II of W. S. Holdsworth, A History of English Law (London, 1903); and in W. A. Morris, English Constitutional History to 1216 (New York, 1930).

10. Liutprand 71 and 118.
11. Ine 19, 33, 34, #1, 70; Alfred 10, 18, and 26.
12. Liutprand 62.
13. Wihtred 20; Ine 45; Alfred and Guthrum 3.
15. Cf. Rothair 224 where provisions are not only made for the complete manumission of slaves, but also for merely raising them to the rank of aldī.
16. Aethelbehrt 26. Note that these sums are lower than those for freemen, but also larger than those for slaves.
17. Ine 23 and 24.
18. Rothair 76-137.
19. Ine 42 and 74; Alfred 24.
21. "... Anglo-Saxon polity preserved, even down to the Norman Conquest, many traces of a time when kinship was the strongest of all bonds. Such a stage of society, we hardly need add, is not confined to any one region of the world or any one race of men. In its domestic aspect it may take the form of the joint family or household which, in various stages of resistance to
modern tendencies and on various scales of magnitude, is still
an integral part of Hindu and South Slavonic life. When it puts
on the face of strife between hostile kindreds, it is shown in
the war of tribal factions, and more specifically in the blood-
feud. A man's kindred are his avengers; and, as it is their right
and honour to avenge him, so it is their duty to make amends
for his misdeeds, or else maintain his cause in fight. Step by
step, as the power of the State waxes, the self-centered and self-
helping autonomy of the kindred wanes. Private feud is con-
trolled, regulated, put, one may say, in legal harness; the aveng-
ing and the protecting clan of the slain and the slayer are made
pledges and auxiliaries of public justice. In England the legal-
ized blood-feud expired almost within living memory, when
the criminal procedure by way of 'appeal' was finally abolished.
We have to conceive, then, of the kindred not as an artificial
body or corporation to which the State allows authority over
its members in order that it may be answerable for them, but
as an element of the State not yielding precedence to the State
itself. There is a constant tendency to conflict between the old
customs of the family and the newer laws of the State; the
family preserves archaic habits and claims which clash at every
turn with the development of a law-abiding commonwealth of
the modern type. In the England of the tenth century, we find
that a powerful kindred may still be a danger to public order,
and that the power of three shires may be called out to bring
an offending member of it to justice. At the same time the
family was utilized by the growing institutions of the State, so
far as was found possible. We have seen that a lordless man's
kinsfolk might now be called upon to find him a lord. In other
ways too the kindred was dealt with as collectively responsible
for its members. We need not however regard the kindred as a
defined body like a tribe or clan, indeed this would not stand
with the fact that the burden of making and the duty of ex-
acting compensation ran on the mother's side as well as the
father's. A father and son, or two half-brothers, would for the
purposes of the blood-feud have some of their kindred in com-
mon, but by no means all." Pollock and Maitland, op. cit., I,
31-32.

22. This is inferred from such laws as Liutprand 13.
23. Edward and Guthrum 11; II Aethelstan 6, #1.
26. "Our Anglo-Saxon charters or books are mostly grants of con-
siderable portions of land made by kings to bishops and reli-
gious houses, or to lay nobles. Land so granted was called book-
land, and the grant conferred a larger dominion than was known to the popular customary law. During the ninth century and the early part of the tenth the grant usually purports to be with the consent of the witan. Alodium (of which we have no English form) is, in documents of the Norman age, a regular Latin translation of book-land. There is great reason to believe that a grant of book-land usually made no difference at all to the actual occupation of the soil. It was a grant of lordship and revenues, and in some cases of jurisdiction and its profits. The inhabitants rendered their services and dues to new lords, possibly enough to the same bailiff on behalf of the new lord, and things went on otherwise as before. The right of alienating book-land depended on the terms of the original grant. They were often large enough to confer powers equivalent to those of a modern tenant in fee simple. Accordingly book-land granted by such terms could be and was disposed of by will, though it is impossible to say that the land dealt with in extant Anglo-Saxon wills was always book-land. Lords of book-land might and sometimes did create smaller holdings of the same kind by making grants to dependents. It is important to remember that book-land was a clerkly and exotic institution, and that grants of it owe their existence directly or indirectly to royal favour, and throw no light, save incidentally, on the old customary rules of land-holding.” Pollock and Maitland, op. cit., I, 60.

27. Liutprand 92.
28. “In England, as abroad, the church introduced the custom of conveying land by written documents. The ‘Boc,’ or written charter, by which land or privileges are conveyed is ecclesiastical in its origin. It is used in England only by the king, the church, or by very great men; and the later Anglo-Saxon kings employed it extensively.” W. S. Holdsworth, op. cit., II, 14.
29. Rothair 252.
30. II Cnut 19.
31. Liutprand 79. Edward 1; Aethelstan I, 10; III Edmund 5; IV Edgar 3-10; I Aethelred 3; II Cnut 23, 24; II Aethelstan 12; IV Edgar 6.
33. Rothair 178.
34. Rothair 199. Aethelbehrt 81.
35. Rothair 204; Liutprand 22. Aethelbehrt 76.
36. “The theory that, in respect to the legal position of women, the Anglo-Saxon conception did not differ in principle from that of the pure Germanic codes of the North is abundantly proved by the books. The charters are full of cases in which women are grantors and grantees, vendors and vendees, plaintiffs and de-
fendants, devisors and devisees, without a variation in the terms of the instrument which could raise a suspicion of difference in sex. In all the law to be drawn from the books, women appear as in every respect equal to men. To women and men are given the same immunities and the same privileges, and on them are laid the same legal and political burdens. A woman was as good a witness and as good a helper in the oath as a man.” Quoted in Holdsworth, op. cit., II, 87, n. 5, from Essays in Anglo-Saxon Law, 113.

37. Rothair 212.
38. Edgar 2; V Aethelstan 4, 5; III Edmund 6.
39. Liutprand 81.
40. Rothair 266, 268.
41. Wihtred 25, 26; Ine 12; II Cnut 82.
42. Ine 36, 1; Ine 50; Alfred 3, 15, 37, 38, and 42; III Edgar 5, 2 (II Cnut 18, 1); II Cnut 58, 2.
43. Rothair 15, 23, 24, 189, 210, 271, 272, etc.
44. Rothair 35-40.
45. Aethelbehrt 8, 5 and 10; Wihtred 2; Aethelbehrt 13, 14, 15, 75, 76; Hlothære and Eadric 14; Wihtred 2; Alfred 5; II Edmund 6, 7; VI Aethelred 34; VIII Aethelred 3, 5, 1; II Cnut 12, 42.
46. Rothair 17 and 18.
47. Aethelbehrt 8; Wihtred 2.
49. “... Treason to one’s lord, especially to the king, is a capital crime. And the essence of the crime already consists in compassing or imagining the king’s death, to use the later language of Edward III’s Parliament. The like appears in other Germanic documents. It seems probable, however, that this does not represent any original Germanic tradition, but is borrowed from the Roman law of maiestas, of which one main head was plotting against the lives of the chief magistrates. No part of the Roman law was more likely to be imitated by the conquerors of Roman territory and provinces; and when an idea first appears in England in Alfred’s time, there is no difficulty in supposing it imported from the continent. Not that rulers exercising undefined powers in a rude state of society needed the Lex Julia to teach them the importance of putting down conspiracies at the earliest possible stage. We are now speaking of the formal enunciation of the rule. On the other hand, the close association of treason against the king with treason against one’s personal lord who is not the king is eminently Germanic. This was preserved in the ‘petty treason’ of medieval and modern criminal law.” Pollock and Maitland, op. cit., I, 51-52.
50. Ratchis 11.