

Honour and Shame in Early Medieval English Legal Systems

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Declaration

I certify that this thesis:

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Abstract

The early medieval English legal system consisted of evolving customary law (*æ*), royal judgements (*domas*), penitential law (*poenitentiale*). This thesis explores the development of this complex system by analysing the concepts of honour and shame using legal evidence written in Old English and Latin from the seventh century to the eleventh century. It explains how the promotion of written law reflected an idealised reconciliatory and punitive legal system, in which honour could be preserved or shame imposed. The influence of these concepts in law stems from how the legal texts navigate around ideal outcomes of justice. This principal argument of this thesis is that shame became an increasingly central principle in the ideal administration of punishment, as kings sought to merge traditional honour-based justice with Christian ideals of internalised shame, sin, and the pursuit of redemption. Notably, however, while early English law codes appear to increasingly impose shame, the overall framework of honour remained mostly consistent. Both phenomena persisted as ideals in the legal system well throughout the pre-Conquest period.

Despite significant recent strides made in research on early medieval English attitudes to honour, the concept of shame has received far less attention. While shame has been the recent focus in studies on ecclesiastical discourse, particularly in hagiography, homilies, and other religious sources, it is often overlooked as a mechanism of social control in early medieval English legal systems. To address this oversight, this thesis adopts a diachronic study of early medieval English legal system, and draws on examples from royal law codes, penitential literature, lawsuits, and literary sources, to illustrate the shift from a primarily reconciliatory system, centring on honour-based justice, to a stronger punitive system focused more closely on shame-based justice. In doing so, it is concerned not so much with examining how these laws were implemented across their kingdoms of origin in historical practice, but rather, with understanding what royal and penitential legal texts reveal about broader cultural ideas and elite mentalities concerning how justice should ideally be administered.

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Abbreviations

<i>ASC</i>	<i>The Anglo-Saxon Chronicle: A Collaborative Edition</i> , gen. (eds.) David Dumville and Simon Keynes, 6 vols (Cambridge: Cambridge University Press, 1983–2004)
<i>ASD</i>	<i>Bosworth–Toller's Anglo-Saxon Dictionary Online</i> , (eds.) Joseph Bosworth and Thomas N. Toller, based on the manuscript collections of the late Joseph Bosworth (the so-called Main Volume, first edition 1898) and its supplement (first edition 1921) < https://bosworthtoller.com/ >
<i>ASPR</i>	<i>Anglo–Saxon Poetic Records</i> , (eds.) George Philip Krapp and Elliott Van Kirk Dobbie, 6 vols (New York, 1931–42)
<i>Canons of Theodore</i>	<i>The Old English Canons of Theodore</i> , ed. Robert D. Fulk and Stefan Jurasinski (Oxford: Oxford University Press, 2012)
<i>CED</i>	<i>Councils and Ecclesiastical Documents Relating to Great Britain and Ireland</i> , (eds.) Arthur W. Haddan and William Stubbs, 3 vols. (Oxford, 1869–73)
<i>DOE</i>	<i>Dictionary of Old English: A to I online</i> , ed. Angus Cameron, Ashley Crandell Amos, Antonette diPaolo Healey et al. (Toronto, Dictionary of Old English Project, 2018) < https://doe.artsci.utoronto.ca/ >
<i>Gesetze</i>	<i>Die Gesetze der Angelsachsen</i> , vol. I: Text und Übersetzung, ed. Felix Liebermann (Halle, 1903)
<i>Historia Ecclesiastica</i>	Bede, <i>Historia Ecclesiastica</i> , (eds.) Bertram Colgrave and Roger A.B. Mynors (Oxford: Oxford University Press, 1969)
<i>MGH</i>	<i>Monumenta Germaniae Historica</i> , (eds.) Ernest Dümmler, et al. (Berlin, 1895) < https://www.dmgh.de/index.htm >
<i>OE Handbook</i>	Roger Fowler, ‘A Late Old English Handbook for the Use of a Confessor’, <i>Anglia</i> , 83 (1965), 1–29.

<i>OE Penitential</i>	<i>Die Altenglische Version des Halitgar'schen Bussbuches</i> (sog. Poenitentiale Pseudo-Ecgberti), ed. Josef Raith (Darmstadt: H. Grand, 1933)
<i>S</i>	<i>Anglo-Saxon Charters: An Annotated List and Bibliography</i> , ed. Peter H. Sawyer, rev. Simon Keynes et al. < https://esawyer.lib.cam.ac.uk/ > Charters are referred to by numbers.
<i>Scriftboc</i>	<i>Das Altenglische Bussbuch</i> (sog. Confessionale Pseudo-Egberti), ed. Robert Spindler (Leipzig: Bernhard Tauchnitz, 1934)
<i>Vulgate Bible</i>	All Bible references and quotations are taken from the Latin Vulgate Bible at https://www.die-bibel.de/bibel/VUL .

Notes on Texts and Translations

All quotations and references to law codes and legal tracts are taken from *Die Gesetze der Angelsachsen*, ed. Felix Liebermann (Halle, 1903). All quotations and references from the Latin penitential handbooks are taken from *Councils and Ecclesiastical Documents Relating to Great Britain and Ireland*, (eds.) Arthur W. Haddan and William Stubbs, 3 vols. (Oxford, 1869–73); *Bußordnungen der Abendländischen Kirche*, ed. F.W. Hermann Wasserschleben (Halle, 1851). As for Old English penitential handbooks, I use the following texts: *The Old English Canons of Theodore*, ed. Robert D. Fulk and Stefan Jurasinski (Oxford: Oxford University Press, 2012); Roger Fowler, ‘A Late Old English Handbook for the Use of a Confessor’, *Anglia* 83 (1965), 1–29; *Die Altenglische Version des Halitgar’schen Bussbuches* (sog. Poenitentiale Pseudo-Egberti), ed. Josef Raith (Darmstadt: H. Grand, 1933); *Das Altenglische Bussbuch* (sog. Confessionale Pseudo-Egberti), ed. Robert Spindler (Leipzig: Bernhard Tauchnitz, 1934). All translations are my own, unless specified otherwise. The legal texts in the following list correspond to Liebermann’s abbreviations, including estimated years of production. Estimates for Latin penitentials are based on John T. McNeill and Helena M. Gamer’s *Medieval Handbooks of Penance* (New York: Columbia University Press, 1990), revised edition. Old English penitential dates are based on Stefan Jurasinski’s *The Old English Penitentials and Anglo-Saxon Law* (Cambridge: Cambridge University Press, 2015).

Texts and Sigla

Law Codes and Sigla

Æthelberht (Abt) [c. 601–4]¹
Hloþhere-Eadric (Hl) [c. 685–6]
Wihtræd (Wi) [c. 695–6]
Ine (Ine) [c. 688–95]
Alfred’s Prologue (Af El) [c. 890–899]
Alfred’s laws (Af) [c. 890–899]
Alfred-Guthrum (AGu) [c. 880–899]
Edward-Guthrum (EGu) [c. 921–938]²
I Edward (I Ew) [c. 901–24]
II Edward (II Ew) [c. 924–5]
I Æthelstan (I As) [c. 925–36]
Æthelstan Alms (As Alm) [c. 925–40]
II Æthelstan (II As) [c. 925–35]
III Æthelstan (III As) [c. 928–38]
IV Æthelstan (IV As) [c. 929–39]
V Æthelstan (V As) [c. 927–37]
VI Æthelstan (VI As) [c. 930–40]
I Edmund (I Em) [c. 942–46]
II Edmund (II Em) [c. 943–6]
III Edmund (III Em) [c. 940–6]
I Edgar (I Eg) [c. 946–61]³
II Edgar (II Eg) [c. 959–62]

III Edgar (III Eg) [c. 959–62]⁴
IV Edgar (IV Eg) [c. 962–3]
I Æthelred (I Atr) [c. 990–1013]
II Æthelred (II Atr) [c. 991]
III Æthelred (III Atr) [c. 981–1012]
IV Æthelred (IV Atr) [c. 991–1002]
V Æthelred (V Atr) [c. 1008]
VI Æthelred (VI Atr) [c. 1008–11]
VII Æthelred Latin (VII Atr Latin)
[c. 992 – 1011]
VII Æthelred Old English (VII Atr
OE) [c. 992 – 1011]
VIII Æthelred (VIII Atr) [c. 1014]
[c. 1009–1016]
Cnut 1020 (Cn 1020) [c. 1020]
Cnut 1027 (Cn 1027) [c. 1027]
I Cnut (I Cn) [c. 1027–34]
II Cnut (II Cn) [c. 1027–34]
William’s Episcopal Laws (Wl ep)
[c. 1070–76]
Legal Tracts
Ordal (Ordal) [c. 936–58]
Swerian (Sw) [c. 920–1050]

¹ On the approximate date ‘600’, see Carole Hough, ‘Legal and Documentary Writings’, in *‘An Ald Reht’: Essays on Anglo-Saxon Law* (Cambridge: Cambridge Scholars Publishing, 2014), pp. 2–13; Lisi Oliver, *The Beginnings of English Law* (Toronto: University of Toronto Press, 2002), pp. 34–41. Liebermann estimates around 601–4. See *Die Gesetze der Angelsachsen*, p. 3.

² A known forgery. Likely written in the eleventh century by Wulfstan, the Archbishop of York (d. 1023). See Nicholas P. Schwartz, ‘Wulfstan the Forger: the ‘Laws of Edward and Guthrum’’, *Anglo-Saxon England*, 47 (2018), 219–46.

³ Also known as Edgar’s *Hundred Ordinance* (Hu).

⁴ II–III Eg is often referred to as one law code known as Edgar’s Andover code.

Geðyncðo (Geðyncðo) [c. 1029–60]

Mircna laga (Mirce) [c. 920–70]

Að (Að) [c. 950–1050]

Hadbot (Had) [c. 1030–50]

Grið (Grið) [c. 1028–70]

Latin Penitentials

The Penitential of Cummean

(*Poenitential Cummeani*) [c. 650]

The Penitential of Theodore

(*Poenitential Theodori*) [c. 7th]

The Penitential of Bede

(*Poenitential Bedae*) [c. 8th]

The Penitential of Egbert

(*Poenitential Egberti*) [c. 750]

The Roman Penitential of Haltigar,

(*Poenitential Romanum*) [c. 830]

Old English Penitentials

The Scriftboc (*Scriftboc*)

[possibly c. 9th]

The Canons of Theodore

(*Canons of Theodore*) [c. 9th–11th]⁵

The Old English Handbook

(*The OE Handbook*) [c. 11th]

The Old English Penitential

(*The OE Penitential*) [c. 10th]

⁵ The date for this text in particular is difficult to assess. Regarding its date and authorship, see *The Old English Canons of Theodore*, ed. Robert D. Fulk and Stefan Jurasinski (Oxford: Oxford University Press, 2012), pp. xxxvi–xlii.

Chronology of the Early Medieval English Period per the *Anglo-Saxon Chronicle**

449	The arrival of the Angles and Saxons in Britain
455	The Kingdom of Kent is established
519	The Kingdom of Wessex is established
597	St. Augustine lands in Britain and King Æthelberht of Kent converts to Christianity
604	Pope Gregory I dies
668	Theodore of Tarsus becomes archbishop of Canterbury
685	King Hlophere of Kent dies
686	King Eadric of Kent dies
689	Ine becomes King of Wessex
690	Wihtrred becomes King of Kent
757	Offa becomes King of Mercia
787	First recorded Viking attack in Britain
793	Viking raid on Lindisfarne
802	Egbert becomes King of Wessex
871	Alfred becomes King of Wessex
886	The Danelaw is established
899	Edward the Elder becomes King of the Anglo-Saxons

* Unless specified otherwise, dates for events derive from *The Anglo-Saxon Chronicle: A Collaborative Edition*, gen. (eds.) David Dumville and Simon Keynes, 6 vols (Cambridge: D.S Brewer, 1983–2004).

924	Æthelstan becomes King of the English
937	Battle of Brunanburh
939	Edmund I becomes King of the English
959	Edgar becomes King of England
978	Æthelred becomes King of England
1002	Wulfstan is appointed archbishop of York
1013	Æthelred is deposed by Sweyn Forkbeard and flees to Normandy
1014	Æthelred is invited to reclaim the throne after Sweyn's death
1016	Cnut becomes King of England
1042	Edward the Confessor becomes King of England
1066	Battle of Stamford Bridge and the Norman Conquest

Introduction

At the behest of his king, Cnut (r. 1016–1035), the ruler of both England and Denmark, Archbishop Wulfstan of York (d. 1023) drafted a set of English law codes. Wulfstan was a major figure of England's tenth- and eleventh-century political and ecclesiastical circles, well-known for his legal and homiletic writings, which he frequently combined.¹ In *II Cnut*, Wulfstan details how punitive mutilation was to be enacted:

And on the second occasion, there is to be no compensation, if he is guilty, his hands, or feet, or both shall be cut off, according to the severity of the offence. And, if he continues to commit further offences, he shall have his eyes put out and his nose and ears and upper lip sliced off, or he should have his scalp removed, whichever of these penalties is desired by those who judge him, and thus punishment shall be inflicted so that the soul may be saved.²

As Wulfstan understood, the purpose of mutilation and dismemberment was more than just a response to punish recidivist criminals. The suffering inflicted upon the criminal's body carried an inherent redemptive purpose. Nicole Marafioti and Jay Paul Gates have argued that 'whereas an immediate death sentence might place the soul of the condemned beyond redemption ... a life-sparing punishment allowed even the worst offenders enough time to make their peace with God'.³ This perspective illuminates Wulfstan's intention to salvage the souls of those living in sin. However, this preservation of the soul was not without significant consequences. For the soul to be saved, the body had to endure

¹ Michael K. Lawson, 'Archbishop Wulfstan and the Homiletic Element in the Laws of Æthelred II and Cnut', *The English Historical Review*, 107:424 (1992), 565–86.

² II Cn 30.4–5: 'And æt ðam oðran cyrre ne sy ðær nan oþer bot, gyf he ful wurðe, butan ðæt man ceorfe him ða handa oððe ða fæt of oððe ægðer, be ðam ðe seo dæd sy. 7 gyf he ðonne gyt mare weorc geworht hæbbe, ðonne do man ut his eagan, 7 ceorfan of his nosu 7 his earan 7 ða uferan lippan oððe hine hættian, swylc ðisra swa man wyle, oððe ðonne geræde ða ðe ðærto rædan sceolon; swa man sceal steoran 7 eac ðære saule beorgan'. While this punishment appears explicitly in Cnut's laws for the first time, it predates his reign and that of King Æthelred (r. 978–1016), with its origins traceable to King Edgar's (r. 959–75) rule in the tenth century. It is recorded in Lantfred of Fleury's *Translatio et miracula S. Swithuni* (The Translation and Miracles St. Swithun), which states that the punishment occurred during Edgar's reign, indicating that it was a known legal measure before Cnut. See Matthew Firth, 'Allegories of Sight: Blinding and Power in Late Anglo-Saxon England', *Ceræ: An Australasian Journal of Medieval and Early Modern Studies*, 3 (2016), 1–33, at pp. 6–7; Dorothy Whitelock, 'Wulfstan Cantor and Anglo-Saxon Law', in *Nordica Et Anglica: Studies in Honor of Stefan Einarsson*, ed. by Alan H. Orrick (The Hague: Mouton, 1968), 83–92, at pp. 85–87; Keynes, 'A Tale of Two Kings: Alfred the Great and Æthelred the Unready', *Transactions of the Royal Historical Society*, 36 (1986), 195–217, at p. 212.

³ Nicole Marafioti and Jay P. Gates, 'Introduction: Capital and Corporal Punishment in Anglo-Saxon England', in *Capital and Corporal Punishment in Anglo-Saxon England*, (eds.) Nicole Marafioti and Jay P. Gates (Woodbridge: The Boydell Press, 2014), p. 1.

shame. The mutilation of criminals, through gouging out eyes, amputating limbs, and scalping, was not arbitrary. In choosing to target these specific parts of the body, lawmakers deliberately chose to use the mutilated bodies of criminals as physical testaments to the consequences of their crimes. As Katherine O'Brien O'Keeffe describes it, 'their mutilated bodies became texts of their behaviour and its lawful consequences', transforming the body, through its scars and disfigurements, into a living testament to the person's violation of the law – legible to all who encountered the offender.⁴ Such punishment thus had implications that went beyond the immediate physical pain inflicted on the perpetrator. In the case of punitive mutilation, damage to physical capability and appearance went hand-in-hand with the degradation of the offender, who now internalised the shame of their past wrongdoing through their altered body. Their only avenue for redemption lay in repentance and in the hope of salvation.

Yet, this approach stands in stark contrast to the punitive framework outlined in the earliest English royal law code, promulgated at the behest of King Æthelberht of Kent (r. 589–616) around the year 600.⁵ While Wulfstan's provision outlined in *II Cnut* advocates for a severe form of corporal punishment, Æthelberht's law reveals a more conciliatory approach that prioritised financial restitution over physical retribution. In Æthelberht's law, the primary response to crimes like violence, theft, and sexual impropriety was to elicit compensation. Those convicted of homicide, for example, were required to repay the value of the slain man to his kin. This is encapsulated in clause 9 of his decree, which states that 'if a freeman slays another freeman, he must pay 100 shillings compensation'.⁶ For theft, the punishment required the thief to repay the value of the stolen goods according to the status of the victim(s): 'If a freeman steals from another freeman, he must pay three times the stolen value'.⁷ If a man had sexual relations with a woman belonging to another man's household, he had to pay that man

⁴ Katherine O'Brien O'Keeffe, 'Body and Law in Late Anglo-Saxon England', *Anglo-Saxon England*, 27 (1998), 209–32, at p. 217. For similar analyses on punitive mutilation as a mechanism for enforcing shame, see Marafioti, 'Punishing Bodies and Saving Souls: Capital and Corporal Punishment in Late Anglo-Saxon England', *The Haskins Society Journal*, 20 (2008), 39–57, at p. 55; Daniel O'Gorman, 'Mutilation and Spectacle in Anglo-Saxon Legislation', in *Capital and Corporal Punishment*, p. 151; Firth, 'Allegories of Sight', pp. 4–5; Firth, 'The Broken Body in Eleventh to Thirteenth-Century Anglo-Scandinavian Literature', *Comitatus*, 50 (2019), 45–75, at pp. 69–74; Klaus van Eickels, 'Gendered Violence: Castration and Blinding as Punishment for Treason in Normandy and Anglo-Norman England', *Gender and History*, 16:3 (2004), 588–602. Rolf H. Bremmer Jr., 'The Children He Never Had; the Husband She Never Served: Castration and Genital Mutilation in Medieval Frisian Law', in *Castration and Culture in the Middle Ages*, ed. Tracy Larissa (Cambridge: D.S. Brewer, 2013), pp. 112–3; Lisi Oliver, *The Body Legal in Barbarian Law* (Toronto: University of Toronto Press), pp. 171–9.

⁵ Abt 1, 4, 9, 28, 90.

⁶ Abt 21: 'Gif man mannan ofslæhð, medume leodgeld C scillinga gebete'.

⁷ Abt 9: 'Gif frigman freum stelþ, III gebete, 7 cyning age þæt wite 7 ealle þa æhtan'.

compensation according to their status: ‘If a man lies with a commoner’s serving maid, he must pay 6 shillings’.⁸ Æthelberht’s law code communicates a clear hierarchical vision of Kentish society, whereby compensation for such affronts are delivered in accordance with social rank. The hierarchical structure of the laws is evident in their organisation, beginning with the king and clergy at the top (Abt 1–12) and progressing through ranks of noblemen, freemen, freedmen (Abt 13–31), and, finally the unfree, being divided into servants (esne) and slaves (peo) (Abt 86–90).⁹ Stefan Esders notes that compensation in Germanic law codes should be understood as ‘money that could represent the honour of a person numerically’.¹⁰ The higher a person’s rank, the more reputation, respect, and honour, they were seen to possess, and thus greater compensation was owed if that honour was violated. Money ensured that restitution for any crime, including theft, corresponded to this ‘perceived’ loss of honour.¹¹ A king, for example, was entitled to greater compensation than a freeman. In relation to theft, the law states that if a freeman steals from the king, he must pay him back ninefold.¹² For sexual relations with a serving maid that belongs to a nobleman, Æthelberht’s law decrees that: ‘if a freeman lies with a nobleman’s serving maid, he shall pay 12 shillings compensation’.¹³ These two examples demonstrate that the king and the nobleman’s compensation values were set higher than an ordinary freeman’s. In this sense, compensation appears to reinforce notions of social hierarchy by assigning honour to different ranks from top to bottom. By assigning different values of compensation to different social classes, from the nobility down to those in servitude, the legal system explicitly determined whose honour was deemed more valuable. As Tom Lambert argues, compensation symbolised the restoration of honour and justice,

⁸ Abt 16: ‘Gif wið ceorles birelan man geligeþ, VI scillingum gebete’.

⁹ On the terminology of slave and servant, see David Pelteret, *Slavery in Early Mediaeval England: From the Reign of Alfred to the Twelfth Century* (Woodbridge: The Boydell Press, 1995), pp. 261–330.

¹⁰ Stefan Esders, ‘Wergild and the Monetary Logic of Early Medieval Conflict Resolution’, in *Wergild, Compensation and Penance: The Monetary Logic of Early Medieval Conflict Resolution*, (eds.) Lukas Bothe, Stefan Esders, and Han Nijdam (Leiden: Brill, 2021), p. 12.

¹¹ Ibid. This idea is also supported by a host of scholarship: Tom Lambert, *Law and Order in Anglo-Saxon England* (Oxford: Oxford University Press, 2017), pp. 35–9; Lambert, ‘Compensation, Honour and Idealism in the Laws of Æthelberht’, in *Wergild, Compensation and Penance*, pp. 133–160; Han Nijdam, ‘Wergild and Honour: Using the Case of Frisia to Build a Model’, in *Wergild, Compensation and Penance*, pp. 161–79; Helle Vogt, ‘The Kin’s Collective Responsibility for the Payment of Man’s Compensation in Medieval Denmark’, in *Wergild, Compensation and Penance*, p. 284; Paul Hyams, ‘Feud and the State in Late Anglo-Saxon England’, *Journal of British Studies*, 40:1 (2001), 1–43; Thomas M. Charles-Edwards, ‘Honour and Status in some Irish and Welsh Prose Tales’, *Ériu* 29 (1978), 123–141, at pp. 123–4; William I. Miller, *Eye for an Eye* (Cambridge: Cambridge University Press, 2006), pp. 23–7.

¹² Abt 4.

¹³ Abt 14: ‘Gif wið ceorles birele man geligeþ, XII scill gebete’.

rather than serving solely as a material gain.¹⁴ Honour, then, was promoted as a guiding principle in compensation negotiations. It shaped the external perception of fairness and the internal worth of the people involved.

In contrast, while the restoration of honour could provide satisfaction to the victim, shame was meted out to offenders. Shame and honour, then, acted as a parallel system of justice. What is to be observed here is a fundamental difference in the philosophical emphasis of 'justice'. While Æthelberht's early seventh-century legislation emphasises the victim's claim and rights to honour through monetary compensation, Wulfstan's provision demonstrates a focus on shaming perpetrators, with an important added redemptive dimension. Such comparison offers a window into the nature of early medieval English justice as it developed over time. It is with this shift in emphasis that this study seeks to engage.

1. Research Aims

The central argument of this thesis is that between *c.* 600 and *c.* 1066, the evolving discourse within the early English legal system increasingly framed shame as a key element of justice. Over time, kings placed greater emphasis on reconciling two aspects of justice: the traditional, honour-based system focused on kinship retribution for victims and the emerging religious imperative to redeem the sinner by internalising shame. Of course, this transition was not only a royal initiative, but was also actively supported and reinforced by the Church, which provided moral justifications for shame. A growing ecclesiastical elite emphasised penance and the shame which comes with it, framing them as essential for spiritual redemption, as illustrated in Wulfstan's provision above.¹⁵ At the heart of this study's argument, however, is the recognition that English kings and ecclesiastical authorities did not seek to redefine the legal order, but rather adapt and expand it. The growing influence of Christianisation paved the way for shame to address sins that threatened communal peace (*frip*); however, despite these developments, the legal system also continued to be shaped by its origins in honour-based traditions, often with the Church's support.¹⁶

As explained in greater detail below, honour and shame were parallel forces of justice that shaped behaviour within society.¹⁷ Together, they formed an integral part of the wider legal framework,

¹⁴ Lambert, 'Compensation, Honour and Idealism', p. 151.

¹⁵ See 'Internalising Shame: Penance and Idealism', below.

¹⁶ See 'Internalising Shame: Penance and Idealism', below.

¹⁷ Concepts of Honour and Shame are explained below in 'Conceptualising 'Honour' and 'Shame'.

influencing how lawmakers addressed offences and regulated conduct to maintain order. Yet, their relationship was not static and could vary depending on the nature of specific laws. In certain cases, honour remained the dominant social currency, while shame did not always hold the same level of significance. For example, compensatory practices focus primarily on restoring honour through tangible means rather than explicitly imposing shame on offenders. In laws that prioritised compensation, such as Æthelberht's code, the focus was primarily on repaying the victim for the loss of honour. This reflects a restorative approach to justice, in which the restoration of the victim's honour took precedence. Conversely, later legal systems, like Cnut's laws, emphasised a stronger punitive approach to justice, with shame acting as a tool of punishment. Yet, it would be overly simplistic to categorise Æthelberht's laws as solely honour-focused and Cnut's laws as shame-driven. Both laws addressed honour and shame in different ways. What emerges is a fluid exchange between honour and shame, with the two concepts operating in tandem to shape the evolving nature of justice. Nevertheless, what can be observed is that over time shame becomes increasingly central.

The question of whether early medieval English legal culture aimed to restore honour is not a new one. In the context of early medieval England, a tradition of honour lasted well beyond the Norman Conquest and approaches to satisfy honour remained as a significant part of the legal process, not just in royal laws, but also as part of the fundamental logic in penitential handbooks. Nevertheless, scholarship on the early medieval English legal traditions has tended to focus much less on the increasing legal emphasis on shame, focusing instead on its persistence of honour. This study aims to address this gap. The thesis demonstrates *how* legal systems emphasised shame as a growing parallel aspect of justice and *why* shame became a principal focus of the overall jurisprudence. It concludes that there was an increasing focus on shame between c. 600 and c. 1066 and that, while honour continued to be important, the imposition of shame became an increasingly ideal aspect of justice.

2. Developing Notions of Justice: A Diachronic Approach

This thesis adopts a diachronic framework in order to trace the development of legal responses over time. One of the major strands of inquiry in scholarship on the issue of 'justice' is how early medieval English societies functioned without much interference from centralised legal institutions. Scholars have long debated the extent to which early societies relied on customary law, communal arbitration, and kin-based systems of retribution and compensation to maintain order in the absence of a formal

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judicial apparatus.¹⁸ A key question in this discussion is how and when royal power came to formalise control over legal processes, transitioning from decentralised mechanisms of justice to a more codified and centralised system of law enforcement. To answer this, scholars have analysed justice through the frameworks of ‘horizontal’ and ‘vertical’ justice. Justice regulated ‘horizontally’ refers to traditional kinship-based approaches to achieve justice. This form of justice is often associated with feuding, where retributive violence serves as a means of restoring honour between opposing kinship groups.¹⁹ As Patrick Wormald contends, retributive violence could restore justice in the absence of authority to protect it.²⁰ In other words, horizontal justice could be administered without the interference of third-party authorities, relying instead on familial structures that were in place.

Importantly, monetary compensation too played a crucial role in this horizontal legal order as it could settle the on-going violence preventing further escalation. Alice Taylor observes that, in a broad sense, this is why compensation is also ‘thought to belong to a horizontal legal order’, because it was doled out ‘among equals, or at the very least, comparable persons’, with little influence from third-party authorities.²¹

Comparatively, ‘vertical’ or ‘top-down’ justice is usually employed by structures or institutions of royal power.²² According to Daniella Fruscione, the development of punitive measures is ‘typical of

¹⁸ For a conceptual overview of the field, see Wormald, ‘Pre-Modern ‘State’ and ‘Nation’: Definite or Indefinite?’, in *Staat im frühen Mittelalter*, (eds.) Stuart Airlie, Walter Pohl, and Helmut Reimitz (Vienna, 2006), pp. 179–89; Wormald, ‘Inter Cetera Bona Genti Suae’: Law-Making and Peace-Keeping in the Earliest English Kingdoms’, in *Legal Culture in the Early Medieval West: Law as Text, Image and Experience*, ed. Patrick Wormald (London: Hambledon, 1999), pp. 194–8; Andrew Rabin, ‘Capital Punishment and the Anglo-Saxon Judicial Apparatus: A Maximum View?’, in *Capital and Corporal Punishment*, pp. 181–99; Rabin, ‘Law and Legal Culture in Anglo-Saxon England’, *History Compass*, 18 (2020), 1–13; James Campbell, *The Anglo-Saxon State* (London: Hambledon, 2000), pp. 1–30; Lambert, *Law and Order*, pp. 1–7; Paul R. Hyams, ‘Afterword: Neither Unnatural nor Wholly Negative: The Future of Medieval Vengeance’, in *Vengeance in the Middle Ages: Emotion, Religion and Feud*, (eds.) Susanna A. Throop and Paul R. Hyams (Farnham, 2010), p. 218; Gates and Marafioti, ‘Introduction: Capital and Corporal Punishment’, pp. 9–10; Allen, ‘When Compensation Costs an Arm and a Leg’, p. 17; Daniella Fruscione, ‘Beginnings and Legitimation of Punishment in Early Anglo-Saxon Legislation From the Seventh to the Ninth Century’, in *Capital and Corporal Punishment*, pp. 34–47; Alice Taylor, ‘Crime Without Punishment: Medieval Scottish Law in Comparative Perspective’, *Anglo-Norman Studies*, 35 (2013), 287–304, at pp. 288–90.

¹⁹ Feud paradigms are explored below in ‘Chapter Two: Violence and Conflict Resolution’.

²⁰ Wormald, ‘Inter Cetera Bona Genti Suae’, p. 196.

²¹ Taylor, ‘Crime Without Punishment’, p. 288.

²² Lambert, *Law and Order*, p. 6; Fruscione, ‘Beginnings and Legitimation of Punishment’, p. 35; Taylor, ‘Crime Without Punishment’, p. 288; Allen, ‘When Compensation Costs an Arm and a Leg’, p. 17.

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civilisations where a central power is emerging'.²³ Where this power emerges, it is presumed to be the ability of ruling authorities to dole out punishment. This form of justice focuses on punishing the perpetrator who generally commits a crime that affects the wider community. The primary objective of punishment here is not to restore honour on behalf of a victim, but to assert authority through the imposition of penalties solely onto the offender. Punishments in early medieval England under this system include fines, corporal punishments (flogging, amputation, mutilation), capital punishment, imprisonment, trial by ordeal, unconsecrated burial, excommunication, and penance. Unlike retributive violence as an aspect of horizontal justice, where individuals or kinship groups directly seek redress for wrongs through a process of 'self-help' justice, vertical violence is enforced by a third-party authority.²⁴ Paul Hyams contextualises the distinction between horizontal and vertical violence by associating them with terms 'ultio' (vengeance) and 'vindicta' (punishment).²⁵ One is met with reprisal and the other prevents further reprisal. Although both horizontal and vertical approaches are 'vectors of force', as Valerie Allen suggests, their difference concerning acts of violence can further be defined as such:

...vengeance tracks a horizontal line of reciprocal violence between (roughly) equal bodies (whether kin or entire communities), while punishment thrusts vertically and unidirectionally down from top (state, ecclesiastical, or regnal power) to bottom with a mandate of authority that pre-empts, at least in theory, reprisal from family and friends of the disciplined offender.²⁶

It is the emphasis on pre-empting reprisal that is significant to the nature of vertical justice. It commands authority over the use of certain kinds of violence, restricting it in certain aspects for the exclusive use of royal power.

There are, of course, some disagreements in the scholarship with the logic that surrounds this binary and whether this horizontal/vertical distinction is useful for differentiating forms of punishment. An important contention is that even though compensation is handed over 'horizontally', one could argue that it was still ideally *enforced* through written legislation and penitential handbooks. Indeed, Allen contends that, 'monetary compensation sits uneasily' because it can be viewed in two ways:

²³ Fruscione, 'Beginnings and Legitimation of Punishment', p. 35.

²⁴ Marafioti and Gates, 'Introduction: Capital and Corporal Punishment', p. 10.

²⁵ Hyams, 'Afterword', p. 218.

²⁶ Allen, 'When Compensation Costs an Arm and a Leg', p. 17.

‘either as limp substitute for revenge or ideologically inflected ‘progress’ towards centralised law’.²⁷ Yet, I see the merit in needing to make a distinction between justice which restores honour for victims and justice which shames perpetrators. The present study cautiously applies similar categorical terms – ‘restorative justice’ and ‘punitive justice’ – simply to demonstrate where punishment is principally shown to restore the honour of the *victim* (restorative justice), in comparison to punishment which focuses on generating shame for the *perpetrator* (punitive justice). Indeed, this is a fundamental distinction with significant implications. What I am proposing is not merely a question of who administers the punishment – whether it is the king, a religious authority, or kinship group – but rather who ultimately bears the weight of its consequences. This distinction is crucial to determine how shame and honour are allocated.

There are also ongoing debates as to whether late seventh-century lawmakers were actively constructing a wholly new legal order, characterised by an increasing shift towards a ‘new’ idealised system of justice that was predominantly vertical.²⁸ In Fruscione’s view, King Wihtred’s (r. 690–725) late seventh century Kentish law ‘marked a turning point in developing notions of punishment’.²⁹ It was the beginning of a system in which traditionally restorative justice moved towards a more vertical, ‘top-down’ approach to justice. If one also takes into account Stefan Jurasinski’s and Lisi Oliver’s argument that Wihtred’s law was perhaps the product of an episcopal synod, rather than a royal assembly, then it makes sense that the original function of law switched to one which focused on a more ‘Christianised’ approach to justice.³⁰ Such assumptions have also led Allen to conclude that this shift meant that there was a strong ‘indication of the Christianization of law’, one in which there are observable changes from feuding logic to a ‘logic of punishment’.³¹ Hough adds that what makes the early seventh century law codes different to those of the later period is that ‘crimes are increasingly regarded as offences against society rather than against individuals, leading to a change of emphasis from the compensation of victims to the punishment of offenders’.³² Wormald, pre-empting Fruscione, Allen, and Hough,

²⁷ Ibid, p. 18.

²⁸ Wormald, ‘Inter Cetera Bona Genti Suae’, pp. 192–8; Lambert, *Law and Order*, pp. 65–67; Fruscione, ‘Beginnings and Legitimation of Punishment’, p. 35; Hough, ‘Legal and Documentary Writings’, p. 13; Allen, ‘When Compensation Costs an Arm and a Leg’, p. 17.

²⁹ Fruscione, ‘Beginnings and Legitimation of Punishment’, p. 35.

³⁰ Jurasinski and Oliver, *The Laws of Alfred: The Domboc and the Making of Anglo-Saxon Law* (Cambridge: Cambridge University Press, 2021), pp. 52–3.

³¹ Allen, ‘When Compensation Costs an Arm and a Leg’, p. 17.

³² Hough, ‘Legal and Documentary Writings’, p. 13.

observed that this development suggests that through their ambitions, kings wished to widen their responsibilities using the ‘Roman message: that disturbances among their people were their business’.³³ All of this assumes that kings, influenced by their new found powers, created new legislation aiming to fundamentally reshape notions of justice.

However, it is possible that there was nothing novel about this top-down approach to justice. On the opposing side of this argument, Lambert contends that just because kings were compelled to use their new legislative powers to encode legal regulations and promote Christianity, this does not necessarily indicate that there was a growing sense of a new legal order.³⁴ Aspects of vertical justice might have existed before Wihtred’s laws, and yet, were not added to his surviving law code. For example, the appearance of corporal punishment in Wihtred’s law code should not be assumed to be a new development solely triggered by the events of the seventh century.³⁵ Fruscione, however, does indeed suggest that such developing notions principally emerged with the process of late seventh century Christianisation.³⁶ It is entirely plausible that corporal punishment, for example, might have already applied at a local level or was perhaps recognised elsewhere in any number of neighbouring kingdoms outside of Kent. A key point to make early is that not every kingdom would have shared the same local customs and notions of punishment. We also do not have any extant early law codes attributed to Northumbria, Mercia, or East-Anglia, which means that any attempt to portray the beginnings of a unitary early English law is dubious at best.³⁷

³³ Wormald, ‘Inter Cetera Bona Genti Suae’, p. 198.

³⁴ Lambert, *Law and Order*, pp. 63–110.

³⁵ On corporal punishment in Wihtred’s law code, see Wi 10, 13, 15, 22.

³⁶ Fruscione, ‘Beginnings and Legitimation of Punishment’, pp. 37–40.

³⁷ There is the possibility of a lost Mercian law code ascribed to King Offa (r. 757–96), which is alluded to in the preamble to Alfred’s law code: ‘Ac ða ðe ic gemette awðer oððe on Ines dæge, mines mæges, oððe on Offan Mercna cyninges, oððe on Æpelbryhtes þe ærest fulluhte onfeng on Angelcynne, þa ðe me ryhtoste ðuhton, ic þa heron gegaderode, 7 þa oðre forlet’ (But those that I found either from the time of Ine, my kinsman, or of Offa, king of the Mercians, or of Æthelberht who first in England received baptism, those which seemed most just to me, I gathered herein, and left out the others). See Wormald, ‘In Search of Offa’s ‘Law Code’’, in *Legal Culture*, pp. 201–24. However, Wormald speculates that Offa’s purported law code might not have even been a royal law code in the traditional sense, but instead a legatine capitulary presented to the king during the Papacy’s visit in 786. Kristen Carella has demonstrated that the Legatine Capitulary of 786 was influenced by Alcuin, a native Northumbrian who incorporated Northumbrian law. See Carella, ‘The Historical and Literary Context of the Legatine Capitulary of 786 in England and Abroad’, in *Law, Literature, and Social Regulation in Early Medieval Europe*, (eds.) Anya Adair and Andrew Rabin (Woodbridge: Boydell and Brewer, 2023), pp. 137–50.

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Though it does seem that there was a shift in the overall legal system that skews to a more punitive direction, it cannot be solely proved that kings and their courts were trying to implement a handful of new punitive measures that might have already existed, and yet, were not written down. Hence, this thesis does not contend that lawmakers simply aimed to replace existing law and its emphasis on restorative justice with punitive justice. A superficial reading of the law codes would assume that this was the case. As we shall see below, the changes we see in the late seventh century law codes do not replace the tradition of honour. Lambert argues that just because kings, with their new-found notion of Romano-Christian kingship, now appear to have had new powers to encase written legislation does not mean that kings were trying to ‘cut against the grain of an established legal culture’.³⁸ Lambert further posits that while often viewed as a somewhat dramatic shift towards royal power and state-imposed punishment, it should be understood that although kings indeed sought to establish their role in shaming wrongdoing, this was not a complete departure from earlier legal practices based on feud and compensation. Changes were not as revolutionary as often portrayed; rather, they worked alongside existing legal traditions, addressing different types of offences. On the one hand, feuding and compensation dealt with personal affronts, while on the other, punitive justice handled offences against the wider community.³⁹

I do not dispute Lambert’s argument regarding the supposed novelty of punitive justice itself, nor do I think that kings were trying to fundamentally replace honour-bound justice. This thesis too suggests that the development of punitive justice was complementary rather than a direct replacement. However, I differ from Lambert’s conclusions regarding the nature and extent of ideological development of the overall legal system. Lambert’s work primarily examines the development of cultural and royal attitudes towards honour, concluding that the legal order was shaped by ingrained royal beliefs about honour and justice, and not driven by radically new ideas but was consistently rooted in traditional practices.⁴⁰ Yet, I argue this perspective overlooks the role of shame as a redemptive mode of social control – an emerging emphasis that can be indeed understood as radical. The influence of Christianity, combined with merging royal and ecclesiastical powers to enforce shame, will be shown to have had a more intrusive impact than previously recognised. Even so, late seventh century kings and ecclesiastics did not reshape the framework of these laws completely, nor did they attempt to pacify a traditionally

³⁸ Lambert, *Law and Order*, p. 105.

³⁹ *Ibid.*

⁴⁰ *Ibid.*, pp. 349–57.

restorative system of honour in favour of shame and punitive justice. Rather, as I see it, there was a shift in ideological *emphasis* from a system of honour to one which heavily incorporated shame as a pathway to redemption which demands further exploration.

3. Conceptualising ‘Honour’ and ‘Shame’

Because honour and shame are often embedded within different social, legal, and cultural frameworks, their meanings are not always straightforward or universally agreed upon. Therefore, a foundational grasp of honour and shame is crucial to frame the study. What follows here is an introductory survey of the key historical and anthropological literature that aims to define honour and shame. This foundation will help clarify these concepts and guide their interpretation in the discussions that follow in the subsequent chapters. This review will highlight important theoretical frameworks and cultural interpretations which have shaped the study of these constructs. In doing so, it will also help set the stage for a more focused inquiry into how these concepts ideally operated in early medieval English legal systems as outlined in Chapter One. The next chapter, therefore, presents a more exhaustive review of interpreting honour and shame in the texts.

Honour

The multifaceted nature of honour has been examined extensively in the anthropological literature.⁴¹ Frank Stewart categorises studies of honour as either lexical or conceptual. On the one hand, the lexical approach focuses on how honour is linguistically framed and understood within a particular cultural context. According to Stewart, when one takes a lexical approach, one examines specific words related to honour ‘in the language of the people whose notions of honour are being investigated’.⁴² On the other hand, the conceptual approach tends to begin with a general definition of honour and then investigates

⁴¹ The literature is vast and cannot all be listed here. This thesis, however, works with Frank H. Stewart, *Honor* (Chicago: The University of Chicago Press, 1994); John G. Peristiany, ‘Introduction’, in *Honor and Shame: The Values of Mediterranean Society*, ed. John G. Peristiany (London: Weidenfeld and Nicolson, 1965); John G. Peristiany and Julian Pitt-Rivers, ‘Introduction’, in *Honor and Grace in Anthropology*, (eds.) John G. Peristiany and Julian Pitt-Rivers (Cambridge: Cambridge University Press, 1992); Julian Pitt-Rivers, ‘Honour and Social Status’, in *Honor and Shame: The Values of Mediterranean Society*; David D. Gilmore, ‘Introduction’, in *Honor and Shame and the Unity of the Mediterranean*, ed. David D. Gilmore (Washington: American Anthropological Association, 2009); James Bowman, *Honor: A History* (New York: Encounter Books, 2006); Robert L. Oprisko, *Honor: A Phenomenology* (London: Routledge, 2012); Dagmar Burkhart, ‘The Unwieldy Phenomenon of Honor’, in *Honor and Shame in Western History*, (eds.) Jörg Wettlaufer, David Nash, Jan Frode Hatlen (New York: Routledge, 2023); Elvin Hatch, ‘Theories of Social Honor’, *American Anthropologist*, 91 (1989); Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge: Cambridge University Press, 1977).

⁴² Stewart, *Honor*, p. 5

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how honour could manifest in certain social or legal settings.⁴³ Stewart, to some degree, adopts both methods. He thinks of honour as a 'right', essentially, it is the right to be regarded and treated as possessing a certain inherent 'worth'.⁴⁴ This worth is often perceived in two distinct ways: internal and external. Dagmar Burkhart's analysis sheds further light on the distinction between internal and external honour, stating that internal honour is something the individual possess and self-assesses, whereas 'outward honour', as he prefers to phrase it, is bestowed by society.⁴⁵ Internal worth thus refers to an individual's self-assessment of their own honour. This means it functions as an intrinsic sense of dignity or self-worth. External worth, on the other hand, is the recognition of this worth by others in the community. It is granted through the acknowledgement of one's own peers through achievement or social standing. Stewart's analysis encompasses both internal and external aspects, indicating that, in his view, the two are closely interconnected.⁴⁶ Both aspects influence a person's behaviour and reputation. When one holds themselves to a standard of what is considered honourable behaviour, they are simultaneously reinforcing both aspects.

Stewart was inspired by the anthropological works of Julian Pitt-Rivers, who concluded earlier that honour is both a personal and social valuation, and that although honour encompasses an individual's self-worth, it also requires societal recognition.⁴⁷ Honour, as both Pitt-Rivers and Stewart came to understand it, then, is a claim to excellence that often needs to be affirmed by others. Building on this, Robert Oprisko extends both internal and external aspects of honour into further subdivisions claiming that honour functions as a 'multiphenomenal category'.⁴⁸ Oprisko equates 'external honour' with facets including prestige, shame, face, esteem, affiliated honour, and glory, whereas 'internal honour' is associated with honourableness and dignity. Much like Stewart and Pitt-Rivers' assessment, for Oprisko, honour is not simply a personal attribute, but a complex system that also involves a social group ascribing value onto certain individuals.⁴⁹ Oprisko's perspective is that honour should be understood as a socially constructed phenomenon that is won or maintained through social interactions within a community. People are assigned honour based on their adherence to what is considered

⁴³ Ibid.

⁴⁴ Ibid, p. 21.

⁴⁵ Burkhart, 'The Unwieldy Phenomenon of Honor', p. 10.

⁴⁶ Stewart, *Honor*, pp. 12–13.

⁴⁷ Pitt-Rivers, 'Honour and Social Status', p. 21.

⁴⁸ Oprisko, *Honor: A Phenomenology*, p. 3.

⁴⁹ Ibid.

honourable and their ability to conform to that notion. James Bowman further elaborates on this important social dimension of honour, defining it as the ‘good opinion of the people who matter to us.’⁵⁰ In this sense, honour can be perceived as a currency of social value. It is this notion that led one of the pioneers on the topic of honour in the anthropological field, Pierre Bourdieu, to conclude that honour is a form of ‘social capital’ which ties people together. It is his idea that honour as ‘social capital’ implies that an individual’s reputation and esteem within a community facilitate social interactions and can be understood as a currency of social exchange, whereby individuals earn social capital through honourable actions.⁵¹ This is essentially how historians have come to understand honour in an early medieval legal context. William Ian Miller investigates social exchanges in ‘honour–cultures’ and used historical antecedents to comprehend a philosophical analysis of honour.⁵² Although Miller’s work focuses to some extent on early English law, his main attention is drawn to Iceland and interpreting honour in Old Norse-Icelandic sagas. His idea that the Icelandic society functioned as an ‘economy of honour’ suggests it was one in which honour was highly valued in social interactions. In this context, Miller points out, ‘honour was at stake in virtually every social interaction’, meaning that people constantly navigated their actions and relationships with the potential gain or loss of honour in mind.⁵³ Both internally and externally, individuals shaped their behaviour accordingly.

In a broad sense, I have framed honour in a similar way to the anthropological and historical consensus. Essentially, honour is an assigned value recognised in social and legal interactions. Its

⁵⁰ Bowman, *Honor: A History*, p. 4.

⁵¹ This is a running theme in Bourdieu’s *Outline of a Theory of Practice*.

⁵² William I. Miller has made many contributions to this area, writing in both early English and Norse-Icelandic contexts. See Miller, *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland* (Chicago: The University of Chicago Press, 1990); Miller, *Eye for an Eye*; Miller, *Humiliation: And Other Essays on Honor, Social Discomfort, and Violence* (Ithaca: Cornell University Press, 1993); Miller, ‘Choosing the Avenger: Some Aspects of the Bloodfeud in Medieval Iceland and England’, *Law and History Review*, 1:2 (1983), 159–204; Miller, ‘Threat’, in *Feud, Violence and Practice: Essays in Medieval Studies in Honor of Stephen D. White*, (eds.) Belle S. Tuten and Tracey L. Billado (Farnham: Ashgate, 2010); Miller, *The Anatomy of Disgust* (Massachusetts: Harvard University Press, 1997); Miller, *‘Why Is Your Axe Bloody?’: A Reading of Njáls Saga* (Oxford: Oxford University Press, 2014). Aside from the works of Miller, numerous cultural literary works exemplify the importance of honour, along with the underlying ideas and values it embodies in social interactions. Honour is pervasive in medieval literature with an extensive tradition of scholarship dedicated to understanding it. Notable mentions that this thesis works include: Peter S. Baker, *Honour, Exchange and Violence in Beowulf* (Cambridge: D.S. Brewer, 2013); Richard Fletcher, *Bloodfeud: Murder and Revenge in Anglo-Saxon England* (Penguin Books, 2002); Scott Gwara, *Heroic Identity in the World of Beowulf* (Leiden: Brill, 2008); Cowell, *The Medieval Warrior Aristocracy: Gifts, Violence, Performance and The Sacred* (Cambridge: D.S. Brewer, 2007). For a very recent collection of essays see *Honor and Shame in Western History*.

⁵³ Miller, *Bloodtaking and Peacemaking*, p. 29.

application in social interactions is significant because when an affront occurs, it challenges this value. For honour to be recovered, the affronted person seeks to restore it through various means, including legal redress, as demonstrated in the laws of Æthelberht. Because honour serves as a social metric that guides behaviour and interactions, its restoration becomes a crucial aspect of maintaining one's social standing and self-respect amongst their peers. Like Stewart, my approach to honour in this context considers how honour manifests within specific legal settings. Lambert, who has commented extensively on honour, has also taken a conceptual approach to understanding honour.⁵⁴ Though he does not necessarily make the distinction between lexical and conceptual, his work approximates something close to this understanding. Lambert implicitly points out the issue with a lexical approach to the early English legal system, stating that 'the context of honour is not something the laws discuss explicitly. The reason for this is surely that it did not need explication: an understanding of honour is assumed'.⁵⁵ Essentially, Lambert is arguing that the absence of direct references to honour in legal texts does not indicate its absence from the legal system. Instead, he implied that honour was deeply ingrained as a guiding principle, despite it not being directly mentioned. This thesis adopts a similar approach and puts forth the same argument in the context of shame.

Shame

Like honour, shame is considered to be a mechanism of social evaluation in the anthropological literature.⁵⁶ The imposition of shame ensures that people adhere to established social and legal norms and when someone acts against such norms, the imposition of shame can act as a mechanism to correct unwanted behaviour.⁵⁷ Focusing on the relationship between shame as an a mechanism of social control

⁵⁴ Lambert is particularly prolific in this area. See Lambert, *Law and Order*, pp. 35–39; Lambert, 'Compensation, Honour and Idealism', pp. 133–160; Lambert, 'Hospitality, Protection and Refuge in Early English Law', *Journal of Refugee Studies*, 30:2 (2015), 243–60; Lambert, 'Theft, Homicide, and Crime in Late Anglo-Saxon Law', *Past and Present*, 214 (2012), 3–43. On Lambert's literary analysis of honour outside of the legal corpus, see 'Anthropology, Feud and De Obsessione Dunelmi', in *Anglo-Norman Studies XLI: Proceedings of the Battle Conference 2018*, ed. Elisabeth van Houts (Woodbridge: Boydell and Brewer, 2019), pp. 59–81.

⁵⁵ Lambert, *Law and Order*, p. 35.

⁵⁶ Anthropological studies this thesis incorporates includes: Peristiany, 'Introduction', in *Honor and Shame: The Values of Mediterranean Society*; Pitt-Rivers, 'Honour and Social Status'; Peter N. Stearns, *Shame: A Brief History* (Champaign: University of Illinois Press, 2017); Jörg Wettlaufer, 'Shame: A Social Emotion and Its Cultural Concepts in a Historical (European) Perspective', in *Honor and Shame in Western History*; Julien A. Deonna, et. al., in *Defense of Shame: The Faces of an Emotion* (Oxford: Oxford University Press, 2011); Gilmore, 'Introduction', in *Honor and Shame and the Unity of the Mediterranean*; Oprisko, *Honor: A Phenomenology*; Cecilea Mun, 'Introduction', in *Cultural Perspectives on Shame*, ed. Cecilea Mun (New York: Routledge, 2023).

⁵⁷ Stearns, *Shame*, p. 1; Wettlaufer, 'Shame', p. 28.

in early medieval England, Alice Jorgensen has examined the vocabulary of shame in the context of Ælfric of Eynsham's (c. 955–1010) writings, who refers to shame in the vernacular as 'bysmor', 'sceamu' and 'sceand', among others.⁵⁸ Such terms are often aligned with facets of shame such as insult, mockery, scorn, and humiliation. It is significant, then, that while there is a host of words denoting shame, there is a lack vocabulary pinpointing honour. Peter Baker notes that Old English texts generally refer to what we might think of as 'honour' related concepts, such as 'fame' or 'glory' (*ār*, *blāed*, *dōm*, *hrēð*, *lof*, *māerðo*, *tīr* or *þrymm*), but rarely do we see one definitive cultural word denoting 'honour'.⁵⁹ Indeed, 'honour' is a much later word with French and Latin origins carried over from the Norman Conquest. Perhaps, then, we are dealing with a culture which is more concerned with the avoidance of 'shame'. Jorgensen argues that Ælfric encourages the use of 'worldly-shame' as an umbrella term for failing to fulfil 'Christian ideals'.⁶⁰ Her understanding is that Ælfric promotes the 'ethicization and psychologization of shame' to his audience and that shame can explicitly mean a sense of failing to live up to these Christian ethics.⁶¹ Ælfric's shame concept is thus a combination of 'exterior shaming' and 'self-policing'.⁶²

The Old English term 'woroldsceamu' (worldly-shame) is an apt example of that blend. Ælfric's contemporary, Wulfstan asks his audience to imagine the Viking invasions as a byproduct of 'worldly-shame' in his homilies, such as the *Sermo Lupi ad Anglos*, which is a lamentation on the sins of the wider English nation.⁶³ Rolf Bremmer Jr. notes in his study of honour and shame in hagiography, that a key aspect of the genre was to promote the interaction of both phenomena in a saint's life in order to give the story special attraction during tumultuous times.⁶⁴ As a learned churchman, Wulfstan was familiar with hagiography and was aware that his particular emphasis on this sense of shame was a way

⁵⁸ Alice Jorgensen, 'It Shames Me To Say it': Ælfric and The Concept and Vocabulary of Shame', *Anglo-Saxon England*, 41 (2012), 249–76; Małgorzata Fabiszak and Anna Hebda, 'Emotions of Control in Old English: Shame and Guilt', *Poetica*, 66 (2007), 1–35. Also, see Wettlaufer, who briefly touches on the etymology of the Old English terms 'scamu and sceomu' in 'Shame: A Social Emotion and Its Cultural Concepts', p. 32.

⁵⁹ Baker, *Honour, Exchange and Violence*, p. 12.

⁶⁰ Jorgensen, 'It Shames Me To Say it', p. 249.

⁶¹ Ibid.

⁶² Ibid, p. 253.

⁶³ Ibid, pp. 275–6.

⁶⁴ Bremmer Jr., 'Shame and Honour in Anglo-Saxon Hagiography, with Special Reference to Ælfric's Lives of Saints', in *Hagiography in Anglo-Saxon England: Adopting and Adapting Saints' Lives into Old English Prose (c. 950-1150)*, (eds.) Loredana Lazzari, Patrizia Lendinara, and Claudia di Sciacca (Fédération Internationale des Instituts d'Études Médiévales, 2014), p. 120.

to admonish his audience for not upholding Christian standards, especially when both faith and unity were ideally needed to avoid divine further punishment. As Patrick Wormald once claimed, Wulfstan aimed to ‘fortify the Church militant’.⁶⁵ In part of that militant approach (which by Wulfstan’s time had reached its zenith), Christian morality was emphasised more prominently with the theological aspect of worldly-shame being an influential part of that exercise. As Ælfric and Wulfstan viewed it, English society had failed to live up to its proper Christian identity and had thus become violently humiliated by God as collective punishment for their sins.⁶⁶ For both contemporary figures, their meaning of shame was much more elevated from everyday sentimentalities such as being ashamed for individual failures, appearance, or failing to comply with the social order, to one in which there became an accepted theological sense of ‘spiritual’ shame for sins.⁶⁷ To counter balance this spiritual shame, Wulfstan invoked the idea of ‘woroldwurðscipe’ (worldly-dignity) in his legal treatises.⁶⁸ By promoting the concept of ‘worldly-dignity’, Wulfstan provided a positive incentive for adhering to ideal behaviours which complemented the negative effect of acquiring unwanted spiritual shame. Despite the rich Old English vocabulary surrounding shame in ecclesiastical discourses, like honour, explicit references to shame are surprisingly rare in legal texts. This absence necessitates a conceptual approach, similar to how honour is understood, where the notion of shame is inferred from the nature of the punitive measures.

Jorgensen’s findings are particularly intriguing in this context. Though her approach is more focused on the lexical aspects of shame, she raises an important point: religious justifications for shame, within ecclesiastical discourse, served as a tool for expanding social control and regulation in early medieval England. I argue this insight can open up a more nuanced understanding of shame as an emerging phenomenon parallel to honour, with its own distinct dynamics. That is to say, I treat shame as having the ability to shape behaviour, rather than being reducible to something which is merely the lack of honour. Considering there exists a wealth of anthropological literature of shame in other areas that parallels the scholarship on honour, it makes it all the more surprising that scholars have underemphasised religious justifications for the imposition of shame, particularly when examining early medieval English legal systems. Perhaps because of its overt role in shaping social hierarchies and

⁶⁵ Wormald, *The Making of English Law*, p. 455.

⁶⁶ Jorgensen, ‘It Shames Me To Say it’, pp. 275–6.

⁶⁷ *Ibid.*

⁶⁸ V Atr 9.1; VI Atr 5.3; I Cn 62a.

senses of self-worth, honour is seen as the more visible force that governs interpersonal relations. In contrast, shame, although equally crucial, operates in a more subtle and less tangible way. It is less outwardly displayed in legal texts, meaning its influence is not always expressed in concrete legal terms, unlike honour, which has clear links to compensation. What this study aims to do is shine a light on shame in order to underline its significance in shaping the nature of early medieval English justice. This thesis argues that shame played a more deliberate role in maintaining social control. It was employed by kings and ecclesiastics to punish, correct, and redeem offenders. This made it vital in the pursuit of justice.

4. Scope and Outline

The scope of this study interprets concepts of honour and shame as reflected in the perspectives of the elite who shaped royal and ecclesiastical laws from the seventh to the eleventh century. It traces the chronological development of these laws to analyse shifts in the focus of justice over time. While punitive measures that could generate shame became increasingly prominent, this study stresses that honour remained an enduring element of legal thought throughout the period. Chapter One begins with a review of key historical sources, and lays the foundation for a more in-depth exploration of how these concepts functioned in early medieval English legal systems. I offer a thorough analysis of the history and historiography related to the interpretations of honour and shame in the sources, setting the stage for the discussions in the subsequent chapters.

The body chapters are structured thematically. They focus on the evolving attitudes towards, what I argue, are four significant offences in early medieval English law: violence, perjury, theft, and sexual impropriety. Each chapter explores the evolution of legal responses to these offences over time and analyses the wider royal responses that increasingly merge with religious responses over time. Each chapter begins by examining early cultural and royal legal perspectives on the offence in question up to the seventh century. I contextualise these attitudes within broader socio-political structures and highlight the role of honour. The chapters then shift the focus to religious and ecclesiastical legal perspectives, analysing how the offence in question was perceived and addressed within ecclesiastical circles up to the eighth century. The section examines the influence of penitential practices and the function of shame as a redemptive aspect of justice. I then identify the points of divergence and convergence between royal and ecclesiastical laws from the late ninth century to the eleventh century, making it clear that while shame overwhelmingly increases, aspects of honour remain pertinent to the overall jurisprudence.

Introduction

The first of these chapters begins by examining the cultural and royal legal attitudes towards violence and the mechanisms through which conflicts were traditionally resolved. It is revealed how early medieval English societies largely approached violence through kin-based justice systems, where compensation and retaliatory measures were central to honour. The chapter then turns to the role of the Church in shaping these cultural and legal attitudes towards violence. I show how the Church introduced spiritual considerations weighing on violence, while attempting to mitigate excessive bloodshed by promoting penance as an important part of conflict resolution. Though some attitudes towards violence persist in the later period, particularly in cases where honour was at stake, ecclesiastical attitudes played a crucial role in gradually reshaping royal legal attitudes to conflict resolution. As I see it, they seek to make shame and redemption a central element in the royal laws, thus reshaping lay attitudes to conflict resolution.

Chapter Three examines attitudes towards oath-swearing and the increasing royal and religious concerns surrounding perjury. The chapter first considers how honour and reputation played a central role in oath-taking. It addresses the problem that honour and reputation could be exploited to manipulate the oath-swearing system. A person with a strong reputation could absolve themselves of guilt simply by being considered of good character. Ecclesiastics used shame as a social mode of control to combat this. By the tenth century, kings and ecclesiastics worked together to impose severe penitential sentences on perjurers, thereby adding shame and redemption as part of the overall punishment for perjury. Over time, kings began to heighten the role of shame as punishment for perjury, as royal authority expanded and the reliability of oaths and truthful testimony became increasingly crucial for maintaining loyalty.

Chapter Four examines early medieval English attitudes towards theft, highlighting the particular anxiety surrounding this crime compared to others. I show how in the early period, honour played a crucial role in reconciling thieves with their victims, often through compensation settlements. However, the royal approach increasingly prioritised maintaining order and deterring crime, accepting the killing of thieves who could not be captured as a legitimate means of enforcing justice. This contrasted with ecclesiastical responses, which sought to redeem the offender by emphasising repentance. Both royal and ecclesiastical authorities used shame as a tool to address theft, yet tensions arose between their respective approaches – where kings viewed execution as a necessary deterrent, ecclesiastical figures advocated for penance as a means of rehabilitation. I demonstrate where punitive measures against thieves intensified over time, with kings promoting harsher corporal punishments and executions as deterrents. Even within ecclesiastical circles, there was a growing acceptance of shame-based corporal

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punishments, including punitive mutilation, as a means of enforcing a severe form of penance that could save the soul.

Chapter Five delves into the evolving perspectives on gendered punishment in laws addressing sexual impropriety. It shows that in the seventh century, sexual transgressions were primarily viewed through the lens of honour, where the focus was on the preservation of male and familial reputation. As a result, the primary response to such transgressions was often financial restitution and preventing further dishonour. Ecclesiastics, however, introduced a spiritual dimension to the understanding of sexual transgressions. Sexual impropriety was not just a breach of honour, but a sin. Growing ecclesiastical influence brought with it an emphasis on shame and repentance and the possibility of spiritual redemption. The gendered dynamics of this shift, especially regarding the harsher punishments imposed on women, are of particular concern here. While men were sometimes afforded more lenient means of redemption, women faced significantly more stringent shame and scrutiny. The increasing emphasis on shame appears to disproportionately impact women, with female sexual impropriety being treated more shameful than that of men. This ultimately culminated in punitive mutilation as accepted punishment for women and not for men.

To close, I reflect on the broader shift from honour to shame in early medieval English law, and consider some implications for the concept of honour itself. I also outline potential directions for future research, posing several brief questions about the legacy of these developments after the Norman Conquest – particularly in relation to how legal responses to key offences evolved, and what certain continuities and divergences might mean for honour and shame. Though, before engaging in the thematic analysis, it is necessary to first develop a comprehensive understanding of the foundational role of honour-based restorative justice and shame-based punitive justice within the legal sources. This groundwork will provide the necessary context for assessing how attitudes towards justice evolved across different types of offences.

1.

Interpreting Honour and Shame: Texts and Contexts

Having established a scholarly foundation on the concepts of honour and shame, I now turn to an examination of how these ideas have been treated in the historiography of early medieval English sources. This chapter is crucial for situating the subsequent chapters, which will explore the increasing prominence of shame in legal responses to acts of violence, perjury, theft, and sexual impropriety. To prepare for these discussions, it is necessary to outline this study's analytical approach to the primary sources and to establish how concepts such as honour and shame are identified and interpreted within them. This chapter, therefore, provides a detailed overview of the key textual sources: royal law codes, penitential literature, lawsuits, and literary works. The aim here is to look closely at the ways in which historians have tended to pluck ideas about honour and shame from each genre. While significant scholarly attention has already been paid to the ideology underpinning the royal law codes, particularly with regard to the role of honour, I argue that it is necessary to look beyond these texts and explore a wider range of sources within the vast body of literature. Although the law codes certainly offer rich material for understanding how honour was codified and protected by royal power, they represent only one facet of a much wider cultural discourse. It is thus essential to consider a more diverse range of texts, many of which operated outside the formal structures of royal power, yet nonetheless played an important role in regulating behaviour. I argue in this chapter that penitentials should assume importance when analysing medieval English legal systems. These texts, often written by ecclesiastical authorities for the use of confessors, illuminate a different sphere of the overall jurisprudence which is certainly worth investigating further. As will be demonstrated, they prioritise shame and redemption. Unlike the royal law codes, which sought to enforce honour through external mechanisms such as compensation, penitentials framed shame as essential to the process of repentance and reconciliation. Additionally, the inclusion of literary sources and recorded lawsuits allows for further exploration of how honour and shame were expressed. These texts are rich in narrative and emotive detail, which can help us provide glimpses into cultural expectations that may be less apparent in legal texts.

1. Ideology in the Royal Law Codes

Our sources present some difficulty due to their ‘tenuousness of preservation’, as Wormald puts it, which is expected for this period under investigation.¹ Many of the surviving early medieval English law codes, though composed during this period, were transcribed and preserved in manuscripts that date to the twelfth century. Wormald identifies twenty of manuscripts which contain law codes, and among the most important of these is the *Textus de Ecclesia Roffensi per Ernulphum episcopum* currently in Rochester Cathedral library, MS A.3.5.² The *Textus Roffensis*, for short, is the most extensive of these legal codices. It was compiled around 1124 and contains an abundance of these law codes. While the laws of the West-Saxon tradition are preserved in a wider range of manuscripts, the *Textus Roffensis* encompasses all surviving seventh-century Kentish legal codes. All Kentish laws exist solely in this manuscript and are written in Old English. Their preservation is attributed to Ernulf, the Bishop of Rochester (c. 1040–1124), who instigated their transcription.³ As an important figure with an interest in both legal and ecclesiastical history of England, his decision to include the Kentish laws in the *Textus Roffensis* is was due to his interest as a legal scholar and later as a prior of Canterbury Cathedral and Peterborough abbey, where he helped draft the later recordings of the *Anglo-Saxon Chronicles*.⁴ His decision to record these laws meant that we have a somewhat comprehensive idea about the early Kentish legal framework.

Considering that these texts only exist as twelfth century transmissions, questions may arise on what grounds are these seventh-century texts authentic? There are several arguments which support their authenticity, though two important one should suffice here. Firstly, scholars such as Lisi Oliver and Nicholas Brooks argue that the language of the texts indeed point to an earlier Old English vernacular.⁵ Secondly, continuity of scribal institutions in Kent also makes it very likely that the laws were preserved across the centuries, particularly with Rochester as having a proven track record of

¹ Wormald, *The Making of English Law*, p. 262.

² See Ibid, pp. 164–5. Here, Wormald provides a useful table of these manuscripts.

³ Mary P. Richards, ‘The *Textus Roffensis*: Keystone of the Medieval Library at Rochester’, in *Textus Roffensis: Law, Language, and Libraries in Early Medieval England*, (eds.) Bruce O’Brien, and Barbara Bombi (Turnhout: Brepols, 2015), p. 20; Wormald, *The Making of English Law*, p. 245; Oliver, *The Beginnings of English Law*, pp. 22–3.

⁴ Oliver, *The Beginnings of English Law*, pp. 22–3.

⁵ Ibid, pp. 20–34; Nicholas Brooks, ‘The Laws of King Æthelberht: of Kent: Preservation, Content, and Composition’, in *Textus Roffensis*, pp. 105–11.

preserving pre-Conquest documents. To this day there remains many royal charters and diplomas in addition to the *Textus Roffensis* at Rochester.⁶

Now, any diachronic examination of the early medieval English legal system necessarily begins with the law code of Æthelberht of Kent, which is the earliest extant written royal pronouncement. The history of early medieval English law begins with King Æthelberht of Kent's (r. 589–616) conversion to Christianity in 597. Æthelberht's conversion followed the arrival of Augustine, sent by Pope Gregory I (c. 540–604) to evangelise the people of Kent.⁷ According to Bede's *Historia*, '[Augustine] sent to Æthelberht to say that he had come from Rome and brought the best of news, which would, without any doubt, promise those who obeyed him eternal joys in heaven and a kingdom without end with the living and true God'.⁸ Æthelberht's embrace of Christianity made Kent the first early medieval English kingdom to adopt the faith, marking the beginning of England's religious transformation. Æthelberht ruled a wealthy and well-positioned kingdom, influenced by Frankish culture through his marriage to Bertha (c. 567–601), the Christian daughter of King Charibert of the Franks (r. 517–67).⁹ The Merovingians, the first ruling dynasty of the Franks, were a Germanic people who also codified their laws. The earliest of these is known as the *Lex Salica* (c. 500), which was written around one hundred years before Æthelberht's reign.¹⁰ The Merovingians influenced Kentish society through cross-cultural trade.¹¹ It is likely that through this influence, Æthelberht was prompted to adopt this new method of lawmaking, putting his laws into writing around the year 600.¹² Although the surviving Old English text is a later copy, scholars such as Oliver argue that Æthelberht was responsible for committing pre-

⁶ Brooks, 'The Laws of King Æthelberht', p. 108.

⁷ Barbara Yorke, *The Conversion of Britain: Religion, Politics and Society in Britain, c.600–800* (London: Taylor and Francis, 2006), pp. 122–8; Henry Mayr-Harting, *The Coming of Christianity to Anglo-Saxon England* (Pennsylvania: The Pennsylvania State University Press, 1991, revised edition, pp. 51–68; Rob Meens, 'A Background to Augustine's Mission to Anglo-Saxon England', *Anglo-Saxon England*, 23 (1994), 5–17, at. pp. 14–17; Ian Wood, 'The Mission of Augustine of Canterbury to the English', *Speculum*, 69 (1994), 1–17.

⁸ '...et mittens ad Aedilberctum, mandauit se uenisse de Roma ac nuntium ferre optimum, qui sibi obtemperantibus aeterna in caelis gaudia et regnum sine fine cum Deo uiuo et uero futurum sine ulla dubietate promitteret', Bede, *HE*, 1.25, p. 72.

⁹ Yorke, *The Conversion of Britain*, pp. 121–22; Wood, 'The Mission of Augustine of Canterbury', pp. 6–12.

¹⁰ *The Laws of the Salian Franks*, ed. and trans. Katherine F. Drew (Pennsylvania: University of Pennsylvania Press, 1991), pp. 28–31.

¹¹ Jurasinski, 'The Continental Origins of Æthelberht's Code', *Philological Quarterly*, 80 (2001), 1–15; Wood, 'The Mission of Augustine of Canterbury', pp. 6–12.

¹² See 'Texts and Sigla', p. iv.

existing oral laws to writing.¹³ His decision to formalise these laws was influenced by several factors, including his desire to align himself with other Christian rulers and adopt the Roman model of governance, which emphasise written codes as a hallmark of civilised rule. In his *Historia*, Bede provides valuable commentary on Æthelberht's legislative efforts, noting that 'he [Æthelberht] established with the advice of his councillors a code of laws after the Roman manner'.¹⁴ The *exempla* referred to here alludes to the process of putting law in writing.¹⁵ This was a practice, Æthelberht and his councillors sought to emulate. Wormald argues that Bede's 'Romans' might actually be Franks, who had put their laws to writing much earlier.¹⁶ In many respects, then, Æthelberht's code reflects broader trends in the codifications of laws among those deemed as *Leges Barbarorum* (Barbarian Laws) that were written down on the Continent during the Late-Antique period.¹⁷ These legal codes, developed by various tribes in Northern Europe that succeeded the Roman Empire, were also composed 'in the manner of the Romans' (*exempla Romanorum*).¹⁸ Through adopting this approach, Æthelberht's code aligned with contemporary continental practice. For Æthelberht, this code symbolised his status as a Romano-Christian king, drawing on the prestige of Roman traditions while embedding Kentish customs within it.

It is for this reason that considerable uncertainty surrounds the precise 'purpose' behind the codification of these laws. Scholars have long debated whether these codes were intended as practical tools for governance, enforceable and routinely applied across the kingdom, or whether they were primarily ideological in nature, serving more to articulate royal authority than to regulate everyday legal

¹³ Oliver, *The Beginnings of English Law*, pp. 34–41. See also Wormald, 'Inter Cetera Bona Genti Suae', p. 183; Wormald, 'Lex Scripta and Verbum Regis: Legislation and Germanic Kingship, from Euric to Cnut', in *Legal Culture*, pp. 37–8; Lambert, *Law and Order*, 31–4; Lambert, 'Compensation, Honour and Idealism', pp. 139–41.

¹⁴ '...decreta illi iudiciorum iuxta exempla Romanorum cum consilio sapientium constituit': Bede, *HE*, 2.5, p. 150.

¹⁵ On this much discussed phrase see Patrick Wormald's initial commentary in 'Exempla Romanorum: The Earliest English Legislation in Context', in *Rome and the North*, (eds.) Alvar Ellegård and Gunilla Åkerström-Hougens (Jonsö, 1996), pp. 15–27. Also, Wormald, *The Making of English Law*, pp. 29–30, and pp. 93–6; See also Wormald, 'Lex Scripta and Verbum Regis', pp. 25–8. For more recent analyses see Rabin, 'Bede, Æthelberht, and the 'examples of the Romans' in early medieval England', *Early Medieval Europe*, (2023), 1–22; Ingrid Ivarsen, 'King Ine (688–726) and the Writing of English Law in Latin', *The English Historical Review*, 137:568 (2022), 1–46, at pp. 3–6, and p. 19.

¹⁶ Wormald, *The Making of English Law*, p. 29; Wormald, 'Lex Scripta and Verbum Regis', pp. 31–2.

¹⁷ See Walter Goffart, *The Narrators of Barbarian History: (A.D. 550-800) Jordanes, Gregory of Tours, Bede, and Paul the Deacon* (New Jersey: Princeton University Press, 1988).

¹⁸ For commentary on these see Wormald, *The Making of English Law*, pp. 29–101.

disputes. Patrick Wormald, whose work remains central to this debate, was especially sceptical of the notion that these texts directly mirrored legal practice. Rather than viewing royal legislation as a faithful reflection of how justice was administered, Wormald interpreted these codes as ideological instruments: texts that projected a vision of law and kingship grounded in a Romano-Christian tradition of rule. According to Wormald, kings were not merely setting out pragmatic solutions to social disorder; they were asserting their legitimacy and authority by doing what powerful Christian rulers were expected to do: promulgate written laws.¹⁹ The very act of law-giving, for Wormald, was a performative gesture, one that aligned English kings with an idealised image of Christian rulership derived from continental and Roman imperial models. This interpretation does not suggest that the law codes are historically useless; quite the opposite. Wormald fully acknowledged that legal texts offer crucial insight into elite discourse, what the ruling classes thought about justice, governance, and law and order. But he insisted that these sources must always be read through the lens of ideology and with an awareness of their performative function.²⁰ Like Wormald, I contend that these early law codes, while perhaps only intermittently enforced and variably applied, nevertheless encode important cultural values and elite conceptions of justice.²¹ Even if their practical impact was limited, they can still be read as repositories of royal and ecclesiastical ideals. These are certainly texts through which we can discern what kinds of behaviour rulers thought should be scorned and how they imagined the social order should be structured. Rather than viewing these documents as fixed rules for conduct, it is more productive to understand them as contributions to an ongoing project that envisions how law and order *should* ideally function.

In the latter half of the twentieth century, scholars began to conceptualise the ideology of these laws in relation to honour. The pivotal works of Lisi Oliver, Paul Hyams, William I Miller, and Tom Lambert, as well as others, have had a profound influence and it is principally their interpretations which have been instrumental in contextualising early English legal codes within the broader framework of honour.²² The bulk of this scholarship primarily examines the mechanisms through which victims whose

¹⁹ Wormald, 'Lex Scripta and Verbum Regis', pp. 1–43; Wormald, *The Making of English Law*, pp. 61–2; Wormald, *Papers Preparatory to the Making of English Law: King Alfred to the Twelfth Century*, vol. II: *From God's Law to Common Law*, (eds.) Stephen Baxter and John Hudson (University of London: Early English Laws, 2014), especially chapters 8 and 9.

²⁰ Wormald, 'Lex Scripta and Verbum Regis', pp. 40–1; Wormald, 'Inter Cetera Bona Genti Suae', p. 198.

²¹ In addition to Wormald, other scholars have also expressed this idea. See Lambert, *Law and Order*, pp. 13–15; Rabin, *Crime and Punishment in Anglo-Saxon England* (Cambridge University Press, 2020), p. 13.

²² Oliver, *The Beginnings of English Law*; Oliver, *The Body Legal*; Hyams, *Rancor and Reconciliation in Medieval England* (Ithaca: Cornell University Press, 2003); Hyams, 'Feud in Medieval England', *Haskins Society Journal Studies in Medieval History*, 3 (1991), 1–21; Hyams, 'Feud and the State', pp. 1–43; Hyams, 'Was there Really

honour has been affronted can seek redress, of which the specific details were outlined in the introduction of this thesis. My argument, however, is that shame should also be understood as vital to the ideology inherent in these texts. In the introduction, I demonstrated how honour and shame shaped the jurisprudence across different points in time. In doing so, I acknowledged a difference between the ideology of the early royal law codes in comparison to the later ones. As I see it, there is a tendency in the scholarship to overlook the shift in this ideology from a culture primarily governed by honour to one that increasingly framed shame as a redemptive quality alongside honour. It extended beyond compensation to demand spiritual correction. The scholarship often focuses narrowly on restorative justice, emphasising honour while neglecting the Church's influence and the growing expectation that shame be internalised for sins, often as an additional part of the overall reconciliatory process. The next section here is therefore imperative to our understanding as to where this redemptive quality stems from and how exactly shame should be conceptualised as a redeeming force.

2. Internalising Shame: Penance and Penitentials

With the limitations that surround the royal laws, I argue it is additionally necessary to look beyond the more 'royal' sources. Although ideas about penance are referenced in the law codes, particularly in the later laws as ecclesiastical influence expands, the specifics of its practice are omitted. We can draw from a well-established penitential tradition based on ecclesiastical regulations to aid us in our understanding here. Essentially, penitentials were clerical handbooks that prescribed specific penances for particular sins. They originated from Irish and British monastic settings and reflect a monastic concern with spiritual correction.²³ While monastic communities were the primary audience, the penitentials were not limited to monks. As early as the sixth century, they gradually extended to include penances for laypeople. Although monastic in origin, penitentials became tools of pastoral care, allowing the clergy to administer penance to both monks and lay penitents. Compiled around the beginning of the eighth century, the *Poenitentiale Theodori*, attributed to Theodore of Tarsus, Archbishop of Canterbury (c.

such a thing as Feud in the High Middle ages?', in *Vengeance in the Middle Ages*, pp. 151–175; Miller, *Eye for an Eye*; Miller, *Bloodtaking and Peacemaking*; Miller, *Humiliation*; Miller, 'Choosing the Avenger'; Miller, 'Threat', pp. 9–28; Lambert, *Law and Order*; Lambert, 'Compensation, Honour and Idealism', pp. 133–160; Lambert, 'Hospitality, Protection and Refuge', pp. 243–60; Lambert, 'Theft, Homicide, and Crime', pp. 3–43; John S. Beckerman, 'Adding Insult to Iniuria: Affronts to Honor and the Origins of Trespass' in *On the Laws and Customs of England: Essays in Honour of Samuel E. Thorne*, (eds.) Morris S. Arnold, et al. (Chapel Hill: The University of North Carolina Press, 1981), pp. 159–81.

²³ On the origins, see Meens, *Penance in Medieval Europe, 600–1200* (Cambridge: Cambridge University Press, 2014), pp. 44–57.

668–90), was a set of ecclesiastical regulations which reflected penitential teachings. His penitentials were devised shortly after his death around 700.²⁴ It is therefore only attributed to him by name. For Allen Franzten, it is precisely this penitential that represented ‘a landmark in the literary history of penance’ because it recognised the enforcement of consistent Church standards and ecclesiastical organisation during the seventh century when the Church was considered to be heavily decentralised.²⁵ *Poenitentiale Theodori* was copied by an unknown scribe with the title of ‘Discipulus Umbrensiū’ around 700.²⁶ The version called the *Poenitentiale Umbrense* composed in Northumbria decades after Theodore’s death represents the most complete remaining version of the text. Theodore’s penitential derives most of its canons from Irish penitentials and so a distinctive ‘English’ penitential tradition must also be understood as deriving from another culture’s punitive procedures. Theodore’s penitential was circulated in England and on the Continent and was acquired by monks from monasteries leaving an influential mark on other ecclesiastics in England in the proceeding decades. As a consequence, this original Latin text came to serve as an important source for the Old English penitentials, which in turn contain many clauses translated from it.

There are also four surviving texts written in the vernacular, which were translated from earlier Latin texts. The dates of these range approximately from the tenth to the eleventh century. Stefan Jurasinski’s recent work, in particular, has provided a most extensive commentary on these texts: the

²⁴ Charles-Edwards, ‘The Penitential of Theodore and the Iudicia Theodori’ in *Archbishop Theodore: Commemorative Studies on His Life and Influence*, ed. Michael Lapidge (Cambridge: Cambridge University Press, 1995), pp. 141–174; Allen J. Frantzen, *The Literature of Penance* (New Jersey: Rutgers University Press, 1983), pp. 63–4; Frantzen, ‘The Tradition of Penitentials’, *Anglo-Saxon England*, 11 (1983), 23–55, pp. 27–32; Roy Flechner, ‘An insular tradition of ecclesiastical law: fifth to eighth century’, in *Anglo-Saxon/Irish relations before the Vikings*, (eds.) James Graham-Campbell and Michael Ryan, *Proceedings of the British Academy*, 157 (Oxford, 2009), 23–46; Flechner, ‘The making of the Canons of Theodore’, *Peritia*, 17–18 (2003), pp. 121–43; Flechner, *Making Laws for a Christian Society: The Hibernensis and the Beginnings of Church Law in Ireland and Britain* (London: Routledge, 2021), pp. 47–67; John T. McNeill and Helena M. Gamer, *Medieval Handbooks of Penance* (New York: Columbia University Press, 1990), revised edition, pp. 179–82.

²⁵ Frantzen, *The Literature of Penance*, p. 64.

²⁶ On the manuscript tradition see *Bußordnungen der abendländischen Kirche*, pp. 13–37; *Councils and Ecclesiastical Documents*, pp. 173–190; Charles-Edwards, ‘The Penitential of Theodore and the Iudicia Theodori’, pp. 141–174; Frantzen, *The Literature of Penance*, pp. 63–4; Frantzen, ‘The Tradition of Penitentials’, pp. 27–32; Flechner, ‘An Insular Tradition of Ecclesiastical Law’, pp. 23–46; Flechner, ‘The Making of the Canons of Theodore’, pp. 121–43; McNeill and Gamer, *Medieval Handbooks of Penance*, pp. 179–82. There is also a select group of canons attributed to Theodore which should be seen as separate to the penitential text ascribed to him. Whether they are older or proceed the *Poenitentiale Umbrense* is debatable. See McNeill and Gamer, *Medieval Handbooks of Penance*, p. 215.

Scriftboc, the *Canons of Theodore*, the *Old English Penitential*, and the *Old English Handbook*.²⁷ Most of the canons in these texts borrow from the penitentials attributed to Theodore, though the penitentials authorised by Haltigar of Cambrai (d. 831) was specifically influential to the *Old English Penitential*.²⁸ All of these are considered in this approach. I also look at two other Latin texts, though their place in the English penitential tradition is perhaps less certain than Theodore's. The *Poenitentiale Egberti* was composed in the earlier half of the eighth century, though, like Theodore's penitential it is more than likely only attributed to the Archbishop Egbert of York (d. 766), rather than being actually written by him.²⁹ Then there is the *Poenitentiale Bedae* which is also possibly an eighth century text. Though attributed to the monk Bede, this is highly improbable.³⁰ Both texts derive canons from Theodore's penitential, though some chapters attributed to Egbert derive possibly from the Continent, whilst most, if not all the work attributed to Bede appears to have originated outside of England.³¹ Despite this, both texts reflect much of what we expect from penitentials. Indeed, all penitentials listed here show similar penitential punishments coinciding with similar sins: adultery, theft, homicide, incest, drunkenness, and magic. In response to such sins, punishments laid out in penitentials often manifest as either fasting, prayer, or compensation. Though penitentials often share prescriptions for lengths of fasts, amounts of prayers to be said, or even different amounts of compensation to be paid, they nonetheless all share an emphasis on the same sorts of treatment and sin. The broader point here is that while penitentials from the continent or the British Isles are largely consistent in their approach to punishing sinners, the primary differences lie in the severity and duration of the prescribed penances, with some texts imposing lengthier periods of atonement while others allow for shorter, more lenient sentences. Despite these variations in implementation, penitential texts generally reflect a shared set of moral attitudes towards the sins they address and mostly reinforce common ecclesiastical values and expectations.³²

²⁷ For commentary and a discussion on their past reception see Jurasinski, *The Old English Penitentials*, pp. 35–51. Frantzen also provides commentary on these and discusses the manuscript tradition in *The Literature of Penance*, pp. 133–50.

²⁸ Jurasinski, *The Old English Penitentials*, p. 39.

²⁹ On the manuscript tradition see Frantzen, *The Literature of Penance*, pp. 69–77; According to Frantzen, the earliest of these, and thus the earliest manuscript we have containing it, is the Vatican, Palatinus Latinus 554. (possible eighth or ninth century). See *The Literature of Penance*, p. 70.

³⁰ On the manuscript tradition see Frantzen, *The Literature of Penance*, pp. 69–77; Frantzen, 'The Penitentials Attributed to Bede', *Speculum* 58:3 (1993), 573–597, at 577–595.

³¹ Frantzen, *The Literature of Penance*, pp. 69–76.

³² Ibid, p. 17. Meens, *Penance in Medieval Europe*, p. 36.

Considering this approach aims to demonstrate the broader influence of restitution and punishment, I opt here for a wider understanding of what social control looked like beyond royal legislation. For this reason, I have included penitential literature as another example of how social modes of control function. By conducting the study in this fashion, I seek to reassess what constituted ‘law’ during this period in order to paint a more comprehensive picture about the overall shift in emphasis. What constituted ‘law’ during this milieu is often difficult to interpret. There are already distinctions drawn in ‘royal’ laws, namely the royal laws, and ecclesiastical laws which could pertain to penitential law, canon law, or monastic regulations. These two often merge, and especially by the later period from the tenth century onwards, penitentials becoming increasingly intertwined with royal laws. These distinctions, however, are often unreliable. Even the modern application for the term ‘secular’ in comparison to ecclesiastical is often unhelpful. Whereas some scholars separate social modes of control simply as ‘secular’, or ‘civic’ and ‘religious’, or ‘ecclesiastical’, Jurasinski describes penitential literature as ‘less convention-bound’ and uses the term ‘normative’ to describe the royal law codes.³³ I have framed the distinction between these two groups as royal and ecclesiastical law in accordance with his recent scholarship. It is a purposeful way to emphasise that the penitential texts, when thought about as ‘law’, are an undervalued area of study and thus need to be brought to the attention of scholars when thinking about law in its broader application.

Royal codes are built upon elite mentalities concerning cultural, economic and social responsibilities, overlaid with idealised visions which can be interpreted as displaying certain ideas about honour and shame intended for a contemporary lay and ecclesiastical audience. I show that a similar description is apt for penitential handbooks. Like Jurasinski, I demonstrate that penitential literature has not received the attention it deserves when scholars have sought to investigate how ‘legal

³³ Jurasinski, *The Old English Penitentials*, p. 5. For others, see Cubitt, ‘Bishops and Councils in Late Saxon England: The Intersection of Secular and Ecclesiastical Law’, in *Recht und Gericht in Kirche und Welt um 900*, ed. Annette Grabowsky and Wilfried Hartmann (Munich, 2007), pp. 151–68; Catherine Cubitt, ‘Bishops, Priests and Penance in Late Saxon England’, *Early Medieval Europe*, 14 (2006), 41–63, at p. 44; Cubitt, ‘Individual and Collective Sinning in Tenth- and Eleventh Century England: Penance, Piety and the Law’, in *Religion und Politik im Mittelalter: Deutschland und England im Vergleich*, (eds.) Ludger Körntgen and Dominik Waßenhoven (Berlin: Walter de Gruyter, 2013), p. 58; Levi Roach, ‘Penance, Submission and Deditio: Religious Influences on Dispute Settlement in Later Anglo-Saxon England (871–1066)’, *Anglo-Saxon England*, 41 (2012), 343–71, at p. 346; Thomas P. Oakley, ‘The Cooperation of Medieval Penance and Secular Law’, *Speculum* 7 (1932), 515–524; Meens, ‘Penance and Satisfaction: Conflict Settlement and Penitential Practices in the Frankish World in the Early Middle Ages’, in *Wergild, Compensation and Penance*, pp. 212–14; Meens, ‘Penitentials and the Practice of Penance in the Tenth and Eleventh Centuries’, *Early Medieval Europe*, 14 (2006), 7–21, at p. 19.

behaviours may be reconstructed’, to borrow Jurasinski’s words.³⁴ My method in approaching these sources owes much to Jurasinski’s work, and like him, I am also convinced that the study of penitential literature can bear fruit when examining legal interests of the period. They too should be considered normative in their application when thinking about every day medieval legal realities.

By analysing penitential logic, it is possible to identify ideological traits promoted through ecclesiastical social control, including the honour-based practice of compensation and the imposition of shame through the processes of confession and penance. Indeed, as with the law codes, penitential handbooks circulating in England and on the Continent from the seventh century onwards are accessible to interpret honour and shame.³⁵ As Frantzen states in his study of penitential literature, as well as displaying ‘lengthy lists of sins likely to be confessed’, the penitentials also ‘seem to be richly informative of medieval morality’.³⁶ Though lay elites had interests in encasing a working system of honour and shame, we must be aware that ecclesiastics were also influential in writing these laws and, for that matter, legal regulations of their own.³⁷ I argue that ecclesiastics did wish to use their influence to impose some of their own theological aspirations onto the laws they drafted, as well as into the overall legal system by which penitential justice would also have been applied. In seeking to answer how lawmakers could have imposed shame in legal contexts, the subsequent analysis centres on the argument

³⁴ Jurasinski, *The Old English Penitentials*, p. 6.

³⁵ The evidence for the circulation of these texts is discussed in: Gerald P. Dyson, *Priests and their Books in Late Anglo-Saxon England* (Woodbridge: Boydell and Brewer, 2019), pp. 193–226; Meens, ‘The Frequency and Nature of Early Medieval Penance’, in *Handling Sin: Confession in The Middle Ages*, (eds.) Peter Biller and A.J. Minnis (Woodbridge: York Medieval Press, 1998), pp. 35–55; Meens, ‘Penitentials and the Practice of Penance’, pp. 7–21; Meens, *Penance in Medieval Europe*, pp. 1–11; Frantzen, *The Literature of Penance*, pp. 151–74; Sarah Hamilton, *Church and People in the Medieval West, 900–1200* (London: Routledge, 2013), p. 167; Helen Foxhall-Forbes, *Heaven and Earth in Anglo-Saxon England* (Farnham: Ashgate, 2013), p. 137; Jurasinski, *The Old English Penitentials*, pp. 26–7.

³⁶ Frantzen, ‘The Penitentials Attributed to Bede’, p. 573.

³⁷ On the matter of ecclesiastics and the production and influence of laws see Ivarsen, ‘Innovation and Experimentation in Late Seventh-Century Law: the Case of Theodore Hlothhere, Wihtræd and Ine’, *Anglo-Saxon England*, (2023), 1–39; Jurasinski and Oliver, *The Laws of Alfred*, pp. 16–40; Oliver, ‘Royal and Ecclesiastical Law in Seventh-Century Kent’, in *Early Medieval Studies in Memory of Patrick Wormald*, (eds.) Stephen Baxter et al. (London: Routledge, 2009), pp. 97–112; Oliver, ‘Who Wrote Alfred’s Laws’, in *Textus Roffensis*, pp. 231–54; Wormald, ‘Æthelred the Lawmaker’, in *Ethelred the Unready: Papers from the Millenary Conference* (British Archaeological Reports, 1978), pp. 59–62; Wormald, ‘Inter Cetera Bona Genti Suae’, pp. 186–98; Wormald, ‘Giving God and King their Due: Conflict and its Regulation in the Early English State’, in *Legal Culture*, pp. 333–57; Wormald, *The Making of English Law*, pp. 418–27; Lawson, ‘Archbishop Wulfstan’, pp. 565–86.

that ecclesiastics worked in tandem with kings to develop notions of punishment which could generate shame, just as they were, at times, both able to promote lay standards of honour.

Although the law codes reflect the desired rules and regulations of kings and elite mentalities, they often fail to offer a sense of how legal customs were realised in practice. The penitentials, on the other hand, ‘tend to clarify much that royal legislation leaves obscure’, as Jurasinski puts it, focusing more on solving conflicts in practice rather than through the application of compensation fines alone.³⁸ Hence, if we limit ourselves to royal law codes, as scholars often have, this analysis would leave us with an insubstantial impression of how honour and shame functioned. Broadening the scope of analysis beyond royal law through an investigation of penitential attitudes and the articulation of religious principles enables a more fruitful depiction of honour and shame in the wider legal system. I do this by demonstrating where attitudes towards honour in ecclesiastical law converge with royal laws, but I also examine where they diverge and what this can tell us about the imposition of shame as a parallel system of justice to honour. The evidence shows that there was often frequent coupling and discord between both written social modes of control. Law codes and penitentials, at times, reflected different kinds of medieval morality. They present related, yet distinct ideas about honour and shame. The differences between these textual traditions result in legal ideas that are occasionally similar, but often noticeably distinct.

The clearest indication of this is how the penitentials present the imposition of shame within a Christian moral framework. Confession and acts of penance emphasised the relationship between feeling ashamed and public displays of contrition, which were crucial steps in the process of reintegrating the individual into the community after sin or wrongdoing, encouraging individuals to reflect on their shame. Religious authorities, known as confessors, were tasked with receiving the confession from the penitent. The role of the confessor in guiding the penitent is especially evident in the Old English penitentials, which emphasises shame as a consequence of sin. According to the introduction of the *Scriftboc*, it was the confessor’s duty to confront the sinner with the weight of their wrongdoing, urging them to fully acknowledge their shame and express genuine remorse:

³⁸ Jurasinski, *The Old English Penitentials*, p. 7.

forðon betere þe is þæt ðe **sceamige** nu her beforan me anum yrmincge þonne eft on domes dæge beforan Gode, þær hefenwaru and eorðwaru and helwaru beoð ealle ætsomne.³⁹

... for it is better that you now feel **shame** here, before me alone, a miserable man, than hereafter before God at the great judgment, there where all the hosts of heaven, earth, and hell will all be gathered together.

The confessor's job was to ensure that the penitent acknowledged their sin in the present, rather than risk facing a far harsher reckoning in the afterlife, where their shame would be exposed before God – a far more dire and irreversible fate.⁴⁰ Frantzen argues that confession and penance in this light a form of social control that forced sinners to make a choice between two forms of humiliation or punishment: short-term shame in this life through confession and penance, or eternal damnation and exposure at the Last Judgment.⁴¹ We should not portray confession and penance solely as positive, healing experiences. Instead, they are presented as the lesser of two evils – unpleasant but preferable to eternal suffering in hell. The emphasis is on fear, particularly fear of divine wrath, rather than on love of God or genuine inner contrition. Frantzen links this fear of God's judgment with another powerful social fear common in early medieval English culture: the fear of shame itself. In Old English poetry and in law, shame is portrayed as the public disgrace that comes from failing to fulfil one's expected social role or obligations. Public confession was not something uncommon during this period. It was only after several centuries later that confession became solely a private and confidential act.⁴² As Frantzen understands it, this was a 'shame-dominated' culture – a society where maintaining one's honour in the eyes of others was absolutely crucial, and fear of public scorn was a powerful motivator for behaviour, just as fear of God's wrath was in religious contexts.⁴³

This imposition of shame was an important part of the confessor's pastoral duty, as laid out in Gregory's *Regula Pastoralis* (c. 509), a treatise on pastoral care, widely circulated throughout Britain,

³⁹ *Das Altenglische Bussbuch*, p. 171.

⁴⁰ Malcolm Godden points to this idea in his article, 'An Old English Penitential Motif', *Anglo-Saxon England*, 2 (1973), 221–239, at p. 222. See also Frantzen, *The Literature of Penance*, pp. 176–7; and Cubitt, 'Individual and Collective Sinning', pp. 60–1. Building on Godden's work, Cubitt argues that 'Such admonitions were clearly intended to touch the sinner deeply, pinpointing a public sense of guilt and shame'.

⁴¹ Frantzen, *The Literature of Penance*, pp. 176–7.

⁴² Meens, *Penance in Medieval Europe*, pp. 3–4.

⁴³ *Ibid.*

Ireland and the Continent.⁴⁴ Gregory's treatise on sin addresses how confessors were to instruct confession and how they might help penitents recognise their sin as shame. The *Regula Pastoralis* advises that sinners who do not confess should 'at least be ashamed of being seen for what they are', while those who were willing to confess should in penitence 'drink the tears of compunction'.⁴⁵ Gregory's advice is clear: he guides spiritual authorities to enforce penance in a way that helps the sinner recognise their shame, and that this shame must be acknowledged to be fully alleviated. Only by admitting their shame and accepting penance could the penitent be forgiven and cleansed of their sins.

Reinforcing the sincerity of the penitent's shame was the notion that, during the confessional process, they had to display tears and emotion as an important symbolic gesture that signified the beginning of the journey towards spiritual healing. In the *OE Handbook*, it is stated that when one went to prostrate themselves before a confessor, they had to do so 'with tears flowing' (teara agotennys), begging for the them to intercede with God on their behalf.⁴⁶ These symbolic acts are also echoed in cultural and poetic literature, such as in the poem *Judgement*, where confession is described as releasing 'the well-springs hot from the cheeks, quickly in tears' (wylspringas wel ontynan, hate of hleorum, recene to tearum).⁴⁷ Here the shedding of tears becomes a literary representation of inner repentance. Tears also have Biblical significance, where weeping is a frequent motif in moments of mourning, sorrow, and particularly repentance. Biblical figures are often depicted shedding tears in times of trial, remorse, or even joy.⁴⁸ This Biblical tradition inspired many of the stories and tropes seen in hagiography, where saints and sinners alike are portrayed as weeping to express their heartfelt repentance. In Felix's *Life of Saint Guthlac*, a man called Beccel is said to have tearfully confessed his crime to Saint Guthlac.⁴⁹ For hagiographers, tears were a visible and potent sign of a repentant heart. With a hagiographical tradition

⁴⁴ On Gregory's influence in penitential literature, see Meens, 'Ritual Purity and the Influence of Gregory the Great in the Early Middle Ages', in *Unity and Diversity in the Church*, ed. Robert. N. Swanson (Cambridge, MA: Blackwell, 1996), pp. 31–43; Meens, *Penance in Medieval Europe*, pp. 7–8; Jurasinski, *The Old English Penitentials*, pp. 179–200.

⁴⁵ St Gregory The Great, *Regula Pastoralis*, ed. and trans. S.J Henry Davis (Maryland: The Newman Press, 1950), pp. 208–9.

⁴⁶ *Die Altenglische Version des Halitgar'schen Bussbuches*, p. xlvi.

⁴⁷ Judgment Day II, Lines 25–30.

⁴⁸ Psalm 126:5 John 11:35; Revelation 21:4.

⁴⁹ 'Turn ille, cum se a maligno spiritu seductum intellexisset, prosternens se ad pedes tanti viri Guthlaci, delictum suum lacrimabili voce confessus, supplex veniam orabat. Itaque vir beatae memoriae Guthlac non solum illius culpae veniam indulsit, sed et in futuris tribulationibus adiutorem illius se venturum fore promisit'. *Felix's Life of Saint Guthlac*, ed. and trans. Bertram Colgrave (Cambridge: Cambridge University Press, 1956), p. 113.

steeped in biblical *topoi*, it is no surprise that confessors expected reconciliation to also have a performative function in religious regulations as well.

The power of a confessor as a mediator set between the earthly and the divine was rooted in this idea that, as a representative of the Church, they held the authority to grant absolution and facilitate reconciliation with God. When confession took place, the role of confessor was to assign penance in accordance with the penitential manual for sins ranging from adultery, homicide, theft, and drunkenness to blasphemy. Once assigned by a confessor, penance often included acts of prayer and genuflection, as well as forms of self-debasement such as fasting, which appears to have been the most common form of penance.⁵⁰ The disciplinary nature of fasting signalled to the wider community that the individual was forbidden from eating specific foods, which also served to isolate them from participating in regular community customs.⁵¹ As will be made evident in the case study below, penance functioned as a form of punishment made to intensify feelings of shame and remorse and compelling the individual to take responsibility for their actions. It also encouraged the offender to seek forgiveness from God, the community, and the individual they had wronged through their act of violence. In this way, penance instilled shame, and while it served as a form of punishment, its primary purpose was to evoke shame and genuine remorse in the sinner, ultimately guiding them towards salvation. As Meens puts it, ‘Some form of publicity must be involved in order for the two parties to acknowledge guilt, agree on financial compensation and to reach reconciliation’.⁵²

Penance aimed at the healing of the soul and the granting of absolution from sin. It was regarded as an important mechanism for moral correction and spiritual healing, akin to a kind of medicine meant

⁵⁰ Meens, ‘Penance, Shame and Honour in the Early Middle Ages’, *Shame Between Punishment and Penance: The Social Usages of Shame in the Middle Ages and Early Modern Times*, (eds.) Bénédicte Sère and Jörg Wettlaufer (Firenze: SISMEL edizioni del Galluzzo, 2013), pp. 89–102; Meens, ‘Penance and Satisfaction: Conflict Settlement and Penitential Practices in the Frankish World in the Early Middle Ages’, in *Wergild, Compensation and Penance*, p. 214; Cubitt, ‘The politics of remorse: penance and royal piety in the reign of Æthelred the Unready’, *Historical Research*, 85 (2012), 179–92; Cubitt, ‘Individual and Collective Sinning’, 60–1; Jurasinski, ‘Violence, Penance, and Secular Law in Alfred’s Mosaic Prologue’, *The Haskins Society Journal*, 22 (2012), 25–42, at. 34–41; Godden, ‘An Old English Penitential Motif’, pp. 221–239.

⁵¹ The literature on Christian ritual and fasting is increasingly vast. Some contemporary examples include: Richard Finn, ‘Fasting as an Ascetic Ritual’, in *The Oxford Handbook of Early Christian Ritual*, ed. by Risto Uro, et. al. (Oxford: Oxford University Press, 2019), p. 661; Bernard Cooke and Gary Macy, *Christian Symbol and Ritual* (Oxford: Oxford University Press, 2005), pp. 31–33; Andrew McGowan, *Ascetic Eucharists: Food and Drink in Early Christian Ritual Meals* (Oxford: Clarendon Press, 1999), pp. 186–88.

⁵² Meens, ‘Penance and Satisfaction’, p. 214.

to remedy vice for human salvation.⁵³ The idea of penance as a tool for healing is captured in the eighth-century *Poenitential Bedae*, which describes it as a remedy designed to counter a ‘diversity of sicknesses’.⁵⁴ The use of medical language here is far from incidental. It is a blatant metaphorical understanding of sin as a form of spiritual illness. Sin was an affliction that corrupted the soul. Just as physical diseases required careful diagnosis and an appropriate medicinal response, so too did sins require tailored penitential remedies prescribed by confessors. In this sense, penance offered offenders a second chance. It gave them a way to confront their actions, reflect on what they did, and begin the difficult process of making things right, both with God and within themselves.

While narrative examples of confession and penance in early medieval England are scarce, with only the penitential texts themselves to rely on, there are good examples of repentance that can be found elsewhere in contemporary narrative accounts from neighbouring Ireland, which exhibits much of what we would expect from an ecclesiastical approach to punishment. In *Vita Columbae* (The Life of Saint Columba), written by Adomnán (c. 624–704), there is a striking depiction of a penitent guilty of murder and perjury seeking absolution.⁵⁵ The man, who is later given the name, Librán seeks penance for his past sins by pleading to St Columba: ‘I am prepared to do whatever you order me to do, no matter how harsh or humiliating’ (*Paratus sum ad omnia quaecumque mihi iubere uolueris, quamlibet durissima quamlibet indigna*).⁵⁶ Librán confesses that he broke an oath of servitude made to a wealthy nobleman, who granted him freedom for his crime. Meens speculates that this deal likely involved the payment of compensation for the man he had killed.⁵⁷ However, Librán flees from servitude to seek out a life of servitude to God instead. For committing both murder and perjury, Columba assigned him a seven-year penitential period at a monastery in Tiree, and banned him from receiving the Eucharist. Librán obediently fulfilled the prescribed acts of penance and once he completed his penance, he received permission to take the Eucharist again. Upon completing his term, he returned to Columba and sought

⁵³ Patristic writers provide the earliest extant discussions of ritual as a remedy. See McNeill and Gamer *Medieval Handbooks of Penance*, pp. 44–46. McNeill and Gamer provide a good short history of the early Church fathers on the topic of ‘medicine for sin’.

⁵⁴ *Poenitential Bedae* 2: ‘Institutio illa sancta que in diebus patrum nostrorum rectas vias nunquam deseruit, que instituerit penitentibus atque lugentibus passioncs suas ac vitia, medicamenta ceterne salutis, quia diuersitas culparum diuersum facit penitentibus medicamentum’.

⁵⁵ Adomnán's *Life of Columba*, (eds.) and trans. Alan O. Anderson and Marjorie O. Anderson (Oxford: Oxford University Press, 1991), pp. 154–63.

⁵⁶ *Ibid*, p. 154.

⁵⁷ Meens, ‘Penance, Shame and Honour’, p. 92.

guidance on resolving his broken oath and reconcile with the offended parties. Upon his return home, St Columba gives him the name 'Librán'.

Meens contends that the story of Librán serves as a powerful example of the ambivalent nature of confession and penance in early medieval Europe. For him, it was a process that was both punitive and redemptive. Indeed it was humiliating, yet also spiritually elevating. He argues that while the act of penance imposed significant shame on Librán, marking him as a transgressor in the eyes of both God and his community, it also paradoxically elevated his spiritual status.⁵⁸ Through sincere humility and repentance, Librán regained his moral standing that transcended his earlier wrongdoing. In submitting himself to the rigours of penitential discipline, Librán acknowledged the gravity of his sin, and for Adomnán, he became a model of contrition and exemplary behaviour. His penance was accepted as a necessary path to spiritual healing, and as a way to right past wrongs and re-establish his moral standing in the eyes of God. His willingness to engage in self-abasement, to fast for seven years, and to exclude himself from sacred rites such as the Eucharist speaks to the emotional and spiritual weight of the penitential process. There was more to this than just ticking off a list of Church-imposed duties, this was ultimately about the weight of one's wrongdoing, carrying that burden inwardly, and being moved to genuine remorse.

As I see it, the logic that underpins Columba's sentencing of Librán for his violent offence finds a clear parallel in the principles articulated in the early English penitentials. Both frameworks reflect an integrated understanding of penance as a process that both seeks to restore divine order by reconciling the sinner with God, as well as mend the social bonds fractured by violence. Adomnán's account of Librán encapsulates many of the key characteristics we expect to see in the penitential tradition. The assignment of a prolonged fast functioned as visible sign of his repentance that the community would be aware of. The exclusion from key communal practices further emphasises his temporary moral exile and then later reintegration. Most significantly, however, is the way shame is carefully constructed within the narrative, not simply as a means of punishing the offender, but as a transformative force. Because Librán recognises his shame and actively seeks to repair the harm he caused, he embodies the penitential ideal: the sinner who is ashamed, humbled through confessing this shame, and ultimately redeemed.

⁵⁸ Ibid, p. 94.

The story of Librán reveals that the point of confession and penance is not just to shame the perpetrator. Meens makes the cases that confession fulfilled two purposes: while it could impose shame on sinners, it also had the ability to restore honour to the sinner.⁵⁹ He further argues that within Christian teaching, humility – an idea central to penance – was itself an ambivalent virtue. Humility could be perceived as degrading, yet it was also considered honourable because a true Christian was expected to embody humility, which would render their humbling actions praiseworthy. As Trisha Olson adds, there was a ‘crucial and paramount place of humility in penitential renewal’.⁶⁰ The sinner, by undergoing penance, faced humiliation yet could also become an example to others, thereby gaining honour.⁶¹ Though humiliation in penance could be shameful, should the sinner give himself up the act imbued within confession could contain a kind of honour in Christian thought. The interpretation of whether penance was truly voluntary was crucial, as it had to be genuinely voluntary for it to be acceptable to God. This ambivalence, the tension between shame and honour in penance, made it a valuable social tool because it allowed for different interpretations. This had the potential to connect personal humiliation with social redemption, offering a pathway for reintegration into the community. Penance thus redirected the moral status of punishment towards something that was therefore both restorative and punitive in practice.

The purpose of the discussion thus far has been to highlight a gap in the existing scholarship on the ideological purpose of justice in early medieval English legal systems, demonstrating that a more comprehensive understanding of emerges when we integrate both honour and the redemptive qualities of shame into our analyses. Before proceeding taking this approach into practice in the subsequent chapters, however, it is also necessary to consider supplementary sources beyond law codes and penitentials. By incorporating additional sources, such as lawsuits, poetry and other literary texts, we can further refine our understanding of how individuals and communities experienced and responded to these mechanisms of justice. The next section will explore these supporting materials. It will demonstrate their relevance in constructing a more holistic view of early medieval punishment and its reliance on both honour and shame.

⁵⁹ Meens, ‘Penance, Shame and Honour’, p. 89.

⁶⁰ Trisha Olson, ‘Of the Worshipful Warrior: Sanctuary and Punishment in the Middle Ages’, *St. Thomas L. Rev.* 16(3), 473–550, at p. 518.

⁶¹ Meens, ‘Penance, Shame and Honour’, p. 89.

3. Lawsuits

There are approximately 200 surviving lawsuits that can be categorised as either contemporary or date shortly after the pre-Conquest period.⁶² Lawsuits can provide a wealth of insight into ideas about legal and societal norms in early medieval England. These extant lawsuits, unfortunately, provide no direct references to the established royal law codes. This absence of direct connection with the law codes can be partially explained by the primary function of many lawsuits: to serve as a formal record of land transactions rather than to provide a detailed account of legal principles or judicial decisions. Since many of these transactions were conducted by churches, which held significant legal and property rights, the concept of restitution was often tied to property rather than to the formal application of royal law codes.⁶³ As such, the primary concern of these lawsuits was to document the transfer and ownership of land, which needed to be preserved in case of future disputes over land titles. In contrast, matters like compensation for wrongs or personal injury, which were often settled without the need for legal documentation beyond immediate restitution, did not require the same level of official record-keeping. This has led some scholars, such as Oliver, to conclude that there would have been no need to preserve records of litigation involving compensation, because once restitution was made, the issue was resolved. The matter was settled, with no further incentive to record it.⁶⁴ Land transactions, on the other hand, needed to be preserved to address any potential disputes over land ownership that might arise in the future. These charters ensured that the legal basis for land ownership could be verified and defended.

That there was a lack of direct references to the law codes in the judicial decisions outlined in the extant lawsuits was deeply troubling for Wormald. He found it rather disconcerting that these documents did not explicitly cite specific clauses from the law codes, which would have provided a clearer connection between written laws and their actual practical application in every day legal disputes. Nevertheless, Wormald did not argue that the absence of explicit references to the law codes meant that the lawsuits were of little value in understanding early medieval legal practices. Instead, he argued that these lawsuits could still reveal important insights about the mentalities and perspectives of the record-

⁶² Wormald, 'Charters, Law and the Settlement of Disputes', in *Legal Culture*, p. 291.

⁶³ On the overwhelming evidence in favour of church-land see Wormald, 'Charters, Law and the Settlement of Disputes', pp. 289–311; Wormald, 'Lex Scripta and Verbum Regis', p. 1–43; Wormald, *The Making of English Law*, pp. 14–61; Hough, 'Legal and Documentary Writings', pp. 13–21.

⁶⁴ Oliver, *The Body Legal*, pp. 27–28.

keepers themselves.⁶⁵ While specific law codes are never cited in lawsuits, many of the procedures described in these accounts do coincide with regulations found in royal legislation. Thus, by examining these lawsuits, one can also gain insight into the attitudes and perspectives of the litigants. After all, the lawsuits reflect how legal principles could be interpreted and applied in reality along with the social and political ideas they represent.

Building on Wormald's observations, Rabin argues that lawsuits, even in the absence of explicit legal references, at the very least, can offer insight into the dynamics of 'personality and power', and in doing so, they reveal how kinship groups perceived and navigated issues related to 'honour and shame'.⁶⁶ Even without direct references to formal law codes, lawsuits still offer a window into the cultural and social mechanisms by which individuals and families asserted their status, managed reputations, and sought redress for perceived wrongs. Rabin's perspective aligns with Wormald's identification of key themes in the lawsuits, particularly in cases involving homicide. In his 'Handlist of Lawsuits', Wormald highlights nine cases of homicide that provide a rich source of understanding about how legal disputes functioned in a society where honour and revenge played central roles.⁶⁷ Homicide cases are especially revealing because they often involve intense emotional and culturally significant issues such as vengeance, honour, and the cycles of feuding. These types of disputes were not merely about the facts of the crime but about the perceived affronts to personal and familial honour. Such cases were rooted in a culture where personal retribution and the maintenance of one's reputation were of paramount importance. These legal codes, Wormald contends, serve as an 'antithesis to feud', providing a means for resolving conflicts while allowing each party to maintain its sense of 'honour'.⁶⁸

In addition to these homicide cases, Wormald's handlist also identifies twenty-one cases of theft.⁶⁹ These also tell us about the nature of what were considered 'dishonourable' crimes.⁷⁰ The events

⁶⁵ Wormald, *The Making of English Law*, p. 143; Wormald, 'Lex Scripta and Verbum Regis', p. 21. Also, on the lack of explicit reference to the law codes see Roach, 'Law Codes and Legal Norms in Later Anglo-Saxon England', *Historical Research*, 86:233 (2013), 465–86, at pp. 465–8.

⁶⁶ Rabin, 'Anglo-Saxon Women before the Law: A Student Edition of Five Old English Lawsuits', *Old English Newsletter*, 41:3 (2008), 33–56, at p. 35.

⁶⁷ See Wormald's compilation of these in 'A Handlist of Anglo-Saxon Lawsuits', in *Legal Culture*, pp. 253–87. For homicides see nos: 50, 54, 58, 60, 61, 71, 145, 148, 161, 173.

⁶⁸ Wormald, 'Giving God and King their Due', p. 342.

⁶⁹ See nos: 23, 25, 31, 37, 41, 45, 54, 56, 100, 102, 124, 127, 129, 132, 155, 156, 157, 158, 169, 173, 178. For Lambert's discussion on the lawsuits 'Theft, Homicide, and Crime', pp. 32–33.

⁷⁰ See *Ibid*, pp. 16–20.

in these cases of theft help illustrate the types of behaviour that were scorned and the social consequences for those who violated the social norm. Building on these insights, the approach taken in this thesis is to identify patterns that emerge from the cases available and to link them to broader social contexts indicative of honour and shame. Through an examination of the commonalities in the types of disputes, their resolutions, and the values that informed legal decisions, one can gain a clearer picture of the cultural and legal systems in early medieval England. Lawsuits, as records of conflict resolution, serve as invaluable resources for understanding the underlying cultural principles that shaped the lives of individuals and communities during this period.

4. Literary Sources

Ideas about honour and shame are certainly not limited to interpretations of legal texts only. Both phenomena permeate much of the literature which in turn culturally informs us about early medieval England, their values, their social norms, and their ideal moral frameworks. If applied cautiously, they can help to fill gaps where explicit references might be lacking. Extracting conceptual ideas about honour and shame from the rich early medieval English literature, and other cultural and religious sources, can better inform our interpretation of the legal texts and reach more nuanced conclusions concerning how the balance of justice skewed in emphasis from honour to shame. Beginning with honour, a considerable body of scholarly work has explored literary narratives, particularly by interpreting ideas relating to it.⁷¹ For example, honour is important in works like *Beowulf*. Here, honour is tied to cycles of violence which serve as ways of restoring the balance of honour and social reputation. Baker's analysis reveals that the text is not simply an imagined tale of monster-slaying, but it is also an indication of the cultural values of the period, where honour and cycles of violence play important roles in shaping social relationships.⁷² Similarly, Scott Gwara has commented that 'no modern English term

⁷¹ On scholarly perspectives concerning honour and violence see, for example, Baker, *Honour, Exchange and Violence*; Miller, *Bloodtaking and Peacemaking*; also Miller, 'Choosing the Avenger', pp. 159–204; Nira Gradowicz-Pancer, 'De-Gendering Female Violence: Merovingian Female Honour as an 'Exchange of Violence'', *Early Medieval Europe* 11 (2002), pp. 1–18; Fletcher, *Bloodfeud*; Richard W. Kaeuper, *Chivalry and Violence in Medieval Europe* (Oxford: Oxford University Press, 1999); Richard North, 'Tribal Loyalties in the Finnsburh Fragment and Episode', *Leeds Studies in English*, 21 (1990), 13–43; Cowell, *The Medieval Warrior Aristocracy*, pp. 24–27.

⁷² Baker, *Honour, Exchange and Violence* throughout, though, regarding honour in particular, see pp. 12–18. On honour, also see Gwara, *Heroic Identity*. Honour is mentioned throughout his analysis.

quite captures Beowulf's motivation, which in Greek epic might be expressed as *thymos*, a quality associated with one's personal ambition for honor and a touchy regard for its public acknowledgment'.⁷³

The protagonist Beowulf himself is driven by the weight of his obligations tied to his honour-bound interpersonal relationships. After he slays Grendel, his responsibility does not end, rather it deepens when Grendel's mother seeks revenge by killing Hrothgar's thegns. Beowulf, through oath and desire for prestige and glory, is compelled to avenge these deaths as part of that strive to affirm his own honour and status. The cyclical nature of violence in Beowulf mirrors the ideal consequences of feud, where honour is restored through retributive violence, and the failure to act could be seen as dishonourable, leading to shame and loss of reputation. From the beginning of the poem, Beowulf's actions are framed within the context of honouring a social obligation. He arrives at the court of the Danish King, Hrothgar, as someone who recognises the need to pay back a previous exchange with Beowulf's father, Ecgtheow, who had previously been aided by Hrothgar, and now Beowulf is expected to fulfil the reciprocal obligations that bind their dynasties:

Hroðgar maþelode, helm Scyldinga:

‘For gewyrhtum þu, wine min Beowulf,

ond for ar-stafum usic sohtest.

Gesloh þin fæder fæhðe mæste,

wearþ he Heaðolafe to hand-bonan

mid Wilfingum...’⁷⁴

(Hrothgar replied, helmet [protector] of the Scyldings: ‘For our deeds, my friend, and out of kindness, you have now sought us. Your father struck up the greatest of feuds, becoming the hand-slayer [by his own hand] of Heatholaf among the Wylfings)

That Beowulf reciprocates this action out of obligation shows the weighted value the protagonist places on his own honour. Throughout the poem, Beowulf's honour is continually under threat, and the poem often suggests that through acts of violence, especially retributive violence, he is able to maintain his

⁷³ Gwara, *Heroic Identity*, p. 23.

⁷⁴ *Beowulf*, Lines: 455-475. For the Old English text, see Howell D. Chickering, *Beowulf: A Dual-Language Edition* (New York: Random House, 2006), revised edition, pp. 74–5.

honour.⁷⁵ Baker points to a key moment in the text where Unferth publicly challenges Beowulf, questioning his supposed prowess, and by extension, he deems a ‘threat’ to Beowulf’s honour.⁷⁶ Beowulf’s response to Unferth is to boast about his upcoming confrontation with the monster, Grendel, thus aiming to prove his resilience to this affront. Beowulf aims to restore the damage to his honour caused by Unferth’s words. The act of defeating Grendel becomes a public vindication of Beowulf’s honour.

Although the portrayal of these events is undoubtably heightened and dramatic in an imaginative styles of its author, it nonetheless reflects certain ideas and values steeped in reality regarding obligations and ties of honour. Of course, Beowulf should not be regarded as straightforward depictions of societal norms, especially as it contains poetry often draws from biblical narratives, saint’s lives, and Germanic mythology. The poetic treatment of concepts like feud and honour, therefore, may not directly reflect contemporary legal systems, but rather idealised or symbolic representations of these concepts and their relationship to other social dynamics. As Erin Sebo put it ‘while literature is not necessarily an indicator of reality, it is often an indicator of cultural assumptions’.⁷⁷ That said, contemporary audiences of these texts were expected to recognise the themes and concepts presented within them. Much like modern audiences today, they would have been able to make sense of these ideas and assert the practical and idealistic dimensions of them in their own social realities. In this way, while *Beowulf*, and many other similar texts, may not provide a literal account of feuding or retributive violence, they offer a valuable window into how these ideas were understood, imagined, and communicated. To borrow Jorgensen’s words concerning her analysis of *The Dream of the Rood*:

The emotion is simultaneously part of the meaning-making of the poem, conveying the mystery and the overwhelming personal importance of the crucifixion in a way that sheer statement

⁷⁵ Gwara, *Heroic Identity*, p. 32.

⁷⁶ Baker, *Honour, Exchange and Violence*, p. 17. Unferth says to Beowulf: ‘Donne wene ic to þe wyrsan gēpingea, ðeah þu heaðoræsa gehwær dohte grimre guðe, gif þu Grendles dearest nihtlongne fyrst nean bidan.’ (Then I expect from you a worse result, although you have prevailed in the rush of battle, grim warfare, if you dare to await Grendel nearby all night). See *Beowulf*, Lines: 525–8.

⁷⁷ Erin Sebo, ‘Ne Sorga: Grief and Revenge in Beowulf’, in *Anglo-Saxon Emotions: Reading the Heart in Old English Language, Literature and Culture*, (eds.), Alice Jorgensen, Frances McCormack, and Jonathan Wilcox (London: Routledge, 2015), p. 178.

could not, and part of the persuasive armoury of a text that models the devotion it exhorts its audience to practice.⁷⁸

Although Beowulf's contemporary popularity can only be speculated, the nature of reciprocal violence does pervade much of the heroic style genre, and feud appears to have been an important aspect in the imagination of poets.⁷⁹ These glimpses of imaginary feud demonstrate the repercussions faced when kinship groups were expected to support each other. The ramifications of restoring honour are not always explicitly mentioned in the law codes, yet they were vividly evident in the imaginary stories depicted in poetry. With such few rare examples, it is important to also address the perception of honour outside of law which often shows fascinating insight into cultural assumptions about conflict that are often lacking in the law codes.

This brings us to ideas about shame in the literary evidence. While Beowulf can offer many examples of shame as well as honour, hagiographical and other religious texts, in particular, provide valuable perspectives about the concept of shame that move beyond the elite warrior ethos.⁸⁰ The primary challenge, however, in interpreting contemporary mentalities and the motives of lawmakers in early medieval English hagiography is that the surviving literary sources, while they do reference some of these judicial punishments, are often clouded in religious symbolism and moral allegory. Although early medieval literary sources can still bear fruit in terms of practices that could generate shame, their religious symbolism can often make it difficult to accurately gauge the contemporary legal ideologies at play.⁸¹ This blending of religious and legal thought means that punishment in narratives often obscure

⁷⁸ Jorgensen, 'Introduction', in *Anglo-Saxon Emotions*, p. 1.

⁷⁹ The secondary literature on poetic feud particularly relating to Beowulf is vast. Some examples include: Chickering, *Beowulf*, pp. 329-33; Leslie Lockett, 'The Role of Grendel's Arm in Feud, Law, and the Narrative Strategy of Beowulf', in *Latin Learning and English Lore: Studies in Anglo-Saxon Literature for Michael Lapidge*, (eds.) Katherine O'Brien O'Keefe and Andy Orchard (Toronto: University of Toronto Press, 2005), pp. 368-88; Baker, *Honour, Exchange and Violence*, pp. 12-18; Sebo, 'Ne Sorgia', pp. 177-90; Fletcher, *Bloodfeud*; Hyams, *Rancor and Reconciliation*, pp. 73-78; Rosemary Woolf, 'The Ideal of Men Dying with Their Lord in The Germania and in The Battle of Maldon', *Anglo-Saxon England*, 5 (1976), 63-81; David Day, 'Hwanaan sio fæhð aras: Defining the Feud in Beowulf', *Philological Quarterly*, 78 (1999), pp. 77-96.

⁸⁰ For scholarship regarding shame in Beowulf, see Carol J. Clover, 'The Germanic Context of the Unferþ Episode', in *The Beowulf Reader*, ed. Peter S. Baker (London: Routledge, 2000), pp. 145-47; Jane Chance, 'Grendel's Mother as Epic Anti-Type of the Virgin and Queen (1986)', in *Interpretations of Beowulf*, ed. Robert D. Fulk (Indiana University Press, 1991), p. 260; Gwara, *Heroic Identity*, pp. 273-74.

⁸¹ Concerning the historical evaluation of hagiography, see Susan J. Ridyard, *The Royal Saints of Anglo-Saxon England: A Study of West Saxon and East Anglian Cults* (Cambridge: Cambridge University Press, 1988), pp. 8-16.

lawmaker's primary motivations. In the poem *Juliana*, based on the biblical story of the protagonist's martyrdom, there is a reference to Juliana being stretched out naked on a rack and then beaten with scourges while imprisoned.⁸² Similarly, the poem *Andreas* also depicts suffering and destitution while subjected to imprisonment.⁸³ These accounts, though fictional and imbued with religious themes of suffering, can still be cautiously used to infer the physical and emotional aspects of shame. Many of the techniques and machinery of punishment remain ambiguous in some law codes, yet they were evidently vivid in the imagination of ecclesiastics.

Churchmen were aware and had some working knowledge of lethal judicial sentences and that shame and humiliation were very much a part and parcel of such punishments. Wulfstan of Winchester's *The Life of St. Æthelwold* references the punishment of a bound thief who was whipped and sent to the stocks for more sterner tortures, only later to be freed by the word of bishop Æthelwold in a miraculous dream:

Nor must I pass over in silence how Bishop Ælfheah, who was, as I have said Æthelwold's successor, had a thief, who was guilty on many counts, whipped and sent to the stocks for sterner tortures. When he had long lain thus undergoing his punishment, there came to him one night in a vision Æthelwold, holy bishop of God, who said to him: 'Wretch, why do you lie so long stretched out in the stocks?' The man had often seen him in his mortal life, and he recognised him.' My lord, 'he replied, 'I am suffering as I deserve. I am being tortured like this on the just judgement of the bishop, because I was often caught stealing, and did not cease from it, but repeated my crime over and over again.' Then the saint said: 'Cease even now, wretched man, from your thefts, cease and be freed from the bonds of these shackles.' The poor man at once got up, freed.⁸⁴

⁸² Lines 185-90: 'þa fæmnan het þurh niwræce nacode þennan, ond mid sweopum swingan synna lease' (He ordered the woman to be put on a rack and then she was stretched out naked and scourged sinless). *The Exeter Book, ASPR 3*, (eds.) George Philip Krapp and Elliott Van Kirk Dobbie (New York, 1936), p. 118.

⁸³ Lines 1555-60: 'Nu ge magon sylfe soð gecnawan, þæt we mid unrihte ellþeodigne on carcerne clommum belegdon, witebendum' (Now you are aware of the truth for yourselves, that we have unrightly put them in chains inside the prison with painful bonds). *The Vercelli Book, ASPR 2*, ed. George Philip Krapp (New York, 1932), p. 46.

⁸⁴ Nec silentio praetereundum est quod praedictus sancti uiri successor, Ælfeagus antistes, quendam furem pro multiplici reatu flagellis caesum mitti iussit in cippum acrioribus suppliciis cruciandum. Cumque diu sic in poenis iacisset damnatus, quadam nocte uenit ad eum in uisione sanctus Dei pontifex Æthelwoldus et ait illi: 'Miser, cur tanto tempore sic in trunco iaces extensus?' At ille recognoscens sanctum uirum, quem saepe uiderat in uita mortali, respondit: 'Dignas, domine mi, sustineo poenas, et iusto iudicio episcopi sic torqueor, quia frequenter' in

At first glance, this account might be taken as contemporary evidence of how criminals were publicly shamed, particularly in the late tenth century during the lifetime of St. Æthelwold (d. 984). Wulfstan describes how a criminal was subjected to scourging (flagellis) and then, before he could be released, he was sent to the stocks to receive ‘sterner tortures’ (acrioribus suppliciis cruciandum). What such ‘severe’ methods of punishment may have looked like is not specified, leaving much to speculation.

Wulfstan identifies the criminal as a ‘fur’ (thief) and notes that he was a repeat offender, but he does not provide any further details about the thief’s status, such as whether he was a freeman or not. If the thief mentioned were indeed a freeman, Wulfstan’s narrative would seemingly contradict the law codes, which typically prescribed scourging for slaves and servants. There are no clauses in the law codes which refer to the scourging of freemen. Scourging throughout the early medieval English period was reserved for the unfree. The absence of scourging of freemen suggests a deliberate legal protection of their bodily honour. Alfred’s law even made provisions against the scourging of a freeman.⁸⁵ Violation of this was an affront to his status. Employing scourging as punishment cemented their subjugated status. The generation of shame through public floggings was a tool of authoritative social control for those who did not have the means to pay compensation or fines. If we consider that all clauses in the early English legal corpus suggest that only slaves could legally be scourged, then it is possible that the generation of shame through public floggings was only reserved for slaves and those bound in servitude. The omission of the thief’s status suggests that it may not have been a crucial factor for Wulfstan. This vagueness invites one to imagine that ‘sterner tortures’ could have been a common feature of punishment, even though specific details are lacking. It is possible, for instance, that criminals could have been attacked or abused before they even were administered their punishment.

Nevertheless, the primary issue here lack of concrete details and the potential contradictions established indicates that while Wulfstan’s account provides a vivid image of different types of punishment, it may not accurately reflect the judicial practices of the time. Saint’s lives tend to employ particular ‘topoi’ rooted in a tradition of hagiographical miracle stories which often depict the torment

furtis deprehensus sum et ab eis non cessavi, sed mala quae feci iterum atque iterum repetiui’. Tum sanctus ‘Cessa’ inquit ‘uel modo, miser, a furtis, cessa, et sis solutus a nexu compedis huius’. Surrexit ilico miser ille absolutus, et exiens inde uenit et procidit ante pedes. Wulfstan of Winchester, *The Life of St Æthelwold*, (eds.) Michael Lapidge and Michael Winterbottom (Oxford: Oxford University Press, 1991), pp. 68–9.

⁸⁵ Af 35.1.

and liberation of prisoners.⁸⁶ These narratives are often exaggerated to emphasise the saint's miraculous intervention. This dramatic portrayal highlights the miraculous power attributed to the saint, rather than providing a reliable account of historical judicial procedure. In Felix's *Life of Saint Guthlac*, the author depicts scenes of physical punishment of a prisoner. In his account, the protagonist, St. Guthlac, was dragged out from his cell and flogged with 'whips like iron':

They took whips like iron and began to beat him. When after innumerable kinds of torments, after beatings with iron whips, they saw him persist unmoved and showing a robust confidence in the enterprise he had undertaken, they began to drag him through the cloudy stretches of the freezing skies to the sound of the horrid beating of their wings.⁸⁷

It is only through divine intervention from St Bartholomew who comes down from heaven causing the demons to flee.⁸⁸ Also, in his *Translatio et miracula S. Swithuni* (The Translation and Miracles St. Swithun), Lantfred of Fleury, a monk of Winchester, recounts how an accused thief was bound in shackles and nearly flogged to death.⁸⁹ Awaiting the death penalty, he miraculously escapes by using a knife to cut his bonds while invoking the aid of St. Swithun.⁹⁰ Like Wulfstan's account, Felix's and Lantfred's accounts also engage with conventional hagiographical hyperbole. These depictions also serve to emphasise the saint's endurance and divine favour. The punishment of St. Guthlac is carried out by demons, and therefore, it is a testament to spiritual suffering and earthy humiliation, rather than punishment enabled by legal authorities. We should therefore be weary when extracting historical value

⁸⁶ Daniel Thomas, 'Incarceration as Judicial Punishment', in *Capital and Corporal Punishment*, p. 94. Also, on saintly liberation see Rachel Koopmans, *Wonderful to Relate: Miracle Stories and Miracle Collecting in High Medieval England* (Philadelphia, PA, 2011), pp. 47–59. Wormald also recognised this in 'A Handlist of Anglo-Saxon Lawsuits', in *Legal Culture*, pp. 249–50. Here Wormald comments that, 'One can look neither to *gesta* nor to *miracula* for legal precision. The value of the latter, like that of the hagiographically tinted cartulary-chronicles, is compromised by the often evanescent line between natural and supernatural process. Thus, in order to do justice to the range and variety of the sources for Anglo-Saxon legal practice, one has no choice but to confront the challenge of establishing a boundary between evidence which demonstrates, and that which merely hints.'

⁸⁷ *Dein iterum adsumentes, flagellis velut ferreis eum verberare coeperunt. Cum autem, post innumerabilia tormentorum genera, post flagellorum ferreorum verbera, ilium inmota mente, robusta fide in eo quod incoeperat, perstare viderent, horridis alarum stridoribus inter nubifera gelidi aeris spatia ilium subvectare coeperunt. Felix's Life of Saint Guthlac*, pp. 104–5.

⁸⁸ *Ibid*, p. 106.

⁸⁹ *Translatio et miracula S. Swithuni*, in *The Cult of St Swithun*, ed. Michael Lapidge (Oxford: Clarendon Press, 2003), pp. 313–15.

⁹⁰ On the broader hagiographical and biblical motif of the loosing of fetters and other means of escaping destitution, see Pelteret, *Slavery in Early Mediaeval England*, pp. 57–60.

from hagiography, as drawing conclusions from such hyperbolic accounts can often be problematic. For Wulfstan, as with other hagiographers, the purpose of recounting judicial punishment serves to exemplify that God, often through the invocation of saints, can work divine miracles on earth. Consequently, the evidence regarding hagiographical accounts of scourging cannot always be corroborated by legal evidence. It is therefore essential to interpret the ideological aims of both literary genres – hagiography and legal texts – in the respective context, yet tentatively apply any possible interrelations that can be made without overreach.

Hagiographies should be understood as conveying spiritual allegories, in which scourging symbolises the person's triumph over earthly shame. Essentially, they are tales of redemption. It is worth quoting Rolf Bremmer Jr. at length here whose analysis speaks to this point:

In hagiography, saints eventually accept the shaming actions from their persecutors willingly, because in their own view suffering will add to their honour. To them, their physical destruction reflects the humiliation of Christ, the king of glory, who was born in a manger and died on a cross, but who was afterwards restored to a seat at the right hand of God, the ultimate place of honour ...

... The phase of martyrdom in the future saint's existence – usually beginning with capture and interrogation, to be followed by shameful exposure and ending in torture and execution – could be marked as one of public humiliation, a point of no return to their former state in society. All martyr-saints, whether male or female, have to step over this threshold; they must pass these moments of increased awareness of what it means to be a witness of Christ in order to enter their new state of honour and glory in the kingdom of God.⁹¹

In this sense, ecclesiastics aim to reframe the concept of shame and humiliation, which were associated with punishment, into experiences that are spiritually significant, and indeed, honourable. In doing so, they transform the perception of suffering and degradation from purely shameful into opportunities for demonstrating spiritual fortitude and divine favour for those who truly repent their sins to God.

In his *Translatio et miracula S. Swithuni*, Lantfred also recounts how a group of judges wrongly convicted a man for committing theft during the reign of King Edgar of England (r. 959–975). Despite the anonymous thief being gruesomely mutilated as punishment, the thief was said to be miraculously

⁹¹ Bremmer Jr., 'Shame and Honour' p. 118.

healed at the relics of Saint Swithun, where he recovered his sight through prayer.⁹² The central motif of the restoration of sight after severe mutilation serves as a powerful religious literary trope with deep roots in Biblical narratives, particularly in the New Testament where miraculous healings by Jesus often involve restoring sight to the blind.⁹³ The text's commentary thus serves to exemplify the saint's divine power and the redemptive potential of faith.⁹⁴ This episode can be read more than a celebration of the saint's power: it resonates with the Reformist and post-Reformist critique of royal justice that emerged in the wake of the Anti-Monastic reaction. In the early Reform period under King Edgar, royal and ecclesiastical power were closely allied, with 'holy kingship' acting as a divinely appointed protector of monasteries and their property.⁹⁵ However, after Edgar's death there was a withdrawal of royal support and challenges to monastic landholdings leading to deep suspicion about secular authority by the clergy. Rabin argues that just as Ælfric's *Eugenia* and the Old English *Ely Privilege* question the capacity of secular courts to deliver true justice, Lantfred's narrative repositions the source of justice from the king's gallows to the saint's miraculous intervention.⁹⁶ Shame is conferred onto the judges as the thief ultimately escapes the finality of their royal judgement, implying that divine justice can overturn flawed royal justice.

And yet, this does not mean we should dismiss such account entirely. Even within heavy religious imbued commentary, Lantfred's account can reveal valuable insight into views of crime, punishment, and the nature of justice. As a near-contemporary of King Edgar, Lantfred's familiarity with the legal system of the time lends some credibility to his observations.⁹⁷ His account is a valuable resource that can be mined for understanding tenth century punitive practices. His writings provide anecdotal evidence of what is referred to by scholars as Edgar's 'lost law code', especially regarding the use of mutilation as a form of punishment.⁹⁸ Lantfred's account offers one of the very few surviving glimpses

⁹² *Translatio et miracula S. Swithuni*, pp. 313–14. Ælfric recounts the same story in his life of Saint Swithun. See *Ælfric's Lives of Saints: Being a Set of Sermons on Saints' Days Formerly Observed by the English Church*, 2 Vols, ed. Walter W. Skeat, Vol. 1 (London: 1881–1900), pp. 458–59.

⁹³ For example, Jesus restores sight on many different accounts: Matthew 9:27-31; 12:22–23; 21:14; Mark 8:22–26; Luke 18:35-4; John 9:1-41.

⁹⁴ See Firth, 'Allegories of Sight', pp. 19–21.

⁹⁵ Rabin, 'Holy Bodies, Legal Matters: Reaction and Reform in Ælfric's "Eugenia" and the Ely Privilege', *Studies in Philology*, 110:2 (2013), 220–65, at p. 228.

⁹⁶ *Ibid*, p. 253.

⁹⁷ Exact years of Lantfred's death are uncertain. For a short biography, see *The Cult of St Swithun*, pp. 218–23.

⁹⁸ Wormald, *The Making of English Law*, p. 370; O'Brien O'Keeffe, 'Body and Law', pp. 225–28; Simon Keynes, 'Crime and Punishment in the Reign of King Æthelred the Unready', in *People and Places in Northern Europe*

into one of the provisions of this law code which has not survived. Though details of Edgar's code remain elusive, later law codes, such as those of Cnut, explicitly reference the use of mutilation as punishment, confirming its continued use.⁹⁹ Lantfred's awareness of Edgar's provision suggests that such measures were already being enacted by judges during Edgar's reign, and that his account, in this sense, corroborates the use of mutilation.

A similar conclusion can be drawn regarding the laws and the types of punishment documented in chronicle sources. While the chronicles often depict punishments that do not always align precisely with the stipulations outlined in extant legal codes, they still reference comparable forms of punishment. For example, it is apparent that in the tenth and eleventh centuries, the use of mutilation was used by kings as a tool to punish political dissidents. Often the mutilated body occupies an important role in narratives. There are three notable entries of mutilation, pre-Conquest, recorded in the *Chronicles*. In 993, one entry records that King Æthelred had Ælfgar, son of Ealdorman Ælfric, blinded.¹⁰⁰ Similarly, in 1006, Wulfheah and Ufegeat were also subjected to the same fate.¹⁰¹ In the year 1036, it is recorded that Earl Godwine blinded a royal rival, Alfred Ætheling, and also inflicted many other mutilations upon Alfred's men:

...sume he man wið feo sealde, sume hreowlice acwealde. Sume hi man bende 7 eac sume blende 7 heanlice hættode.¹⁰²

...some of them were sold for money, some cruelly slain. Some of them were bound, and some of them were blinded, some shamefully scalped.

After the Norman Conquest, the *Chronicles* continue to record examples of mutilation used as punishment to those expected of treason under King William I's rule (r. 1066–87). One entry in 1075 writes that treasonous men were said to have been blinded, banished, and 'getawod to scande' (put to shame).¹⁰³ Mutilation, particularly via the deprivation of sight, served as a symbolic act to disempower

500-1600: *Essays in Honour of Peter Hayes Sawyer*, (eds.) Ian Wood and Niels Lund (Woodbridge: The Boydell Press, 1991), pp. 72–3; Firth, 'Allegories of Sight', pp. 6–7.

⁹⁹ II Cn 30.4–5.

¹⁰⁰ ASC 993.

¹⁰¹ ASC 1006.

¹⁰² ASC 1036. *The Anglo-Saxon Chronicle: A Collaborative Edition MS. D*, ed. G. P. Cubbin (Cambridge: D.S. Brewer, 1996), p. 65. Only the D-text adds 'heanlice' (shamefully).

¹⁰³ ASC 1075. *MS. D*, p. 88. D adds 'put to shame' and records this event a year later in 1076.

political prisoners, rendering them incapable of ruling or posing any further threat to existing powers.¹⁰⁴ Thus, the emphasis on the mutilation of political prisoners within the *Chronicles* lies in the text's primary focus on the brutal reality of political struggle.¹⁰⁵ This is particularly the case when considering the absence of ordinary criminal trials in comparison to the detailed narratives of elites and their political dissidents. In contrast, criminal trials, involving everyday people of all ranks, were usually deemed irrelevant to the overarching narrative of dynastic struggles and divine providence.¹⁰⁶ Consequently, surviving evidence regarding the processes of judicial sentencing and punishment is often lacks specific details. While these narratives still serve as important source to understand the imposition of shame through mutilation, scholars must exercise caution when drawing parallels between the mutilation of political prisoners and punitive measures that were ideally thought of as punishments to be meted out to everyday criminals.

Hence, while historical accuracy is inherently challenging when dealing with literary sources, these texts still offer valuable insights into the mechanisms of punishment during the period under investigation. Despite these limitations, they remain rich resources for understanding how punishment was applied and justified within legal settings, and more importantly to this analysis, how measures were often intertwined with concepts of honour and shame, allowing us to interpret a fuller picture of these ideas and their shift in emphasis over time.

The goal of this chapter has been to establish a contextual framework for the analyses that follow. The process by which the jurisprudence becomes increasingly punitive over time varies depending on the specific crime in question. Each offence carries its own unique trajectory in terms of legal responses and evolving punitive measures. The following chapters will explore these distinctions in detail by examining royal and ecclesiastical responses to violence, perjury, theft, and sexual impropriety.

¹⁰⁴ Firth, 'Allegories of Sight', pp. 2–3.

¹⁰⁵ Brooks, 'Why is the Anglo-Saxon Chronicle About Kings?', *Anglo-Saxon England*, 39 (2011), 43–70; Eickels, 'Gendered Violence', pp. 588–602.

¹⁰⁶ Regarding the relationship between divine providence and royal dynasties in the *Chronicles*, see Eleanor Parker, *Conquered: The Last Children of Anglo-Saxon England* (Bloomsbury Academic, 2022), pp. 70–76. Also, Pauline Stafford, *After Alfred: Anglo-Saxon Chronicles and Chroniclers, 900–1150* (Oxford: Oxford University Press, 2020), pp. 73–74.

2.

Violence and Conflict Resolution

In the mid-tenth century, King Edmund (*r.* 939–46) gathered a large assembly of both ecclesiastical and secular estates in London during the Easter season to deliberate on matters concerning his spiritual welfare and those of the wider nation.¹ During the council, Edmund, in collaboration with prominent ecclesiastical figures, such as Oda, the Archbishop of Canterbury (d. 958) and Wulfstan I, the Archbishop of York (d. 956) issued a series of legal ordinances, with one important injunction intended to combat the spilling of Christian blood:

Gif hwa Cristenes mannes blod ageote, ne cume he na on ðæs cyninges neawiste, ær he on **dædbote** ga, swa him biscop tæce 7 his scrift him wisige.²

If anyone sheds the blood of a Christian man, he shall not come anywhere near the king unless he undertakes **penance**, as the bishop appoints for him or his confessor directs him.

Here the requirement of penance illustrates the expanding role of the clergy in shaping royal law.³ Edmund had a crucial role to play in the early stages of the English Benedictine Reform, supporting figures like Saint Dunstan (*c.* 909–88), Æthelwold, the Bishop of Winchester (d. 984), and, most notably, Oda. While his reign did not fully embrace the reform's intensity on Benedictine monasticism – a religious and intellectual movement that would later dominate under his son Edgar (*r.* 944–975) – Edmund's legislation still recognises the increasing influence of ecclesiastical attitudes in shaping

¹ I Em Prologue: 'Eadmund cyngc gesamnode micelne sinoð to Lundenbirig on ða halgan easterlican tid ægðer ge godcundra had age worldcundra; ðar wæs Oda arcebiscop 7 Wulfstan arcebiscop 7 manega oðre biscopas smeagende ymbon heora sawla ræd 7 þara þe him underþeodde wæron'.

² I Em 3.

³ On the growing influence of moral reform during Edmund's time, see John Blair, *The Church in Anglo-Saxon Society* (Oxford: Oxford University Press, 2005), pp. 349–50; Dumville, *Wessex and England from Alfred to Edgar: Six Essays on Political, Cultural, and Ecclesiastical Revival* (Woodbridge: The Boydell Press, 1992), pp. 174–6; Julia Barrow, 'The Ideology of the Tenth-Century English Benedictine Reform', in *Challenging the Boundaries of Medieval History: The Legacy of Timothy Reuter*, ed. Patricia Skinner (Turnhout: Brepols, 2009) pp. 141–54; Cubitt, 'The Tenth-Century Benedictine Reform in England', *Early Medieval Europe*, 6:1 (1997), 77–94.

responses to violence, with Oda likely having a direct role in drafting Edmund's laws.⁴ According to Wormald, 'the code's terms were in general very close to the 'constitutions of Archbishop Oda, one of the two prelates singled out as present at the council'.⁵ That Edmund's laws show overlap with Oda's rules for the clergy suggests that the Church's role must have been considerable.

Such ecclesiastical influence is lacking in Æthelberht's seventh-century code, whereby acts of violence were primarily settled through financial compensation (**bot**): 'Gif man mannan ofslachð, medume leodgeld C scillinga **gebete**' (If a person kills someone, let him pay an ordinary person-price, 100 shillings).⁶ Hyams explains that the Old English word 'bot' and its verb 'betan' refers to an amendment for a wrong, typically in the form of a payment to restore 'honour according to the worldly ranking enjoyed by all group members'.⁷ While this reasoning is expected in the earliest seventh-century Kentish law code, Edmund's provision, in contrast, is an example of how subsequent law codes drew attention to a different approach. Here violence is not just an affront to honour that requires financial compensation, but also a sin that demands a different form of redress: '**dæd-bote**' (spiritual amends). This amendment makes sense, as Wormald argues that 'in tenth-century legislation, 'bot' and its cognates were overwhelmingly owed to God, Church, king or the community at large'.⁸ What Edmund's clause therefore suggests is that the inclusion of 'spiritual amends', referring to penance, demonstrates a shift in attitudes towards punishing violence – moving beyond simply compensating for lost honour to focusing on restoring the offender's relationship with God and the community through the internalisation of shame.

While the scholarship has generally focused on violence and conflict by examining mechanisms of restorative justice within kinship groups, less attention has focused on the role of penance and how ecclesiastical authorities imposed shame to deter violence and foster peace.⁹ This approach evidently

⁴ On Oda's influence in drafting Edmund's laws see Martin J. Ryan, 'Conquest, Reform, and the Making of England', in *The Anglo-Saxon World*, (eds.) Nicholas J. Higham and Martin J. Ryan (New Haven: Yale University Press, 2013), p. 313.

⁵ Wormald, *The Making of English Law*, p. 310.

⁶ Abt 21.

⁷ Hyams, 'Feud and the State', pp. 10–11.

⁸ Wormald, 'Giving God and King their Due', p. 341.

⁹ For a conceptual overview of honour and feud paradigms, see: Hyams, 'Feud in Medieval England', pp. 1-21; Hyams, 'Feud and the State', pp. 1-43; Hyams, 'Afterword', pp. 203–220; Hyams, *Rancor and Reconciliation*; Hyams, 'Concluding Thoughts from England and the 'Western Legal Tradition'', in *Wergild, Compensation and Penance*, pp. 293-322; John Hudson, 'Feud, Vengeance and Violence in England from the tenth to the twelfth

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influenced later royal law codes, which began to adopt similar strategies of internalising shame to discourage violence. This chapter therefore contends that the Church actively influenced modes of conflict resolution by reinforcing compensation over vengeance. Through calling violent offenders to feel remorse and seek spiritual redemption, ecclesiastics aimed to dilute vengeance-based justice by emphasising that retributive violence was a sin that could lead the soul to damnation. In response to this growing religious influence, kings, particularly from the tenth century onwards, began to incorporate this logic as an expression of royal power. Rather than wholly replacing traditional honour-based justice, however, royal law sought to reconcile it with shame, penance, and redemption. Ultimately, this transformed how violence was punished and how conflict resolution was imagined.

To illustrate this shift, it is important to begin with an examination of the earliest law codes and their methods of conflict resolution. These laws reveal the fundamental role of honour in addressing violence. Section 1 demonstrates that, by resolving disputes through payment, the seventh century royal law codes sought to prevent violence and maintain communal stability. Understanding the values embedded in these early laws provides essential context for the later transition to spiritual forms of accountability as discussed in sections 2 and 3. Here, the chapter investigates how ecclesiastical authorities approached conflict resolution in comparison to their earlier royal counterparts, arguing that they advocated for different ways of looking at the way violence was managed. Considering the role of confessors as peacemakers in resolving conflicts is important here. Through my examination of their spiritual authority and influence, I highlight the confessor's role in resolving tensions in situations where honour was at stake and where shame could be imposed. Sections 4 and 5 then examine the growing ecclesiastical influence in royal law codes after the late ninth century. They explore how Christian principles of forgiveness, penance, and spiritual impurity shaped legal responses to violence and conflict resolution so that honour could be reinforced and shame imposed. It is concluded that kings were ultimately able to reconcile these ideas.

centuries', in *Feud, Violence and Practice*, pp. 29–53; Hudson, 'The Making of English Law and The Varieties of Legal History', in *Early Medieval Studies in Memory of Patrick Wormald*, pp. 429–30; Hudson, *The Oxford History of the Laws of England, Volume II 871-1216* (Oxford: Oxford University Press, 2012), pp. 171–5; Lambert, 'Theft, Homicide, and Crime', pp. 3–43; Lambert, *Law and Order*, pp. 1–7; Lambert, 'Anthropology, Feud and De Obsessione Dunelmi', pp. 59–81; John D. Niles, 'The Myth of the Feud in Anglo-Saxon England', *The Journal of English and Germanic Philology*, 114:2 (2015), pp. 163–200; Halsall, 'Violence and Society', pp. 1–37.

1. Law and the Limits of Violence: Honour, Vengeance, and the Logic of Conflict Resolution up to the Seventh Century

In his *Historia Ecclesiastica*, Bede presents us with a glimpse into a world shaped by firm cultural expectations, where the defence of one's familial honour was perceived as an indelible obligation:

In the ninth year of the reign of King Ecgfrith (*r.* 645–85), after a serious battle was fought between him and Æthelred (*r.* 675–704), king of the Mercians, near the river Trent, King Ecgfrith's brother Ælfwine was killed, a young man of eighteen years of age, much beloved by both kingdoms. For King Æthelred had married his sister whose name was Osthryth. And although there were reasons for even more ferocious wars and a longer enmities between the fierce kings and peoples, Theodore, [the Archbishop of Canterbury], beloved of God, having acted with divine help, with salutary exhortation completely extinguished this great fire that had begun; so much so that, the kings and peoples of both sides being pacified, and no man's life was given for the slain king's brother, but only a great deal of money was owed to the avenging king. The treaties of peace lasted for a long time between these kings and their kingdoms.¹⁰

The death of Ælfwine, a 'young' and 'much beloved' *ætheling*, along with many others who perished in battle, indicates that there was a potential catalyst for further conflict with the potent allure of vengeance looming over the aftermath. As Bede recognises, King Ecgfrith's loss provided 'materies belli acrioris et inimicitiae longioris' (matters for an even more ferocious war and prolonged enmity). The obligation to retaliate and defend his family honour is further recognised by Bede, as indicated by his description of King Ecgfrith as 'regi ultori' (the avenging king). This assumes that vengeance was, in a sense, a 'duty', as Stanley Rubin puts it, to be performed.¹¹ Yet, is only when Archbishop Theodore compels King Ecgfrith to accept compensation that duty for the avenging king is annulled. Although

¹⁰ 'Anno regni Ecgfridi nono, conserto graui proelio inter ipsum et Aedilredum regem Merciorum iuxta fluuium Treanta, occisus est Aelfuini frater regis Ecgfridi, iuuenis circiter x et vm annorum, utrique prouinciae multum amabilis. Nam et sororem eius, quae dicebatur Osthryd, rex Aedilred habebat uxorem. Cumque materies belli acrioris et inimicitiae longioris inter reges populosque feroces uideretur exorta, Theodorus Deo dilectus antistes, diuino functus auxilio, salutifera exhortatione coeptum tanti periculi funditus extinguit incendium; adeo ut, pacatis alterutrum regibus ac populis, nullius anima hominis pro interfecto regis fratre sed debita solummodo multa pecuniae regi ultori daretur. Cuius foedera pacis multo exinde tempore inter eosdem reges eorumque regna durarunt'. Bede, *HE*, 4.21, p. 400.

¹¹ Stanley Rubin, 'The Bot, or Composition in Anglo-Saxon Law: A Reassessment', *The Journal of Legal History*, 17 (1996), 144–54, p. 144.

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the defence of honour is entrenched, the duty of violent reprisal, then, is not absolute or inescapable, but rather a cultural expectation that could be altered by external intervention.

While Bede specifically discusses the consequences of war and is dealing with a dispute specifically involving high-ranking aristocrats, the underlying attitudes towards honour that he outlines are by no means confined as such. Rather, these values permeate other spheres of early medieval English life, including legal contexts where conflict might arise – especially in cases where one party is wronged through violence and must decide which is the more honourable option: to accept compensation or seek retaliation. The choice confronting those who had been wronged would not be straightforward. To accept compensation might signal a willingness to restore peace and repair damaged relationships, but it might equally be perceived as a sign of weakness or submission if not handled carefully. Conversely, the pursuit of vengeance could affirm the injured party's strength. However, this could have risked further escalation of violence and prolonged feuding. In their extensive survey of feud paradigms in early medieval England, scholars such as Lambert and Hyams emphasise that obligations of retributive violence are integral to understanding honour in such circumstances. Lambert argues that 'homicides with free victims represented not one but a series of individual affronts to honour. The victim's kinsmen were entitled to a *wergild* and thus honour-bound to take action to secure it, if not to avenge the killing'.¹² Failure to respond to insult or injury risked damaging one's reputation within the group itself, resulting in shame, and could ultimately diminish the family's standing within the community. As Hyams adds, 'a wrong to an individual was perceived also as an injury to the honour of some group to which he belonged, thus shaming both himself and them into action'.¹³

Given that were valid reasons to prolong hostilities, it was likely that Ælfwine's death would have escalated tensions, leading to further conflict between Northumbria and Mercia. Yet, instead of escalating into prolonged warfare, the conflict is ultimately resolved through monetary compensation for the loss of Ecgfrith's brother. Although the practice of compensation was rooted in Germanic legal tradition, its application in this case is pushed by Archbishop Theodore. In advocating compensation instead of continued warfare, Theodore conveys the idea that justice could be achieved through reconciliation rather than through the sword, or, as Richard Abels puts it 'a challenge to the 'masculine'

¹² Lambert, *Law and Order*, p. 107. Lambert echoes also echoes this sentiment in 'Compensation, Honour and Idealism', p. 146, arguing that 'a man's honour, his reputation, his social standing will suffer if his peers judge that he has failed to respond adequately to an insult he has suffered'.

¹³ Hyams, 'Feud in Medieval England', p. 6.

warrior ethos of honor and vengeance'.¹⁴ While the role of the clergy will be explored in greater detail below, it is essential to acknowledge here the disruptive impact of feuding on communal stability and how we might perceive events like this in legal settings.¹⁵

Early medieval English kings were keenly aware of the dangers that unchecked feuding could pose to social stability. In response, kings promoted compensation, which was crucial to this aim. It provided a structured, enforceable pathway to peace, aiming to both avoid further violence and to 'satisfy honour', as Lambert views it.¹⁶ Agreeing to financial restitution meant that both parties could emerge from the conflict with their honour preserved. In turn, the wronged party acknowledged that their honour had been restored, and further violence was no longer necessary, at least theoretically.

At the centre conflict resolution is the notion of 'wergild' (man-price) – a ubiquitous feature of early medieval English law during Æthelberht's reign and long after 1066, as well as in many traditional continental Germanic legal codes.¹⁷ *Wergild* represented a numerical valuation of a person's life, determined by their status. It is a form of compensation granted to a person's kin in the event of lethal violence.¹⁸ *Wergild* payments features prominently in Æthelberht's law, though we find them under a different name: *leodgeld*. Here we have the wergild value of an ordinary man: 'If someone kills someone, let him pay an ordinary **person-price**, 100 shillings' (Gif man mannan ofslæhð, medume **leodgeld** C scillinga gebete).¹⁹ Specific wergilds are also further outlined for the deaths of individuals of differing ranks among the 'læts' (freedmen), with payments ranging from 40 to 80 shillings

¹⁴ Richard Abels, 'Cowardice' and Duty in Anglo-Saxon England', *Journal of Military History*, 4 (2006), 29–49, at p. 39.

¹⁵ See 'The Clergy as Peacemakers' below.

¹⁶ Lambert, *Law and Order*, p. 35.

¹⁷ Studies on wergild are plentiful. Notable examples this thesis draws from include: Oliver, 'Wergild, Mund and Manbot in Early Anglo-Saxon Law', in *Wergild, Compensation and Penance*, pp. 113–132; Oliver, *The Beginnings of English Law*; Oliver, *The Body Legal*; Nijdam, 'Embodied Honour and Shame in Medieval Frisia', in *Shame Between Punishment and Penance*, pp. 65–88; Nijdam, 'Wergild and Honour', pp. 161–182; Lambert, 'Compensation, Honour and Idealism', pp. 132–57; Hough, 'Wergild', in *The Wiley Blackwell Encyclopedia of Anglo-Saxon England*, (eds.) Michael Lapidge et al. (Wiley Blackwell, 2014), revised edition, pp. 489–490; Hector. M. Chadwick, *Studies on Anglo-Saxon Institutions* (Cambridge, 1905), pp. 76–114; Esders, 'Wergild', p. 6; Vogt, 'The Kin's Collective Responsibility', pp. 277–91; Allen, 'When Compensation Costs an Arm and a Leg', p. 17–33.

¹⁸ See 'The Foundations of Honour in the Royal Law Codes' above.

¹⁹ Abt 21.

depending on whether the slain man belongs to the first, second, or third class.²⁰ The later Kentish law code of Hlophere and Eadric refines this system, assigning a higher wergild of 300 shillings for ‘eorlcund men’ (nobles), reflecting a hierarchical structure that recognised three distinct social classes: nobles, freemen, and læts.²¹ Similarly, the West Saxon laws of Ine followed a comparable model, though prescribing notably higher amounts: 1,200 shillings for a nobleman, 600 for the second class, 200 shillings for the third class of ordinary freemen.²² Thus, higher-status groups such as nobles had a higher wergild value to reflect their elevated role in society.

What separates the free from the unfree, in particular, was this legal privilege. Essentially, slaves were primarily valued for their economic worth, with restitution directed to their masters rather than to the slaves’ families.²³ Regarding the legal status of servants, a labourer with an intermediate status between a freeman and a slave, their value too is not measured by the wergild, but by their ‘entire worth’, a figure based on their labour value.²⁴ For instance, Æthelberht’s law decrees that if a servant’s eye or foot is struck off, the fine paid is calculated based on the servant’s labour value, not the value of an eye or foot attributed to a freeperson: ‘Gif esnes eage 7 foot of weorðeþ aslagen, ealne weorðe hine forgelde’ (If a servant’s eye or foot is struck off, let him pay him [the master] the full worth [of the servant]).²⁵ The code of Hlophere and Eadric further expands on this notion, their law also addressing various scenarios involving a servant’s actions, such as when a servant kills a person. If the victim is a noble, the servant’s master is required to pay compensation equivalent to four servants’ worth, while the compensation for a freeman’s death is equivalent to two servants’ worth.²⁶ While there was an economic value to servants and slaves, the absence of wergild for reveals their exclusion from the very mechanisms of restorative justice that preserved honour. This implies that the ‘economy of honour’ functioned primarily as a system for freemen, rather than for servants and slaves. On the one hand, freemen recognised their social worth as having the ability to engage in these exchanges. On the other

²⁰ Abt 26. On the term ‘læt’, see Oliver, ‘Who Was Æthelberht’s Læt’, in *Confrontation in Late Antiquity: Imperial Presentation and Regional Adaptation*, ed. Linda J. Hall (Orchard Academic, 2003), pp. 153–63.

²¹ HI 1.

²² Ine 70. Ine’s law does not refer to læts as Æthelberht’s law does, and so we can assume that Ine is referring to ‘freemen’ in general, with no further distinction of freemen and freedmen.

²³ For discussion regarding the legal position of slaves, see Hudson, *The Oxford History of the Laws*, pp. 213–16; Pelteret, *Slavery in Early Mediaeval England*, pp. 80–106.

²⁴ Oliver, *The Beginnings of English Law*, p. 115.

²⁵ Abt 87.

²⁶ HI 1–3.

hand, slaves lacked the legal capacity to seek redress in the same manner as freemen, and any violence done to them was often treated as damage to the property of their owner rather than as an affront to their individual honour.

Moreover, it was the master's *mund* (protection) which was affronted, as they were the protector of their slaves, and thus compensation is owed to them as it would have been in the case of women and children. Protection values in early medieval England, like wergilds, were intricately tied to social status, though the fine imposed for a violation of *mund* was determined by the status of the person who extended protection to the person who was affronted.²⁷ This protective duty typically fell to male household heads, noblemen, or lords, who were responsible for ensuring the safety and honour of those under their authority should violence ever affront it.

Now that we have identified who is entitled to wergild and who is not, it is important to examine the underlying logic of the wergild system. Essentially, *wergild* was designed to reduce the destructive consequences of dishonour and retaliation, as the payment for an affront based on status allowed for a peaceful settlement that did not result in any ongoing loss of face.²⁸ Clause 21 of Æthelberht's law provides a clear example of the wergild payment process in cases of homicide and the steps taken to prevent further conflict:

Gif man mannan ofslaehð, medume **leodgeld** C scillinga gebete.²⁹

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

Gif man mannan ofslæhð æt **openum græfe**, XX scillinga forgelde 7 in XL nihta **ealne leod** forgelde.³⁰

²⁷ On the 'mund' see Oliver, 'Wergild, Mund and Manbot', pp. 113–26; Nijdam, 'Wergild and Honour', pp. 172–3; Lambert, *Law and Order*, pp. 51–3; Hough, 'The Widow's 'Mund' in Æthelberht 75 and 76', *The Journal of English and Germanic Philology*, 98:1 (1999), 1–16; Brooks, 'The Laws of King Æthelberht', pp. 123–5.

²⁸ For a conceptual overview of wergild and honour, see Esders, 'Wergild', p. 12; Lambert, 'Compensation, Honour and Idealism', pp. 132–57; Nijdam, 'Embodied Honour and Shame', pp. 65–88; Nijdam, 'Wergild and Honour', pp. 161–182; Hyams, 'Feud in Medieval England', p. 3.

²⁹ Abt 21.

³⁰ Abt 22.

If a person kills someone, let him pay 20 shillings at the **open grave**, and let him pay the **entire ordinary person-price** in 40 nights.

Æthelberht's decree that the 20 shillings providing restitution should be provided at the open grave is a rare statement of where reconciliation might have taken place. The location of the payment is deliberate and symbolically represents the unfinished business of the dispute. The case laid out by Oliver is that the emphasis on paying restitution at the gravesite was meant to show a public act of restitution, because the open grave was a site where a 'blood feud would most likely break out'.³¹ After all, emotions surrounding a killing would have been at their peak during the funeral rites, as the family gathered to mourn their slain kin and to express their grief and outrage. We see how emotions of grief and outrage run in *Beowulf*, as the protagonist consoles King Hrothgar with words of solace for the death of his friend, Æschere: 'Grieve not, wise king! Better it is for every man to avenge his friend than mourn overmuch'.³² The legal requirement to pay the first instalment of compensation at the grave, therefore, served as a crucial intervention and provided a tangible indicator that the process of reconciliation had already begun. The grave was as a focal point for communal involvement in the judicial process. This allowed the community to observe both the restoration of honour and the resolution of conflict. This demonstrated to all the more proper and thus honourable way to resolve disputes (at least as Æthelberht and his lawmakers preferred it). It must be reiterated that these laws were likely aspirational, and not all exchanges would have followed this exact process. Æthelberht seems to outline what he considered to be the honourable way to resolve conflict, aiming for what Hyams describes as a 'satisfactory and honourable deal'.³³ Thus, it is only after that business is concluded (by the payment of compensation) that the grave can be closed. This suggests a bookended structure for dispute resolution: just as the trial takes place at the site of violence, so the compensation is paid at the place where the victim of that violence is laid to rest.

In cases of non-lethal violent offences, such as injury, early royal laws relied on financial compensation as the primary means of resolution. While compensation for death was hierarchical, compensation for injury as a result of violence was often determined by the nature and visibility of the injury itself. Clauses 33–71 of Æthelberht's code detail lengthy injury tariffs which reflect various

³¹ Oliver, *The Beginnings of English Law*, p. 97.

³² Lines: 1380–90: 'Ne sorga, snotor guma! Selre bið æghwæm þæt he his freond wrece, þonne he fela murne'. *Beowulf*, p. 128.

³³ Hyams, 'Feud in Medieval England', p. 3.

offences and assign compensation based on the nature and severity of the injury. This approach recognised that harm was also a matter of bodily integrity, making compensation for an affront to a person's public image essential. As Oliver notes, injury tariffs follow two guiding principles: 'the value in physiological terms of the wounded part and the degree to which the damage is visible, thus adding insult to injury'.³⁴ This consideration meant that compensatory fines were devised according to both physiological damage and the damage visible to honour.³⁵ For example, Oliver observes that the fine for knocking out front teeth is equivalent to the fine for breaking an arm (6 shillings), because the former payment is 'restitution for the permanently visible injury to honour' whereas the latter is concerned principally with payment for 'physical damage'.³⁶ This visibility factor was crucial because, in a society where honour was closely tied to reputation, any lasting physical marks could become 'marks of shame', as Lambert describes it.³⁷ Oliver states that the reason knocking out front teeth needed a high compensation in comparison to the rest of the teeth was that these were highly visible, their loss would have been noticeable in social interactions, affecting both the victim's physical well-being and dignity. Clause 51 decrees that: 'For each of the 4 front teeth, 6 shillings; for each of the teeth which stand next to these, 4 shillings; then for each tooth which stands next to them, 3 shillings; and beyond that 1 shilling for each tooth'.³⁸ As Oliver explains, 'the farther back in the mouth the lost tooth, the lower the fine', since less visibility meant less public shame.³⁹ Knocking out back molars, though not immediately visible, would cause significant impairment, particularly affecting eating and overall functionality, with potential long-term consequences. However, the functionality of the front teeth was equally important. Canine teeth, for instance, play a crucial role in slicing food, such as apples or meat. If functionality

³⁴ Oliver, *The Beginnings of English Law*, p. 99.

³⁵ Oliver, *The Body Legal*; Oliver, *The Beginnings of English Law*. This idea is expressed throughout both works. See also, Oliver, 'Genital Mutilation in Medieval Germanic Law', in *Capital and Corporal Punishment*, pp. 48–73; Oliver, 'Lex Talionis in Barbarian Law', *Journal of Indo-European Studies*, 52 (2006), 197–218; Oliver, 'Protecting the Body in Early Medieval Law', in *Peace and Protection in the Middle Ages*, (eds.) Tom Lambert and David Rollason (Toronto: Pontifical Institute of Mediaeval Studies, 2009), pp. 60–77; Przemysław Tyszka, *The Human Body in Barbarian Laws, c. 500–c. 800: Corpus Hominis as a Cultural Category*, trans. Guy R. Torr (Frankfurt: Peter Lang, 2014), p. 148.

³⁶ Oliver, *The Beginnings of English Law*, p. 100. See Abt 53.1.

³⁷ Lambert, 'Compensation, Honour and Idealism', p. 144; Jurasinski makes a similar argument about injury as a mark of shame in 'Germanism, Slapping and the Cultural Contexts of Æthelberht's Code: A Reconsideration of Chapters 56–58', *Studies in Medieval History*, 18 (2006), 51–71, at. pp. 61–69.

³⁸ Abt 51: 'Æt þam feower toðum fyrestum, æt gehwylcum VI scillingas; se toþ se þanne bistanceþ, IIII scill; se þe ðonne bi ðam standeþ, III scill; ond þonne sibban gehwylc, scilling.

³⁹ Oliver, *The Beginnings of English Law*, p. 100.

were the primary concern, both front teeth and molars would be valued highly, and compensation would not necessarily decrease from front to back. This suggests that Æthelberht's law is not focused on the practical function of teeth, but primarily on the visible damage to a person's honour. This contrasts with other Germanic legal codes, where functionality appears to take precedence. For example, Frisian law ranked molars above canine teeth, prioritising their practical use over visible dishonour. In contrast, early Kentish law, in this case, then, seems more concerned with the social affront of visible injury.⁴⁰

We might also consider the broader consequences of facial damage, which, beyond the immediate loss of body tissue, could lead to a range of significant physiological difficulties. Injuries to the face, particularly those that affected the jaw or other key facial features, often resulted in long-lasting physical impairments that would severely hinder daily functions. For instance, such damage could lead to difficulty with speaking, chewing, or swallowing, resulting in the inability to properly eat or communicate. Przemysław Tyszka points out that physiological issues such as dribbling, excessive secretion of water or phlegm, and the inability to shut the eye properly would not only cause physical discomfort, but also draw attention to the victim's condition. This would ultimately further their sense of dishonour.⁴¹

Looking beyond the more obvious examples in Æthelberht's injury tariff, it becomes clear that acts of violence, even when no physical injury was visible, carried an added layer of insult that extended beyond bodily harm. For example, acts like forcibly binding someone or pulling their hair were still considered significant affronts to a person's dignity, even though these acts may not have resulted in permanent injury.⁴² These actions were understood as deeply symbolic violations of personal honour and social respect. The 20 shilling fine for binding a freeman reflects not only the physical restraint, but also the dishonour it imposed on the individual.⁴³ This hefty fine, equivalent to striking off a thumb, was disproportionate to the physical harm caused by binding which would be unlikely to result in any permanent damage.⁴⁴ Hence, it was the humiliation and violation of dignity that made such an act grievous enough to warrant high compensation. This is reinforced by the fact that the provision specifically applies to freemen. This would have been a practice reserved solely for slaves as 'violating

⁴⁰ *Lex Frisionum* 3.36–8 in *MGH Legum*, p. 687. On this point, also see Oliver, *The Body Legal*, pp. 102–8.

⁴¹ Tyszka, *The Human Body in Barbarian Law*, p. 148.

⁴² Abt 24.

⁴³ Oliver, *The Beginnings of English Law*, p. 90.

⁴⁴ Abt 54.

the physical integrity of a freeman' was still regarded as 'problematic' during this early period.⁴⁵ By being subjected to an action commonly associated with slaves, the freeman was symbolically reduced to a state of subjugation, and to impose such a treatment on a freeman was a direct affront to their status and perceived honour. Thus, this particular injury tariff was not simply about the physical act of restraint, but the social degradation it represented.

Similarly, the act of 'feax-fang' (hair-pulling), was more than just a minor act of violence.⁴⁶ It also breached a cultural taboo. Hair in many Germanic cultures, including early medieval England, held symbolic meaning. Among the Merovingians, for instances, long hair was regarded as a source of royal power and authority.⁴⁷ In a similar vein, in early medieval England, hair functioned as a marker of status and even personal freedom.⁴⁸ In a legal context, pulling someone's hair carries a social stigma which was greater than the physical act itself, as it was considered an affront to the victim's honour and status. Oliver elaborates on this further, suggesting that in legal proceedings, hair-pulling was loaded with symbolic cultural significance. She refers to literary sources, such as *Beowulf* and *Judith* to offer insight into the cultural resonance of the act itself.⁴⁹ In *Beowulf*, the protagonist pulls Grendel's mother 'be feaxe' (by the hair), and in the poem *Judith*, the heroine similarly pulls Holofernes 'be feaxe'. These moments emphasise that feax-fang was not mere physical violence, but a deliberate act that demeaned the adversary.

One clause in Æthelberht's code that has received extensive commentary refers to the highest fine reserved in the injury tariff, despite its supposed hidden visibility, which pertains to damage done to the penis and testicles.⁵⁰ Indeed, as Oliver has argued, this injury shamed their sense of manhood, rendering them intentionally dishonoured by their attacker.⁵¹ This sentiment is echoed by Richards, who reaches a similar conclusion, observing that compensatory damages must exceed those of other catastrophic injuries due to the major 'shame and embarrassment such a wound might involve', while,

⁴⁵ Fruscione, 'Beginnings and Legitimation', p. 39.

⁴⁶ Abt 33.

⁴⁷ Oliver, *The Beginnings of English Law*, p. 105.

⁴⁸ Sally Crawford, *Daily Life in Anglo-Saxon England* (Colorado: Greenwood, 2022), revised edition, p. 151.

⁴⁹ See Oliver's discussion of this in *The Beginnings of English Law*, p. 108.

⁵⁰ Abt 64.

⁵¹ Oliver, *The Beginnings of English Law*, p. 90. See also Oliver's analysis on genital mutilation in other *Leges Barbarorum* in *The Body Legal*, particularly at pp. 128–36.

for his part, Miller contends that the purpose of a triple wergild was to provide compensation for something that was ‘more than a physiological wound’.⁵² Also weighing in on this clause, Lambert labels such significant injuries as ‘potent insults’ in that they were considered ‘forceful denials of a free man’s freedom and masculinity’.⁵³

However, that this fine equalled more than slaying three freemen suggests there is more at play here. The disproportionate wergild fine in the case of damage to the genitals compared to the slaying of a single freeman indicates an understanding of status and lineage. Oliver argues that this affront can be considered a ‘capital crime’ – one that was not just an act of mutilation but an offence which could mark the death of a lineage, disrupt inheritance, and have ripple effects on communities.⁵⁴ The exceptionally high wergild is indicative of the social and personal consequences of infertility.⁵⁵ The absence of heirs both diminished an individual’s status and disrupted the social fabric, as kinship groups were expected perpetuate their legacy and uphold their family’s honour. Unlike other injuries that might heal, the psychological and social ramifications of infertility were enduring, marking the victim as fundamentally diminished in status and worth.

While the royal legal attitudes towards violence and conflict resolution show that compensation could restore honour, there were certainly prevailing cultural attitudes that demonstrate the desire for revenge loomed over the appeal of financial restitution. As the story of King Ecgfrith and King Æthelred demonstrates, survivors had to weigh whether accepting compensation and pursuing peace would adequately repair their damaged standing or if further violence was necessary to achieve full restitution in their eyes. As Hyams notes:

⁵² Richards, ‘The Body as Text in Early Anglo-Saxon Law’, in *Naked Before God: Uncovering the Body in Anglo-Saxon England*, (eds.) B.C. Withers, and J. Wilcox (West Virginia University Press, 2003), pp. 104–5; Miller, *Eye for an Eye*, pp. 126–7.

⁵³ Lambert, *Law and Order*, p. 36.

⁵⁴ Oliver, ‘Genital Mutilation’, pp. 48–73.

⁵⁵ See Jay P. Gates, ‘The Fulmannod Society: Social Valuing of the (Male) Legal Subject’, in *Castration and Culture in the Middle Ages*, ed. Larissa Tracy (Woodbridge: Boydell and Brewer, 2013), pp. 141–2. In the Frisian legal context, Rolf Bremmer also briefly addresses genital mutilation in the context of shame and dishonour in the same volume as Gates. See ‘The Children He Never Had’, pp. 112–3. Disfiguration through castration as a motivation to shame and dehumanise a victim in multiple of the *Leges Barbarorum* has also been addressed by Annette Niederhellmann in her work ‘Kastration’, in *Arzt und Heilkunde in den frühmittelalterlichen Leges* (Berlin: Walter De Gruyter, 1983), pp. 142–54.

Chapter Two – Violence and Conflict Resolution

The one major drawback to the process was the great difficulty of bringing it [feud] to a satisfactory end. This is a direct consequence of the shame and humiliation whose infliction was the very essence of feud. Survivors had to consider whether and how they could regain honor and standing among their peers.⁵⁶

From a legal standpoint, compensation was seen as a way to resolve conflict, ensuring that both the individual and the community could move past the wrong without escalating into further violence. However, cultural attitudes towards honour and vengeance often conflicted with the legal system's reliance on financial restitution. The desire for revenge was thus not only personal but was also culturally legitimised, as it was viewed as a duty to avenge one's kin. This sense of duty was reinforced by the fear of shame and dishonour – if one did not seek revenge, they would risk damaging their own reputation and the standing of their family within the community.

Here, I have demonstrated two modes of restorative justice where honour could thrive: one through the legal system, which sought to resolve violence through financial means, and the other through the cultural imperative to avenge wrongs, which ensured that honour was upheld through violent reaction. Here we have two modes of restorative justice. Han Nijdam also encapsulates this duality well while also taking into consideration the notion of mediation. He suggests that, on the one hand, compensation was designed to 'buy off revenge', essentially providing a non-violent path to restore honour by substituting monetary payment to mitigate further violence.⁵⁷ On the other hand, however, not all parties would accept compensation. For some, Nijdam argues, 'taking revenge was often seen as the more honourable option', and it required social pressure and intervention from mediators to convince kinship groups to 'see accepting compensation as equally honourable'.⁵⁸ In other words, while compensation sought to bring stability, the strong cultural emphasis on personal and familial honour meant that vengeance retained its appeal. The following sections aim to explore this contrast in more detail, providing examples of ecclesiastical mediation and the flat out rejection of compensation in certain circumstances where honour was at stake. First, a brief foundational understanding of religious and ecclesiastical attitudes towards violence are examined before addressing the influence of these attitudes in late royal laws.

⁵⁶ Hyams, *Rancor and Reconciliation*, p. 11.

⁵⁷ Nijdam, 'Wergild and Honour', p. 161.

⁵⁸ Ibid, p. 162.

2. Preserving Honour, Internalising Shame: The Clergy as Mediators and Peacemakers

You have heard that it hath been said: An eye for an eye, and a tooth for a tooth. But I say to you not to resist evil: but if one strike thee on thy right cheek, turn to him also the other. (Matthew 5: 38–39)

Christianity sought to fundamentally reshape the cultural understanding of retributive violence by encouraging lay society to view it as a spiritual offence. A key concept in conflict resolution in the Old Testament, particularly in the Book of Exodus, is the principle of ‘Lex Talionis’ a legal doctrine that dictates appropriate retaliation. A well-known passage, ‘an eye for an eye and a tooth for a tooth’, initially suggests the right to retributive vengeance as commanded by God.⁵⁹ Though the issue of legitimate violence is complex in the Bible, often presenting contradictions between the Old and New Testaments, it seems that early Church Fathers were largely in agreement that retributive vengeance, in particular seeing it as something reserved for God and not for man.⁶⁰ Early Church Fathers, such as St. Augustine (c. 354–430) and St. Jerome (d. 420), interpreted retributive principles as advocating for divine, not personal, retribution. In his commentary on Psalm 93, Augustine asserts that, while the wicked may seem unpunished in the short term, divine vengeance will come in God’s own time. He urges believers not to complain when it seems as though God has failed to bring justice, warning instead that desiring vengeance could make one subject to divine judgment: ‘You complain surely because the wicked are not punished: yet do not complain, lest you be among those upon whom vengeance is taken’.⁶¹ Jerome echoes this in his homily on Psalm 93, asking why humans seek revenge when God, as the ‘God of vengeance’ (Deus ultionum Dominus), is the rightful avenger.⁶² Augustine’s and Jerome’s writings align with New Testament teachings on peace, such as Jesus’ words in the Sermon

⁵⁹ Exodus 21:24.

⁶⁰ On these contradictions of violence, see Susan Niditch, *War in the Hebrew Bible: A Study in the Ethics of Violence* (Oxford: Oxford University Press, 1993); Tina Pippin and George Aichele, et al., *Violence, Utopia, and the Kingdom of God: Fantasy and Ideology in the Bible*, (eds.) Tina Pippin and George Aichele (London: Routledge, 1998). Some examples of God permitting violence in the Bible include: Exodus 12:29-30: Numbers 31:1-18: Judges 1:1-27: Deuteronomy 7:2.

⁶¹ ‘In eo certe murmuras, quia non uindicatur in malos. Noli murmurare, ne inter illos sis in quos uindicatur’. *Sancti Aurelii Augustini enarrationes in Psalmos*, LI-C, vol 2. (eds.) E. Dekkers and I. Fraipont, (Turnhout: Brepols, 1956), p. 1307.

⁶² *S. Hieronymi presbyteri opera, pars II. Opera Homelctica*, ed. Germain Morin (Turnhout: Brepols, 1960), p. 142.

on the Mount: ‘Blessed are the peacemakers’.⁶³ The teachings of Jesus influenced how clerics aimed to negotiate peace. Jesus’ teaching to ‘turn the other cheek’ presents a vision of justice that directly challenges the idea of vengeance as an honourable or appropriate response to injury. Instead of demanding revenge, Jesus calls for a peacemaking approach, where individuals avoid returning violence with violence and instead respond with grace. It is these new Christian principles that aimed to inspire the growth of a new cultural ethos surrounding the nature of violence and conflict resolution.

Of course, we might question how influential these teachings really were in the societies that received them, and whether these Christian ideals of peace, forgiveness, and non-violence could be reconciled with the ongoing practice of ‘legitimate violence’ in various cultural and legal contexts where honour was fundamental. While the early Church Fathers unequivocally promoted peace and condemned personal vengeance, the reality of the early Christian world and the societies in which Christianity spread was far more complex. As we will see, violence, especially in the forms of self-defence and warfare, remained deeply ingrained in the cultural milieu. What emerges is thus not an outright ban on violence, but rather a more nuanced approach to conflict resolution that reconciles both honour and shame.

By the sixth century, the clergy had become a powerful force for transforming conflict resolution. They became part of a new cultural environment in which reconciliatory mediation could thrive.⁶⁴ Their role was to negotiate compensation and penitential sentencing for the parties involved. Hyams highlights the Church’s collaborative role with secular authorities, positioning itself as a ‘peacemaker’: an influential third party in conflict resolution.⁶⁵ This cooperative approach was rooted in the Church’s mission to foster peace, particularly when laymen were embroiled in disputes that threatened community cohesion. We saw this play out in the events depicted by Bede above concerning the war between Ecgfrith and Æthelred. Bede particularly emphasises Archbishop Theodore’s role in preventing

⁶³ Matthew 5:9.

⁶⁴ Scholars have recently drawn attention to ecclesiastical mediation and the role religious actors played in such disputes. See Meens, *Penance in Medieval Europe*, pp. 10-11; Meens, ‘Penance, Shame and Honour’, p. 91; Meens, ‘Penance and Satisfaction’, pp. 212–14; Meens, ‘Penitentials and the Practice of Penance’, pp. 7–8; Meens, ‘Sanctuary, Penance and Dispute Settlement under Charlemagne: the Conflict of Alcuin and Theodulf of Orléans over a Sinful Cleric’, *Speculum* 82 (2007), 277–300; Hyams, *Rancor and Reconciliation*, pp. 18-19; Edward James, ‘Beati Pacifici’: Bishops and the Law in Sixth-Century Gaul’, in *Disputes and Settlements: Law and Human Relations in the West*, ed. John Bossy (Cambridge: Cambridge University Press, 1983), pp. 25–46; Laurent Jégou, *L’évêque, juge de paix. L’autorité épiscopale et le règlement des conflits*, (Turnhout: Brepols, 2011), pp. 25-27; Roach, ‘Penance, Submission and Deditio’, pp. 343-71.

⁶⁵ Hyams, *Rancor and Reconciliation*, p. 19.

further bloodshed. Instead of the king's engaging in retaliatory violence, Theodore persuades the parties to accept financial compensation. Bede's goal here was ultimately to portray to his audience a broader theme of the power of Christ's message, showing how spiritual leadership could override the martial values of feud. The fact that peace endured 'for a long period', in his words, reinforces the message that true honour, in Bede's view, was better in vengeance but only in reconciliation.

The prerogative of the clergy to act as mediators and peacemakers in conflict is further demonstrated in Gregory of Tours' (c. 538–594) *Decem Libri Historiarum*, which Bede certainly read, as it was not only available in the library at Monkwearmouth-Jarrow, but there is evidence of Bede quoting from it in his *Retractatio* on Acts 28:8.⁶⁶ While the source is Frankish in origin, it demonstrates the outworkings of the broader Germanic legal ethos, whereby feud is predictably settled with compensation as payment for wrongdoing. Gregory's story of a feud between two lay elites, Sichar and Chramnesind, begins when a boy was killed while delivering an invitation, but escalates into a violent cycle of revenge and destruction.⁶⁷ Sichar, the aggrieved party, initially seeks refuge and arms himself, only for his adversary, Austregesil, to retaliate by murdering Sichar's children and looting his property. This act of violence spurs further retribution: Sichar destroys an inn, slays Austregesil, his brother, and his son, and seizes their possessions. The conflict spreads beyond these principal figures and threatens even further social unrest. Efforts to mediate the feud through assemblies and religious authorities emphasise the challenge of reconciling the desire to satisfy honour through violent revenge. Sichar ultimately seeks arbitration, and Church leaders intervene, with Gregory himself urging peace and compensating the aggrieved with silver quoting Matthew 5:9: 'Beati pacifici' (Blessed are the peacemakers).⁶⁸ Despite this, the refusal of Chramnesind, Austregesil's kin, to accept reparations reignites hostilities. Ultimately, judicial intervention brings a resolution, imposing penalties on both parties and requiring restitution. When suppering together Sichar boasts that Chramnesind should thank him for slaying his kin because of the wealth that it has brought him. This remark leads Chramnesind to kill Sichar, strip him naked with a dagger, and leave his body on a fence for all to see. Inevitably, this requires the slayer to flee for safety.

⁶⁶ Lapidge, *The Anglo-Saxon Library* (Oxford: Oxford University Press, 2005), p. 212. On some of the texts available at Monkwearmouth-Jarrow, see Scott DeGregorio, *The Cambridge Companion to Bede* (Cambridge: Cambridge University Press, 2010), p. 104.

⁶⁷ Gregory of Tours, *Decem Libri Historiarum*, VII.47, in *MGH*, (eds.) Ernest Dümmler, et al. (Berlin, 1895) <<https://www.mgh.de/de>>, pp. 366–8.

⁶⁸ *Ibid*, p. 367.

Scholars have commented on the motivation of Chramnesind to kill Sichar. Richard Landes claims that, while Chramnesind initially seems to have accepted the negotiated resolution through blood money, his compliance is undermined by Sichar's drunken boast, which publicly shames Chramnesind and reignites the unresolved tension of the feud.⁶⁹ After all, it is indeed the insult which forces Chramnesind to confront the perceived dishonour attached to becoming wealthy through compensation and befriending his family's murderer. The decisive trigger for his violent response is not necessarily rekindled by the desire for vengeance, Landes argues, but the fear of losing his reputation.⁷⁰

Despite Sichar's ultimate recourse to violence, the ecclesiastical authorities in this dispute play a significant role in the attempt to de-escalate the feud. Edward James argues that religious authorities 'no doubt played an informal role in settling disputes within the early Christian communities'.⁷¹ Their role was not entirely dissimilar to the approaches seen in early English royal laws, which sought to resolve conflict through mechanisms such as monetary compensation. Similarly, ecclesiastics recognised the necessity of compensation as a means to restore peace and settle disputes. Meens expands on this idea, noting that, much like Gregory's intervention, a confessor might 'push someone who has committed an affront into offering compensation to the offended party'.⁷² Acting as intermediaries meant that confessors facilitated the resolution of Christian peacemaking and reinforced the secular cultural moral order, which depended on financial reconciliation. At the heart of Meens' premise that confessors were essentially promoters of compensation, was a word of warning to modern scholars that they should 'exercise caution when viewing conflict resolution by means of wergild or other forms of compensation as a purely secular affair'.⁷³ Indeed, in light of Meen's argument, we should think of confessors as advocates for restoring lay honour through compensation, just as royal elites advocated for compensation in their laws as an effective means for settling conflict disputes. Confessors had the ability to reconcile both the sinner and the offended party 'without the loss of face'.⁷⁴ This meant working in tandem with lay legal proceedings to ensure that compensation was paid as part

⁶⁹ Richard Landes, 'Gregory of Tours on Sichar and Chramnesind', in *Honor and Shame in Western History*, pp. 101-2. Ian Wood also believes that Chramnesind is motivated by shame. See 'The Bloodfeud of the Franks': a Historiographical Legend', *Early Medieval Europe*, 14 (2006), 490–503, at p. 492.

⁷⁰ Landes, 'Gregory of Tours on Sichar and Chramnesind', p. 102.

⁷¹ Edward, 'Beati Pacifici', p. 27.

⁷² Meens, 'Penance, Shame and Honour', p. 91.

⁷³ Meens, 'Penance and Satisfaction', pp. 212–39.

⁷⁴ *Ibid*, p. 213.

and parcel of the negation procedure. Hence, the role of confessors in restoring on both the continent and in the British Isles was far from insignificant.

While this discussion has offered important context regarding those whose honour was wronged in conflict, it is equally important to further examine how confessors played a role in regulating violent behaviour by imposing shame on offenders. It is in the earliest English penitentials that we can make assumptions as to how shame worked in tandem with honour in these disputes. To seek absolution for having committed a violent offence, the penitentials demonstrate that an offender had to confront their shame openly, acknowledge their wrongdoing, and repent their misdeeds. The earliest of the English penitentials, the *Poenitentiale Theodori* (c. 700), shows a blend of compensation and penance used to shame offenders for a period of 7 to 10 years – a similar sentence is given to Librán in the *Vita Columbae* for murder, aligning with what we would expect from the English penitentials, which were heavily influenced by Irish penitentials:

Si quis **pro ultione** propinqui hominem occiderit, peniteat sicut homicida, VII. vel X. annos. Si tamen reddere vult propinquis pecuniam aestimationis, levior erit penitentia, id est, dimidio spatii.⁷⁵

If any man kills a man **in revenge** of his kinsman, let him do penance as a murderer, 7 or 10 years. If, however, he wishes to pay his relatives the estimated price, the penance will be lighter, that is, half the time.

The most striking aspect of this provision is its unequivocal connection of vengeance to murder. Through equating the act of killing in revenge with the crime of murder, an attempt is made to not just regulate retaliatory violence, but reframe it as sin. Vengeance, which might otherwise be seen as a justified or even honourable response to a wrong in certain cultural contexts, is here framed as a dishonourable act, worthy of repentance. This discrepancy between the logic of justice we see in passage from Bede's *Historia Ecclesiastica* is significant, as it redefines the traditional understanding of revenge, often associated with the defence of familial honour, as spiritually reprehensible.

Noticeably, the penitential sentence here can be significantly reduced if the offender agrees to pay compensation to the victim's family. While the act of killing still requires penance, the financial element of reconciliation is viewed as an essential step in resolving the conflict, sufficient to lessen the

⁷⁵ *Poenitentiale Theodori*, I. 4.1.

severity of the imposed penance. When we compare this to how conflict resolution is portrayed in seventh-century royal laws, we observe a notable difference in the outcome of justice. Early royal laws primarily only sought to resolve disputes through compensation as a means of restoring honour. In contrast, the penitential approach additionally shames the offender. Though financial compensation addresses the issue of honour for victims, the addition of penance shifts the focus to the perpetrator's moral accountability. As Erin Abraham puts it, whereas financial restitution would 'ideally restore the neighbour's honour and provide social resolution', penance, particularly in the form of fasting, was designed to confront the 'spiritual consequences of the sin', which makes it a more inward-looking form of atonement.⁷⁶

The phrase 'si quis pro ultione propinqui hominem occiderit' (if any man kills a man in revenge of his kinsman) from the *Poenitentiale Theodori* highlights the significance of intent behind the act of pre-meditated homicide. Yet early royal laws generally treated homicide uniformly, showing a less precise consideration of the perpetrator's intent.⁷⁷ In Æthelberht's code, the penalties for homicide seem to imply that any killing required compensation, regardless of intent. The penitentials classify violence according to the intensity of the emotion involved, as though they were 'akin to a sin of passion', as Abraham puts it.⁷⁸ Anger (*ira*) was considered a capital sin – one of the principal sins that warranted extensive penance and one of the primary vices capable of corrupting the soul.⁷⁹ This means that the

⁷⁶ Erin V. Abraham, *Anticipating Sin in Medieval Society: Childhood, Sexuality, and Violence in the Early Penitentials* (Amsterdam University Press, 2017), p. 105. For similar conclusions, see Esders, 'Wergild', p. 25; Harald Siems, 'Observations Concerning the "Wergild System": Explanatory Approaches, Effectiveness and Structural Deficits', in *Wergild, Compensation and Penance*, p. 43.

⁷⁷ Laws addressing accidental harm are rare. One example can be found in Af 13, which deals with a situation where if man cuts down a tree, and the tree falls causing the death of another person.

⁷⁸ Abraham, *Anticipating Sin in Medieval Society*, p. 162.

⁷⁹ A good example of what were considered to be capital sins can be found in the *Poenitentiale Egberti*. A list of these sins and their expected penitential sentence are as follows: 'Nunc igitur capitalia crimina secundum canones explicabo. Prima superbia, invidia, fornicatio, inanis gloria, ira longo tempore, tristitia seculi, avaritia, ventris ingluvies, et Augustinus adiecit sacrilegium, id est sacrarum rerum furtum (et hoc maximum est furtum), vel idolaticis servientem, id est auspiciis et reliqua, deinde adulterium, falsum testimonium, furtum, rapinam ebrietas adsidua, idolatria, molles, sodomita, maledici, perjuri. Ista ergo capitalia crimina sanctus Paulus et Augustinus et alii sancti computaverunt. Pro istis fieri oportet et elemosinas largas et longo tempore jejunium tencatur, id est, ut alii judicant, pro capitalibus, id est adulteriis, homicidiis, perjuriis, fomicariis et similibus, laicus annos IIII clerici V. subdiaconus VI. diaconus VII. presbyter X Episcopus XII., si in consuetudine erit' (Now therefore I will explain the capital crimes according to the canons. First, pride, envy, fornication, vainglory, long-lasting anger, sorrow for the world, avarice, gluttony, and Augustine added sacrilege, that is, the theft of sacred things; and this is the greatest theft, or serving idols, that is, auspices and the rest, then adultery, false witness, theft, robbery, constant drunkenness, idolatry, lewdness, sodomy, slander, perjury. These, therefore, are counted by Saint Paul and Augustine and other saints as capital crimes. For these, it is necessary to give generous alms and observe a

severity of penance depended largely on the offender's motivation and the emotional state accompanying the transgression. Jorgensen contends that the reason ecclesiastics considered anger to be shameful was because it was associated with loss of self-control.⁸⁰ In her analysis of Ælfric's *Life of St. Agatha* she points out that the persecutor, Quintianus, exhibits a cycle of shame and rage, illustrating how anger exposes a person's weakness and spiritual failure. Jorgensen describes this as the 'shame-rage spiral,' in which public humiliation triggers defensive aggression, only meant to intensify one's shame. In Quintianus's case, his repeated humiliation and fury stem from his failure to assert dominance over Agatha.⁸¹ From a penitential standpoint, then, the act of revenge would not resolve this crisis of honour, but instead, it would certainly deepen the sinner's entrapment in anger and violence, thereby compounding their spiritual degradation. Far from restoring honour, ecclesiastics understood retaliatory violence as essentially risking the avenger to further shame.

Determining the appropriate penitential remedy for acts of violence was not a straightforward process. Confessors had to take careful consideration of the specific circumstances and context of an offence. The penitentials considered various factors, such as whether the violence was premeditated, intentional, or accidental, as well as the level of malice involved in the act.⁸² This distinction, which was not fully acknowledged in the early royal law codes, played a crucial role in determining more equitable justice. The *Poenitentiale Theodori* outlines a clear hierarchy of culpability based on intent and circumstance. If someone kills another out of anger (*iram*), the penance shall be three years; if the act is accidental (*casu*), it shall be one year; if the killing occurs through potion or deceit (*poculum vel artem aliquam*), the penance extends to seven years; and if it results from a quarrel (*rixam*), it demands ten years of penance.⁸³ This ranking demonstrates a systematic approach to evaluating the moral weight of an offence, with premeditated or deceitful actions receiving harsher sentences than those stemming from impulsive or unintentional circumstances. Quarrels, viewed as the most severe due to their potential to escalate and involve deliberate choices leading to violence, are punished most harshly. In

long fast, that is, as others judge, for capital crimes, that is, adulteries, homicides, perjury, smoking and the like – a layman shall do four years, clerics five, a subdeacon six, a deacon seven, a presbyter ten, a bishop twelve, if it is customary).

⁸⁰ Jorgensen, 'Historicizing Emotion: The Shame-Rage Spiral in Ælfric's *Life of St Agatha*', *English Studies*, 93:5 (2012), 529–38.

⁸¹ *Ibid.*, pp. 531–2.

⁸² On these distinctions, also see Meens, 'Penance and Satisfaction', p. 220.

⁸³ *Poenitentiale Theodori*, I. 4.7: 'Si per iram III. Annos; si casu I. annum; si per poculum vel artem aliquam IIII. annos aut plus; si per rixam X. annos peniteat'.

contrast, accidental killings, which lack malicious intent and are often the result of unfortunate circumstances, are granted a lighter sentence. Anger and deceit, as emotional motivators for violence, are also differentiated in terms of their moral weight. Deceit, in the form of poisoning, involves a hidden and treacherous element, introducing a level of secrecy that amplifies the dishonour associated with the act.⁸⁴ In contrast anger, while considered a destructive emotion, is seen as a more understandable and forgivable catalyst for violence, as it can be prompted by perceived insults or affronts to honour. Thus, while vengeance in anger is still treated as shameful, the social context of early medieval England was such that acts considered to be culturally more honourable tended to receive lighter or less severe penalties.

In recognising these distinctions, confessors could help prevent further bloodshed and assess the level of shame and remorse the penitent should feel when delivering their judgment. Since confessors were responsible for instilling shame and remorse in the resolution process, it was essential to evaluate every aspect of the violent act itself. The penitentials reveal that less intentional acts of violence should reduce the moral culpability of the perpetrator, which in turn could influence the severity of the shame imposed. This appears to have been a more holistic way of ensuring that there was no retaliatory violence, at least theoretically. A confessor needed to berate the perpetrator to not only pay the victim's family, but press them to also consider the danger now placed onto their soul and the employment of penitential shame was the method in which spiritual authorities were able to do so. This reminder ultimately served to instil a sense of premeditated shame in those contemplating retaliation, deterring them from resorting to further violence and instead encouraging forgiveness and reconciliation. Next, we will see how this penitential logic extended into the late royal laws.

3. Injury, Compensation, and Care: 'Sick-Maintenance' in Alfred's *Domboc* and the *Scriftboc*

By the late ninth century, such ecclesiastical principles began to merge more explicitly with royal law. King Alfred (r. 871–899) made strategic use of written law to articulate his vision of social order, with a merging of religious justifications for the imposition of penitential justice. Alfred's *Domboc* (The Book of Judgements), blends Christian principles with cultural customs, grounding his laws both divine

⁸⁴ On the association of acts considered dishonourable because of their supposed secrecy, see Lambert, 'Theft, Homicide, and Crime', p. 9.

authority and within an already established legal tradition.⁸⁵ The influence of penance in Alfred's law, for example, shows that his law is a reflection of an emerging model of law that sought to address spiritual matters, with the law extending 'inward into the soul', to borrow O'Brien O'Keeffe's words.⁸⁶ Alfred's *Domboc* demonstrates a clear influence of penitential logic. Rather than solely relying on traditional forms of compensation to restore honour for affronted victims, Alfred's code incorporates elements of penance, reinforcing the idea that conflict resolution can restore honour and simultaneously internalise shame.

To demonstrate, we can compare the logic in Alfred's law to a contemporary penitential during his reign, the *Scriftboc*, on their views on injury and 'sick-maintenance'. Here we see different perspective on injury in contrast with the methods seen in the early royal law codes. In most Latin penitential traditions in medieval Europe, whether Irish, English, or from the Continent, the concept of 'sick-maintenance' derives from Exodus 21:18–19:

Si rixati fuerint viri et percusserit alter proximum suum lapide vel pugno, et ille mortuus non fuerit sed iacuerit in lectulo, si surrexerit et ambulaverit foris super baculum suum, innocens erit qui percussit; ita tamen ut operas eius et impensas in medicos restituat.⁸⁷

If men quarrel and one strikes his neighbour with a stone or with his fist, and he is not dead, but is bedridden, if he gets up and walks outside on his staff, the one who struck will be innocent; however, he must pay for this labour and the expenses of the physicians.

Oliver best summarises the purpose of sick-maintenance as 'the responsibility of a person who has grievously injured another to provide for the victim until he is able to work'.⁸⁸ Sick-maintenance demonstrates a principle of personal responsibility and restitution within the context of Mosaic law, providing guidelines as to handle a situation in which injuries might have been sustained.⁸⁹ Whether the

⁸⁵ David Pratt, *The Political Thought of King Alfred The Great* (Cambridge: Cambridge University Press, 2007), pp. 222–32; Todd Preston, *King Alfred's Book of Laws: A Study of the Domboc and Its Influence on English Identity, with a Complete Translation* (London: McFarland and Company, 2012), pp. 18–24; Jurasinski and Oliver, *The Laws of Alfred*, pp. 55–69.

⁸⁶ O'Brien O'Keeffe, 'Body and Law', p. 230.

⁸⁷ See *Vulgate*.

⁸⁸ Oliver, 'Sick-Maintenance in Anglo-Saxon Law', *The Journal of English and Germanic Philology*, 107:3 (2008), 303–326, at p. 304.

⁸⁹ On sick-maintenance, see Jurasinski and Oliver, *The Laws of Alfred*, p. 68; Jurasinski, 'Sick-Maintenance' and Earlier English Law', p. 74–91; Jurasinski, 'Violence, Penance, and Secular Law', pp. 25–42. Oliver, 'Sick-

act was deemed intentional or not is not specified. The emphasis, however, rests with dealing out the appropriate compensation necessary to ensure that the victim receives enough care and support needed to recover. Compensation in this circumstance is uniquely specified as both restitution and repair as a way to make further amends beyond financial requirements as it also encompasses the injurers' obligation.

Though the Biblical ordinance was integrated into two Irish penitentials – the *Poenitentiale Columbani* (c. 600) and the *Poenitentiale Cummeani* (c. 650) – the clause did not find its way into the early medieval English penitential tradition until the Old English penitentials were copied, translated, and modified from these neighbouring Irish penitential traditions.⁹⁰ Nevertheless, Jurasinski notes that, where attested in the Latin tradition, the Old English penitential tradition also follows the 'language of Exodus'.⁹¹ Thus, whether they are seventh-century Latin derivatives of the Exodus clause, or whether they are later Old English translations, the concept of 'sick-maintenance' usually contains the same premise. These ordinances made their way into later ninth century Old English texts such as Alfred's *Domboc* and the *Scriftboc*. The Old English translation in Alfred's Mosaic Prologue essentially carries the same meaning to the original Exodus passage:

Gif hwa slea hys ðone nehstan mid stane oððe mid fyste, 7 he þeah utgongan mæge bi stæfe,
begite him læce 7 wyrce his weorc þa hwile þe he self ne mæge.

Maintenance', pp. 303–326; Calvert Watkins, 'Sick-Maintenance in Indo-European', *Ériu*, 27 (1976), 21–25; Daniel A Binchy, 'Sick-Maintenance in Irish Law', *Ériu*, 12 (1938), 78–134.

⁹⁰ Jurasinski argues that the example of sick-maintenance found in the *Scriftboc* was likely inspired by the Irish penitential ascribed to Cummean: "Qui per rixam ictu debilem uel deformem hominem reddit, inpena in medicos curat et maculae pretium et opus eius donec sanetur restituat et dimidium anni peniteat. Si uero non habeat unde restituat haec, .i. annum peniteat" (He who by a blow in a quarrel renders a man incapacitated or maimed shall meet [the injured man's] medical expenses and shall make good the damages for the deformity and shall do his work until he is healed and do penance for half a year. If he has not the wherewithal to make restitution for these things, he shall do penance for one year). Quote and translations are taken from Jurasinski, 'Sick-Maintenance' and Earlier English Law', p. 79.

⁹¹ The *Old English Heptateuch* also denotes a similar extract Gif men cidað and hira oðer hys nextan mid stane wyrpð oþpe mid fyste slicþ, and he dead ne bið ac lið on bedde seoc, gif he arist and ut gæþ mid his staf, he bið unschildig þe hine sloh; gylde swa þeah his weorc and þæt hine man hæle." (If men quarrel, and one of them throws a stone at the other or beats him with his fist, and he is not dead but lies sick in his bed; if he rises and goes out with his staff, he who injured him is without blame; let him pay nonetheless for his work and so that he may be healed). This is also the case for all subsequent Latin penitential attestations. Quotation and translation from Jurasinski, 'Sick-Maintenance' and Earlier English Law', p. 79.

Chapter Two – Violence and Conflict Resolution

If someone strikes his neighbour with a stone or with a fist, and he goes about with a staff to walk, let him obtain a physician for him and perform his work while he is unable.⁹²

It is in the *Scriftboc*, however, that we see a variation of sick-maintenance, which incorporates something similar to Æthelberht's clause referring to injury of the genitalia:

Swa hwylc man se ðe in gecynde oðerne gedo wanhalne oððe hine **womwlite** on gewyrce, forgyldde him þone **womwlite**, and his weorc wyrce oð þæt seo wund hal sy, and þæt læcefeoh ðam læce gylde, and fæste twa æfestena oððe þreo; gyf he nyte hu he hit gylde, fæste XII monað.⁹³

If anyone injures another in the genitals, or inflicts **personal disfigurement** upon him, he shall compensate him for the **personal disfigurement**, and he shall do his work for him until the wound heals, and he shall pay the physician's fee, and he shall fast for two or three periods [months]; if he cannot pay compensation, then he shall fast for twelve months.

Examining these two clauses in detail reveals the shared understanding between kings and ecclesiastics regarding the role and impact of violence within society. Both groups, despite their differing spheres of authority, were deeply concerned with the consequences of violent actions and sought biblical instruction to regulate it. The second ordinance laid out in the *Scriftboc* in particular, essentially parallels clause 64 in Æthelberht's code, which we addressed above. This shows that ecclesiastics recognised the profound affront to honour such an injury would cause. Analysing the terminology in the *Scriftboc* is crucial for understanding the emotional distress a victim might experience, which Æthelberht's clause does not explicitly address. As Jurasinski recognises, the phrase used here, 'womwlite', though difficult to translate seems to be akin to 'personal disfigurement': 'wom/wamm' can refer to concepts close to personal injury in addition to physiological injuries, such as 'moral stain, disgrace or defilement'.⁹⁴ The term is analogous, or at least somewhat akin to 'appearance' and it can also mean face, but in a more abstract way.⁹⁵ Binchy suggests that the term mirrors the Old Irish term *enech*, meaning 'face,'

⁹² Af El 16.

⁹³ *Scriftboc*, p. 186.

⁹⁴ Jurasinski, 'Sick-Maintenance' and Earlier English Law', p. 85.

⁹⁵ Jurasinski cites the poem Maxims I in the Exeter Book to suggest the association of *wamm* with appearance. I quote Jurasinski's translation here: 'Word gespringeð, oft hy mon wommum bilihð / hæleð hy hospe mænnað, oft hyre hleor abreopeð' ('Word spreads, often she is encompassed with shameful [accusations], men speak of her insultingly, often her face [complexion?] becomes marred'). See Ibid.

which takes on the legal meaning of honour in which ‘face-price’ is equivalent to ‘honour-price’.⁹⁶ The inclusion of an injury tariff melded with Biblical ordinance suggests that as with their secular counterparts, ecclesiastics also purported ideas about the preservation of honour and what could generate dishonour.

However, a distinction emerges in the handling of injury and conflict resolution and its repercussions on personal honour. Æthelberht’s injury tariff, as outlined above, emphasises a pragmatic approach to resolving disputes over sustained injuries. The focus is primarily on material compensation proportional to the severity of the injury inflicted and its damage to personal honour. The underlying assumption is that compensation can effectively mend the breach in honour and restore justice. In stark contrast, the confessor’s approach to injury, rooted in Biblical ordinance, introduces a more holistic approach to the problem outlined in Æthelberht’s earlier law, extending the impact of injury beyond immediate physical harm and loss of honour. While compensation remains an essential component, the *Scriftboc* also mandates taking care of the injured. Indeed, both Alfred’s Mosaic Prologue and the *Scriftboc* have a shared recognition that injury sustained through violence could lead to long-term consequences, such as the deterioration of the victim’s health, which might only become apparent months later if the wound was serious. Simply paying monetary compensation at the time of the injury might not suffice, as even minor wounds could fester, causing infections, prolonged incapacitation, or even death.⁹⁷ Such outcomes would further exacerbate the victim’s suffering and deepen their feeling of dishonour. Importantly, humiliation accompanied injuries of all kinds, not just egregious offences like genital mutilation, but also other acts such as bruises or wounds inflicted with a stone or fist. These injuries could also undermine the victim’s dignity, subjecting them to public embarrassment.

Therefore, in addition to the restoration of honour through compensation, the offender is also required to internalise a sense of shame as a means of personal reflection on their behaviour. This is achieved through fasting. This process of self-abasement aimed to foster genuine remorse and a sense of responsibility before reintegrating into the community.⁹⁸ Additionally, the offender is also required to perform the victim’s work as part of the reconciliatory process. This enforced labour functions as a form of embodied penance, in which shame and remorse is not simply acknowledged internally but is

⁹⁶ Binchy, *Críth Gablach* (Dublin: Institute for Advanced Studies, 1979), pp. 84–6. See Oliver’s commentary on this in *The Body Legal*, p. 102.

⁹⁷ Discussions on the impact of injuries are addressed in Oliver’s *The Body Legal* throughout.

⁹⁸ Meens, ‘Penance, Shame and Honour’, pp. 89–102.

made habitual and visible through repeated acts of service. Every task performed for the victim becomes a public reminder of the offender's wrongdoing. The offender's work thus becomes a living symbol of his indebtedness that would have been witnessed and interpreted by the wider community. Jurasinski offers an interesting argument as to why the requirement that an offender perform labour duties for their victim would, in itself, constitute an intentionally shameful and humiliating punishment. He argues that the *Scritiboc's* remedy for genital injury is best understood as a deliberate strategy of humiliation, designed to correct the offender's pride (*superbia*) through enforced shame.⁹⁹ Injury to the genitals (*wanhalne*) and the associated term *womwite* were not just physical harms but attacks on masculinity and social standing. These were gendered injuries, likely 'feminising' the victim in a society where bodily integrity and male honour were closely linked. Therefore, the prescribed remedy – making the offender work for his victim – intensifies this inversion of status. It temporarily reduces the offender to the social position of women, children, or slaves within the victim's household. This humiliation directly counters the offender's original act of violence, which might have been motivated by pride, dominance, or a desire to assert superiority.¹⁰⁰ Nevertheless, it is this shared sense of understanding of the consequences of injury and its repercussions which exemplifies how kings too were beginning to promote mediation, ensuring that there was a balance of justice that was both reconciliatory and punitive, and which crucially could lead to the internalisation of shame as part of the process of resolution.

4. Honour, Loyalty, and Lordship: Legitimising Violence and Ecclesiastical Challenges

Although it is clear that kings made a concerted effort to incorporate the moral and disciplinary principles of the penitentials into lay society, an important question remains: were such regulations on violence applied in the real world, given the strong cultural emphasis on revenge and honour? It is important to understand that cultural attitudes towards certain forms of accepted violence still persisted in the eighth century. Even as Christianity sought to challenge these practices, the warrior ethos Bede had recognised in the seventh century, with its emphasis on vengeance and the protection of honour, continued to influence behaviour. In particular, there is a strong emphasis on loyalty and lordship, which were central precepts to justify acts of violence. Demonstrating this is a key entry in the *Anglo-Saxon Chronicles* recorded in the year 755, which depicts the violent feud between two noble rivals, Cynewulf

⁹⁹ Jurasinski, 'Sick-Maintenance' and Earlier English Law', p. 89.

¹⁰⁰ Ibid.

and Cyneheard.¹⁰¹ Cynewulf was a king of Wessex (r. 757–786), while Cyneheard was the brother of Sigebert, a former king of Wessex whom Cynewulf had disposed. To maintain his position, Cynewulf wished to drive out Cyneheard. Unbeknownst to Cynewulf, however, Cyneheard attempted to plot against him. His actions were motivated by a personal vendetta, seeking revenge for his brother's shameful death at the hands of a 'swineherd' (an swan). Cyneheard clasped an opportunity to assume power by slaying the king at a moment of vulnerability with a handful of his kin members and loyal thegns. The king was visiting his mistress in Merantune (Merton), and Cyneheard, upon hearing this, took advantage of this moment. Learning that the king was there with few men, Cyneheard led an armed band of men to ambush him. The king's men were said to have fought fiercely to protect their Cynewulf, however the king was slain in the ensuing struggle. When the king's retainers learned of their lord's death, they rushed to avenge him. They tracked down the usurper, who was said to beg for his life by offering 'feoh ond feorh' (property and life).¹⁰² The response the attackers give demonstrates their motives for carrying out revenge: 'they replied that no kinsman was dearer to them than their lord, and they would never serve his slayer'.¹⁰³ Their subsequent killing of Cyneheard, the usurper, reinforces this commitment to upholding loyalty through vengeance.

It is the principle of unwavering loyalty, which prioritises the honouring of social obligations that is vividly portrayed in this story.¹⁰⁴ As Baker observes, 'the offer of 'feoh ond feorh' was not outrageous within the cultural logic of this time; rather, to refuse was considered the 'more honourable choice'.¹⁰⁵ Baker describes how honour was constructed on the notion that one demonstrate their steadfast loyalty to their lord, even if further violence could result. While early Christianity, with its emphasis on peace and reconciliation, had begun to influence early medieval English society, the story of Cynewulf and

¹⁰¹ ASC 755. It is Stephen White's assumption that 'although the entry in the manuscript is for the year 755, editors routinely assume that it treats a sequence of events beginning in 757 and ending in 786'. See White's footnote in 'Kingship and Lordship in Early Medieval England: The Story of Sigebert, Cynewulf and Cyneheard', *Viator*, 20 (1989), pp. 1-18, at p. 1. Francis Leneghan also references this discretion, see 'Royal Wisdom and the Alfredian Context of 'Cynewulf and Cyneheard'', *Anglo-Saxon England* 39 (2011), 71–104, at p. 71.

¹⁰² ASC E 755, p. 38.

¹⁰³ 'þa cweðon hig þet heom nænig mæg leofra nære þone heora hlaforð & heo næfre his banan folgian noldon'. ASC E 755, p. 38.

¹⁰⁴ White, 'Kingship and Lordship', pp. 1-18, Leneghan, 'Royal Wisdom', pp. 71–104; Hyams, 'Feud and the State', p. 6.

¹⁰⁵ Baker, *Honour, Exchange and Violence*, p. 178. On ties of honour and loyalty see Cowell, *The Medieval Warrior Aristocracy*, pp. 66–76; Woolf, 'The Ideal of Men Dying with Their Lord', pp. 63–81; Gwara, *Heroic Identity*, pp. 271–3; Pratt, 'The Political Thought of King Alfred', p. 233.

Cyneheard reflects a tension between Christian ideals and the prevailing warrior ethos. The violence in the story can be seen as contradictory to Christian values that shamed violence and emphasised forgiveness. What we observe in the late ninth-century laws of King Alfred is the explicit permission of violence that reinforces the hierarchical bonds of loyalty and service as depicted in the *Chronicle*. Under Alfred's laws, men were permitted to fight on behalf of their lords without the fear of incurring vendettas or retribution.¹⁰⁶ Yet, this raises a larger ethical problem: to what extent were subordinates held morally accountable for following orders that might otherwise be considered immoral? His laws seems to imply that the answer was not at all. By absolving followers from their participation in committing violence under a lord's command, the law prioritised loyalty in this moral dilemma. This legal sanctioning of violence in the context of lordship suggests that such some acts of revenge were a necessary part of fulfilling one's honourable duty.

At first glance, Alfred's legal justification for revenge may seem to contradict the Christian message of reconciliation over violence. However, his approval of violence in defence of a lord does not grant individuals the unrestricted right to seek revenge on their own terms. Indeed, Alfred explicitly condemns violent retaliation:

The man who slays someone willingly, let him suffer death. However, he who slew him out of necessity or unwillingly or accidentally, as God sent to his hands, and he did not lie in wait: let him be worthy of life and of the remedy permitted by folk-right, if he should seek a place of refuge. But if someone with deliberation and intent slays his neighbour through deceit, take him away from my altar, that he may suffer death.¹⁰⁷

Instead, Alfred framed his laws from a Christian perspective, viewing treachery against one's lord – especially the king – as an unforgivable offence, warranting the death penalty:

... they then established, because of the mercy that Christ taught, that worldly lords might with their leave, without sin receive payment that they [the bishops] established at the first offence for most of those misdeeds; but for betrayal of one's lord they dared not proclaim any mercy, for God almighty judged none for those who despised him, nor did Christ, God's son, grant any

¹⁰⁶ Af 42.5.

¹⁰⁷ Af El 13: 'Se mon se ðe his gewældes monnan ofslea, swelte se deaðe. Se ðe hine þonne nedes ofsloge oððe unwillum oððe ungewældes, swelce hine God swa sende on his honda, 7 he hine ne ymsyrede, sie he feores wyrðe 7 folcryhtre bote, gif he friðstowe gesece. Gif hwa ðonne of giernesne 7 gewældes ofslea his þone nehstan þurh searwa, aluc ðu hine from minum weofode, to þam þæt he deaðe swelte'.

[mercy] to those who gave him to death, and he laid down [that one should] love one's lord just as oneself.¹⁰⁸

Alfred sought biblical precedent, such as God's punishment of idolaters in Exodus and Christ's condemnation of Judas who betrayed his lord Jesus to justify his response.¹⁰⁹ Alfred also positions himself in such a situation whereby he might face treachery: 'If someone plots against the king's life, either by his own actions, or by the harbouring of those who have been banished or of his men, let him be liable for his life and all that he owns'.¹¹⁰ This marks the introduction of England's first treason law (hlafordsearo), an idea similar to the Roman 'laesae maiestatis' (injured majesty) and Continental Germanic traditions, especially Carolingian, reinforcing kingship's public significance.¹¹¹ By doing this, Alfred was able to draw a parallel between betrayal of a lord and betrayal of God or Christ, thus shaping his ideal version of kingship in line with that of the broader emerging tradition of sacral kingship, where the king was central to the order of the realm and was divinely appointed.¹¹² In doing so, he was able to reconcile traditional values of honour and fealty with Christian teachings about service to a lord.

The most striking aspect of this is how penitentials address violence committed in defence of a lord. The *Poenitentiale Theodori*, for example, demonstrates that despite ecclesiastical disapproval of violence, offenders faced little punishment if they slew someone at the command of their lord: 'He who kills a man by the command of his master shall abstain from the church for forty days, and he who kills a man in public war shall repent for forty days'.¹¹³ The lack of a more severe penitential sentence for killings committed under the command of a lord suggests that such violence, though still sinful and thus

¹⁰⁸ Af El 49.7: '...hie ða gesetton, for ðære mildheortnesse þe Crist lærde, æt mæstra hwelcre misdæde þætte ða weoruldhlafordas moston mid hiora leafan buton synne æt þam forman gylte þære fiohbote onfon, þe hie ða gesettan; buton æt hlafordsearwe hie nane mildheortnesse ne dorston gecweðan, forþam ðe God ælmihtig þam nane ne gedemde þe hine oferhogdon, ne Crist Godes sunu þam nane ne gedemde þe hine to deaðe sealde, 7 he bebead þone hlaford lufian swa hine'. On the ideology of lordship and its ties to Biblical authority, see Fruscione, 'Beginnings and Legitimation', p. 41; Pratt, *The Political Thought of King Alfred*, pp. 214–22.

¹⁰⁹ Pratt, *The Political Thought of King Alfred*, p. 233.

¹¹⁰ Af 4: 'Gif hwa ymb cyninges feorh sierwe, ðurh hine oððe ðurh wreccena feormunge oððe his manna, sie he his feores scyldig 7 calles þæs ðe he age'.

¹¹¹ Fruscione, 'Beginnings and Legitimation', p. 42. On the political ideology of treason, see Wormald, 'Giving God and King their Due', pp. 333–54.

¹¹² Fruscione, 'Beginnings and Legitimation', p. 42; Jurasinski and Oliver, *The Laws of Alfred*, p. 56.

¹¹³ *Poenitentiale Theodori*, I. 4.6: 'Qui per jussionem domini sui occiderit hominem, XL. diebus abstineat se ab ecclesia, et qui occiderit hominem in puplico bello XL. dies peniteat.'

deserving of penance, was, nevertheless, viewed as a lesser moral transgression compared to unauthorised, personal revenge. Evidently, then, the permissibility of violence in certain circumstances did not equate to an unrestricted acceptance of violent acts. Rather, kings carefully regulated it, distinguishing it between legitimate and illegitimate forms of retaliation. As Hyams puts it, royal courts were ‘willing to exert pressure against private actions they deemed illegitimate’.¹¹⁴ While royal law allowed individuals to engage in violence in defence of their lord or within sanctioned frameworks, it simultaneously condemned acts of vengeance that fell outside these prescribed boundaries. Ecclesiastical law, while still condemning the sin of violence, were nonetheless lenient in their approach. Thus, shame continued to be recognised in the process of spiritual redemption for violent offenders. It served as a necessary means for them to atone for their sins and secure a place in heaven. Still, political and religious justifications allowed for certain forms of violence, particularly those carried out in the defence of lordship, to remain honourable.

5. The Problem of Legitimate Violence: Reconciling Honour, Shame, and Sin in the Tenth and Eleventh Centuries

Seemingly, then, certain kinds of violence were tolerated due to this firmly established cultural attitude of honour that persisted over time. However, in the tenth century, while attitudes towards defending a lord remained unchanged, there was a noticeable shift in attitudes towards retaliatory violence. After Alfred’s death in 899, the laws of his predecessors continued to emphasise regulations designed to preserve peace and maintain order, though, before Edmund, they often provided limited direct focus on the regulation of violence itself. As we shall see in the next chapter, Edward the Elder’s laws (*r.* 899–924) primarily targeted the punishment of untrustworthy individuals who caused disturbances, and as for his son, Æthelstan (*r.* 894–939) he primarily concentrated on eliminating thieves who disrupted the peace, which we will discuss more of in Chapter Four. Thus, several decades after Alfred’s death in 899, efforts were made to reduce the prevalence of such violence, as his grandson, King Edmund, aimed to curtail the inherently destructive nature of feuding. In the prologue to his legal code, *II Edmund*, the king expresses his concerns surrounding the pervasive issue of violence in his kingdom, stating:

¹¹⁴ Hyams, ‘Feud and the State’, p. 4. On legitimate and illegitimate violence, also see Halsall, ‘Violence and Society’, pp. 7–16; Lambert, *Law and Order*, pp. 230–5.

Þonne ðuhte us ærest mæst ðearf, þæt we ure gesibsumnesse 7 geþwærnesse fæstlicost us
betweonan heoldan gynd ealne minne anwald. Me egleð swyðe 7 us eallum ða unrihtlican 7
mænigfealdan gefeoht ðe betwux us sylfum syndum.¹¹⁵

Now, it has occurred to us first of all that we must steadfastly maintain peace and concord among
ourselves throughout all my realm. I myself and all of us are greatly distressed by the manifold
illegal deeds of violence which are in our midst.

II Edmund gives us neither time nor place as evidence for this council, though it served as an important
platform for deliberation where Edmund sought guidance on how he could ‘best promote Christianity’
(Cristendomes mest aræran).¹¹⁶ Edmund’s vision for maintaining peace rested on the Christian ideal of
all believers being part of a single spiritual kinship, united by mutual charity and a commitment to
harmonious coexistence.¹¹⁷ This notion of Christian unity is captured in the concept of ‘gesibsumnesse’
(peace) which, as Lambert highlights, draws from the Christian ideal of a unified, ‘imitative family’.¹¹⁸
Invoking this ideal meant that Edmund sought to position himself as a paternal figure for his people,
echoing Christ’s role as the head of the Christian family.

This idea of society as an extended Christian family, with the king as its head, was not unique to
Edmund. The allegory is biblical and it had previously been articulated by the Carolingians, whose
governance and legal reforms served as a source of inspiration for the English king.¹¹⁹ To borrow
Wormald’s observation, Charlemagne, a ruler whose texts may well have been accessible to English
law-makers by Edmund’s time, recognised that Christian notions of ‘peace and unanimity’ were
fundamentally incompatible with the cycle of vengeance. In principle, Charlemagne sought to prohibit
feud outright, envisioning a society where Christian charity and unity would replace retributive
violence. Edmund too later drew on the Carolingian model to craft laws that similarly aimed to curb

¹¹⁵ *II Em Prologue* 2.

¹¹⁶ *II Em Prologue*.

¹¹⁷ Paul J.E. Kershaw, *Peaceful Kings: Peace, Power, and the Early Medieval Political Imagination* (Oxford, Oxford University Press, 2011), pp. 140–1.

¹¹⁸ Lambert, *Law and Order*, p. 225.

¹¹⁹ This is particularly evident in the importance of swearing oaths of allegiance to Carolingian kings, a practice later adopted by English kings, see Abels, *Lordship and Military Obligation in Anglo-Saxon England* (University of California Press, 1988), pp. 81–87; Lambert, *Law and Order*, pp. 210–13; Wormald, ‘Lex Scripta and Verbum Regis’, p. 12.

vendettas and promote reconciliation.¹²⁰ By assembling both spiritual and royal authorities to address these issues, Edmund emulated the Carolingian tradition of integrating religious ideals into governance. His approach reflected a deliberate attempt to frame his kingship as divinely sanctioned and morally grounded, using Christian principles to bridge divisions within an increasingly diverse kingdom.

Regarding the practical implementation of these solutions, the king and his advisors detailed their strategy for curbing violence and creating more efficient methods of resolving conflict. Central to this reform was the principle that ‘the slayer alone shall bear the feud’ (þæt he wege sylf ða fæhðe), unless compensation was paid with the help of the slayer’s friends or kin.¹²¹ By isolating the responsibility for violence to the individual perpetrator, Edmund sought to prevent feuds from spiralling into broader family or community conflicts. If the slayer’s kin refused to pay compensation, Edmund mandated that they disown the offender entirely, providing neither food nor shelter. This deliberate ostracism severed kinship ties and ensured that the kin would no longer bear financial liability for reparations to the victim’s family. In doing so, the disowning family was legally protected from acts of retaliatory violence by the aggrieved party, effectively disrupting the cycle of vengeance that so often perpetuated ongoing conflict. To ensure compliance, Edmund imposed severe penalties on those who violated these terms. Any individuals or families who offered aid to the slayer or participated in the feud faced the forfeiture of their property as punishment. As for the slayer, the repercussions were twofold: in addition to their obligation to make reparations to the victim’s kin, they were also required to undertake penance to address the spiritual and moral dimensions of their crime:

And I declare, that I forbid anyone that has shed blood to have right of access to my household, until he has undertaken penance as the Church requires, and has made, or set about making,

¹²⁰ Wormald, *The Making of English Law*, p. 311. On the similarities between Edmund and Charlemagne’s law, also see Guy Halsall, ‘Violence and Society in The Early Medieval West: An Introductory Survey’, in *Violence and Society in The Early Medieval West* (Woodbridge: The Boydell Press, 1998), p. 25.

¹²¹ II Em 1: ‘Gif hwa heonanforð ænigne man ofslea, þæt he wege sylf ða fæhðe, butan he hy mid freonda fylste binnan twelf monðum forgylde be fullan were, sy swa boren swa he sy. Gif hine ðonne seo mægð forlæte 7 him foregyldan nellen, ðonne wille ic þæt eal seo mægð sy unfah, butan ðam handædan, gif hy him syððan ne doð mete ne munde. Gif ðonne syððan hwilc his maga hine feormie, ðonne beo he scyldig ealles ðæs þe he age wið ðone cyning, 7 wege ða fæhðe wið þa mægðe, forðam hi hine forsocan ær. Gyf ðonne of ðære [oðre] mægðe hwa wrace do on ænigum oðrum men butan on ðam rihtanddædan, sy he gefah wið ðone cyning 7 wið ealle his frynd 7 ðolie ealles ðæs he age’.

reparation to the kin, and has submitted to every legal penalty prescribed by the bishop whose diocese it is.¹²²

Edmund's strategy embodies a synthesis of Christian values and pragmatic law enforcement by combining spiritual accountability with compensation. The spiritual motivations behind Edmund's legislative reforms are evident in his collaboration with prominent ecclesiastical figures, such as Oda and Wulfstan I, in promulgating his first law code. Issued 'for the welfare of their own souls and the souls of those who have been placed under their charge', *I Edmund* primarily addressed ecclesiastical matters, showcasing the Christian duty of governance.¹²³ Similar to his provision outlined in *II Edmund*, which forbids access to the king's household should they commit homicide, *I Edmund* also states that 'if anyone sheds the blood of a Christian man, he shall not come anywhere near the king until he proceeds to do penance, as the bishop appoints for him or his confessor directs him'.¹²⁴ This reflects Edmund's effort to root justice in a religious framework where reconciliation with God was as essential as reconciliation with earthly authorities.

Edmund's emphasis on penance is important here as it demonstrates the use of shame as a new royal tool of social control that was shaped by ecclesiastical influence. By isolating offenders, demanding spiritual repentance, and tying justice to religious obligation, Edmund's laws used shame to both punish and reintegrate. Firstly, by incorporating penitential sentences into his law, he sought to guide offenders to seek out forgiveness through a process of remorse and reconciliation, thus also promoting the Christian virtue of offering salvation to sinners. Edmund placed offenders into the hands of confessors. Thus, it was they who became empowered to impose forms of penance specifically designed to evoke and display shame. Secondly, *II Edmund* expels violent offenders from the king's court to purify it from killers living in sin. *II Edmund* states that the king forbids anyone to have access to the king's household until they have made amends as the Church requires and has paid their dues.¹²⁵ This was similarly decreed in his older law code which also states 'if anyone sheds the blood of a

¹²² II Em 4: 'Eac ic cyðe, þæt ic nelle scone habban þone ðe mannes blod geote to minum hirede, ær he hæbbe godcunde bote underfangen 7 wið ða mægðe gebet on bote befangen 7 to ælcum rihte gebogen, swa biscop him tæce ðe hit on his scyre sy'.

¹²³ I Em Prologue 1: '...smeagende ymbon heora sawla ræd 7 þara þe him underþeodde wæron'.

¹²⁴ I Em 3: 'Gif hwa Cristenes mannes blod ageote, ne cume he na on ðæs cyninges neawiste, ær he on dædbote ga, swa him biscop tæce 7 his scrift him wisige'.

¹²⁵ II Em 4: 'Eac ic cyðe, þæt ic nelle scone habban þone ðe mannes blod geote to minum hirede, ær he hæbbe godcunde bote underfangen 7 wið ða mægðe gebet on bote befangen 7 to ælcum rihte gebogen, swa biscop him tæce ðe hit on his scyre sy'.

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Christian man, then they shall not come anywhere near the king, unless they make amends according to what their confessors prescribes'.¹²⁶ Edmund's law code shames perpetrators for committing homicide, ostracising them from the king's court in order to protect the sanctity of kingship.¹²⁷ Hence, *II Edmund* played a complementary role in promoting honour and shame: on the one hand, it punished those who committed homicide through penance and excommunication, and on the other, it recognised the legitimacy of certain controlled violence with cultural norms concerning restorative modes of justice. Noticeably, then, there is a distinct shift from the seventh-century approach, where violence was primarily addressed through compensation, rather than through the internalisation of shame as a fundamental part of conflict resolution.

Though it is clear that Edmund's legal reforms were rooted in religious motivations, interpreting them as a straightforward rejection of violence, leading to the decline of honour and the imposition of shame through penance, risks oversimplification. This brings us to the question of what Edmund means by 'unrihtlican gefeoht' (illegal violence). If certain forms of violence were deemed illegal, what then constituted legal violence in this framework? Lambert has cautioned against interpreting *II Edmund* as a simple, black-and-white prohibition of violence. According to Lambert, Edmund's legal reforms did not seek to abolish violence entirely but to regulate and contain it within boundaries that preserved Christian peace and unity.¹²⁸ The king's primary concern was not violence itself but the destructive consequences of violent feuds, which threatened both communal stability and spiritual cohesion. In this sense, Edmund's laws condemned not all violence but rather those acts of violence that disrupted Christian peace and undermined the unity of his kingdom.

Understanding what was meant by illegal violence provides a clearer context for interpreting Edmund's perspective, but what of legal violence? Did Edmund permit violence under specific circumstances? Lambert provides further insight here, arguing that culturally, the act of feuding was intricately tied to personal and social identity. For free men, the right to bear arms and the readiness to use violence in defence of honour and order were fundamental aspects of their status and masculinity.¹²⁹

¹²⁶ II Em 3: 'Gif hwa Cristenes mannes blod ageote, ne cume he na on ðæs cyninges neawiste, ær he on dædbote ga, swa him biscop tæce 7 his scrift him wisige'.

¹²⁷ Whitelock, *English Historical Documents*, p. 363; William A. Chaney, *The Cult of Kingship in Anglo-Saxon England: the transition from paganism to Christianity* (Manchester: Manchester University Press, 1970), pp. 213–17.

¹²⁸ Lambert, *Law and Order*, pp. 225–7.

¹²⁹ *Ibid*, pp. 227–30.

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Edmund's approach to ensure justice here thus reflects a complex balance between curbing excessive violence and preserving traditional horizontal approaches to restore honour. His law code aimed to punish kin members in participating in what he perceived to lead to cycles of violence detrimental to the broader Christian community. This was an attempt to protect unnecessary spilling more Christian blood. If the feud could be avoided, then generally, it was the aim of his law to promote reconciliation between aggrieved parties and ascribe penance to the offender. Edmund thus preferred to administer justice in this way. Yet, while Edmund's law still absolves uninvolved kinsmen of legal responsibility for the slayer's actions, it does not completely forbid retributive violence, as 'he [the slayer] alone must bear the feud'. It must not be assumed therefore that it was the desire of kings to assert a complete monopoly over violence. Rather, the ideal was that kings should be at least be 'perceived' as capable enough to limit feuding practices, at least in certain circumstances. This led to a mixed approach when dealing with the ethics of violence. Indeed, his law should be understood as a complementary role of maintaining royal punishment and legitimate feuding.¹³⁰

Thus, while honour certainly remained an important framework for legitimising certain forms of violence, what can also be observed here is that growing efforts were made in later period by kings and ecclesiastics to isolate violent offenders from the wider community more than ever before. According to Lambert, this reached its zenith in the late tenth and eleventh centuries in particular as violence was no longer treated solely as a disruption to social order or a private matter between kin groups; rather, there began a heightened sensitivity to the idea that acts of violence were also acts of spiritual 'pollution', to borrow Lambert's phrasing, capable of corrupting the offender and the wider Christian community if left unrepented.¹³¹ It is here that we see a broader ideological shift, inspired in part by Carolingian reform traditions under Louis the Pious, which imagined the kingdom itself as a kind of penitential state.¹³² This ultimately culminated by the eleventh century, as Wulfstan pushed the idea that violent offenders should be cast out of society in order to spiritually purify the nation: 'Here in the country, as it may appear, too many are sorely wounded by the stains of sin. Here there are, as we said before, manslaughterers and murderers of their kinsmen, and murderers of priests and persecutors of

¹³⁰ Lambert, *Law and Order*, p. 7

¹³¹ On sin as a pollution to the Christian community, see Lambert, *Law and Order*, pp. 220–23.

¹³² See Lambert, *Law and Order*, pp. 216–18. On the terminology, see Mayke de Jong, *The Penitential State: Authority and Atonement in the Age of Louis the Pious, 814–840* (Cambridge: Cambridge University Press, 2009).

monasteries...'.¹³³ Shame, in Wulfstan's view, was something that arose not from internal shame but from an individual's standing and reputation within their community – their kinsmen.

In *Sermo Lupi ad Anglos*, Wulfstan uses shame as a rhetorical tool to criticise the English for both their moral failings and their defeat at the hands of foreign enemies, namely the Danes. He claims that the English had become more 'ashamed of doing good' than of committing sins.¹³⁴ Frantzen contends that this is a striking inversion: rather than feeling shame for bad behaviour, people were embarrassed by virtue or repentance – an indication, for Wulfstan, of how morally disordered society had become.¹³⁵ Wulfstan describes shame as operating in two particularly harmful ways. First, shame discouraged people from repenting, since performing public penance carried a social stigma. Second, shame also deterred people from doing good deeds, because acting virtuously – in a society he considered to be dominated by widespread sin – risked attracting ridicule or scorn. In this way, shame could both prevent confession and suppress moral behaviour. However, while public penance might be humiliating for some, Wulfstan believed that fear of divine punishment was powerful enough to overcome the shame that kept sinners silent. Consequently, his efforts in drafting late royal laws began to place far greater emphasis on shaming the offender through exile. This was a necessary step towards cleansing the community of moral corruption.¹³⁶ Rulers had thus now assumed responsibility for protecting the kingdom's spiritual purity through the moral regulation of their subjects. Repentance through the internalisation of shame had become central to restoring the honour of the community.

6. Conclusions

These findings demonstrate that by the late ninth century, there was a common understanding of violence and conflict resolution, with kings making significant efforts to incorporate confession and penance into the processes for addressing violence. Unlike in the seventh century, when such concepts were not present in their laws, kings now viewed shame and remorse as important pathways for resolving conflict and achieving spiritual salvation. However, it must be said that despite these efforts to impose a more penitent and spiritual framework, the honour remained a central pillar of conflict

¹³³ 'Her syndan þurh synleawa, swa hit þincan mæg, sare gelewede to manege on earde. Her syndan mannslagan 7 mægslagan 7 mæsserbanan 7 mynsterhatan...'. *Sermo Lupi Ad Anglos*, pp. 49–51.

¹³⁴ 'Hy ne scamað na þeah hy syngian swyðe 7 wið God sylfne forwyrcean hy mid ealle, ac for idelan onscytan hy scamað þæt hy betan heora misdæda, swa swa bec tæcan'. Ibid, pp. 48–9.

¹³⁵ Frantzen, *The Literature of Penance*, p. 178.

¹³⁶ I Em 3; II Em 4; V Atr 29; VI Atr 36; Cn 1018 7–10:1; II Cn 6; EGu 11.

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resolution. Both ecclesiastics and kings played a significant role in promoting compensation as an important means of resolving conflict and restoring honour to those who had been wronged. Ecclesiastical authorities, influenced by both early cultural Germanic traditions as well as Christian principles of forgiveness and reconciliation, viewed compensation as a way to facilitate peace and avoid the escalation of violence. The Church saw this practice as aligning with its teachings on penance and the restoration of spiritual harmony, offering a more moderate alternative to retaliation. Similarly, kings recognised compensation as a way to maintain social order and prevent cycles of vengeance that could undermine their authority and disrupt communal stability.

Ecclesiastics, while upholding the moral principles of the Church, acknowledged that in certain circumstances, violence could be tolerated, particularly when it was carried out in defence of a lord. In these cases, ecclesiastical authorities were more lenient, recognising that the duty of loyalty to one's lord was deeply ingrained in the social fabric of the time. As a result, if violence was committed in service to a lord, ecclesiastical authorities often imposed only small sentences or penances, acknowledging the importance of defending one's lordship and the role of honour in maintaining the social order. This tolerance of violence, particularly in the context of lordship, highlights the complex relationship between religious doctrine and the practical realities of this society, where loyalty and service to one's lord were paramount. However, this leniency was not extended to all forms of violence. The Church firmly rejected the idea of revenge killings, viewing them as spiritually degrading and thus offenders were shamed with lengthier penitential sentences.

It should be emphasised that although the legal system appears to skew in the direction of one that aimed to shame illegitimate forms of violence, the allure of honourable vengeance certainly continued to hold sway, particularly in matters when honour was at stake, and we must not underestimate the notion that vengeance had an important cultural place in societal norms which this persisted even until the late eleventh-century. Regulations like those of the *Cambridge Thegn's Guild* highlight how retributive violence, though institutionalised within collective agreements, was still permitted. These regulations explicitly endorsed vengeance as a legitimate response when compensation for a slain member was deemed insufficient, with the guild collectively bound to avenge

their comrade: ‘if the slayer scorns the compensation, let all the guildship avenge that guildmember, and all shall bear the feud’.¹³⁷

It is in the eleventh century that we also find one of the most frequently cited examples of feud in early medieval England. The dynamics of honour and revenge can be also found in the narrative from the *De Obsessione Dunelmi* (The Siege of Durham), a twelfth century text by Symeon of Durham (d. 1129), surrounding the conflict between the families of Earl Uhtred of Nortumbria (d. 1016) and Thurbrand the Hold (d. 1024).¹³⁸ The text depicts how families became embroiled in cycles of retributive violence, driven by the need to protect and restore familial honour. In this account, after Uhtred submitted to King Cnut, he was murdered in an ambush orchestrated by Thurbrand. This killing sparked a long-lasting cycle of violence between Uhtred’s descendants and Thurbrand’s family. Uhtred’s son, Ealdred (d. 1038), eventually avenged his father’s death by killing Thurbrand many years later. However, this act of retributive violence did not end the cycle. Instead, it continued for decades, with each side seeking to restore or defend their family through further acts of violence. The violence persisted into the next generation, with further killings involving Ealdred’s descendants.

Of course, like with Bede’s account regarding the feud between King Æthelred and King Ecgrith, it is important to recognise that like all of our narratives regarding feud, they recount the actions of aristocratic families whose wealth and power likely amplified the scale of their feuds. As such, these examples may not reflect the precise experiences of ‘regular’ lower-ranking people. Nevertheless, we must make do with the available sources, which, nonetheless, provide valuable insight into the cultural logic of honour, revenge, and familial obligation that underpinned disputes.

Lambert’s analysis of the text emphasises that feud and familial honour are concepts evident in the *De Obsessione Dunelmi*, where families are depicted as deeply entrenched in retaliatory violence, with each act of aggression spurring further retributive violence in a relentless cycle of familial honour and vengeance.¹³⁹ Fletcher echoes a similar perspective, arguing that ‘feuding cultures tend to be those which set a high value upon the maintenance of group, especially family honour; in which, as a

¹³⁷ ‘gif se stlaga þonne þa bote oferhogie, wrece eal gildscipe þone gildan, and eall beran’. *Diplomatarium Anglicum Ævi Saxonici: A Collection of English Charters from the Reign of King Æthelberht of Kent to That of William the Conqueror*, ed. Benjamin Thorpe (London, 1864), p. 611.

¹³⁸ *De Obsessione Dunelmi*, in *Symeonis Monachi Opera Omnia*, ed. Thomas Arnold, 2 vols, (London: 1882–5), pp. 215–20.

¹³⁹ Lambert, ‘Anthropology, Feud and De Obsessione Dunelmi’, p. 79.

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corollary, there is marked awareness of insult to honour and social shame'.¹⁴⁰ In such societies, the lines between justice and retribution blur, and violence transforms into a socially obligated means of restoring honour. In these contexts, the distinction between justice and retribution becomes increasingly blurred. The societal norms governing honour dictate that violence was a socially obligated response. There was a compelling impetus for families to engage in feuding. Each act of aggression is framed as a necessary step to uphold honour, thus perpetuating the cycles of violence that can span generations.

Thus, the coexistence of these systems demonstrates that there remained tension between ecclesiastical ideals and secular realities. It is difficult to pinpoint a clear stance that kings would have taken on this issue, as the balance between upholding traditional concepts of honour through violence and adhering to the more spiritual and penitential frameworks of justice presents a composite dynamic. On one hand, kings, like Edmund, often permitted or even endorsed violence in cases where compensation could not be made, recognising it as a legitimate means of restoring honour. However, on the other hand, ecclesiastics, with their strong moral and religious grounding, would likely have viewed such violence in a much more negative light, as they were focused on upholding Christian doctrine that framed vengeance as sinful. In summary, then, the concepts of honour and shame in relation violence reveals complex negotiation between traditional honour-bound values and evolving religious and legal norms. Though ecclesiastics sought to frame violence within a spiritual framework of shame, penance, and redemption, royal bodies continued to uphold the legitimacy of honourable violence, adapting it to new social and religious contexts.

¹⁴⁰ Fletcher, *Bloodfeud*, p. 9.

3.

Oath-Swearing and Perjury

The *Fonthill Letter* provides a particularly valuable example of how honour, in the form of reputation and status, shaped the process of oath-swearing in the resolution of legal disputes.¹ This document holds significance as the earliest surviving letter addressed to a king.² It is a petition addressed to King Edward the Elder (r. 899–924) by a West Saxon ealdorman named Ordlaaf, which recounts a long-running land dispute and series of legal confrontations that took place during the reign of Edward's father, King Alfred (r. 871–99). The events described in the letter took place between 897 and 901.³ The letter describes the events related to a particular individual called Helmstan, a wealthy landowner and godson to the petition's author, Ordlaaf. Helmstan's downfall begins when he is caught attempting to steal a belt, a crime that will come to tarnish his 'ryhtrace' (reputation, literally 'correct-account') as a known thief and undermine his ability to defend himself in court.⁴ This renders him vulnerable to exploitation by his neighbour, Æthelm Higa, who seeks to claim several of Helmstan's estates. In response, Helmstan turns to his godfather Ordlaaf for help. Ordlaaf, a figure of considerable reputation intercedes with King Alfred to restore Helmstan's legal standing. This intervention allows Helmstan to defend his property before a local court, conveniently overseen by Ordlaaf. Though Helmstan initially succeeds in defending his land, his subsequent theft of cattle from his neighbour leads to the permanent confiscation of his estates and the loss of his legal privileges namely his ability to swear an oath. As Rabin puts it, 'Those unable to produce the required number of supporters or with a reputation for wrongful behavior were

¹ S1445.

² The document is one of the most well-studied charters of early medieval England. See Keynes who provides an excellent breakdown of the events in 'The Fonthill letter', in *Words, Texts and Manuscripts: Studies in Anglo-Saxon Culture Presented to Helmut Gneuss on the Occasion of his 65th Birthday*, (eds.) M. Korhammer, K. Reichl and H. Sauer (Woodbridge: D.S Brewer, 1992), pp. 53–97. Also, Mechthild Gretsch, 'The language of the "Fonthill letter"', *Anglo-Saxon England* 23 (1994), 57–102; Brooks, 'The Fonthill letter, Ealdorman Ordlaaf and Anglo-Saxon law in practice', in *Early Medieval Studies in Memory of Patrick Wormald*, pp. 301–318; Mark Boynton and Susan Reynolds, 'The Author of the Fonthill Letter', *Anglo-Saxon England*, 25 (1996), 91–95; Scott Smith, 'Of Kings and Cattle Thieves: The Rhetorical Work of the Fonthill Letter', *The Journal of English and Germanic Philology*, 106:4 (2007), 447–67; Wormald, *The Making of English Law*, pp. 144–8; Rabin, 'Testimony and Authority in Old English Law: Writing the Subject in the "Fonthill Letter"', in *Law and Sovereignty in the Middle Ages and the Renaissance*, ed. Robert Sturges (Tempe: Arizona Center for Medieval and Renaissance Studies, 2011), pp. 147–65. Rabin, *Crime and Punishment*, pp. 43–45; Jurasinski and Oliver, *The Laws of Alfred*, pp. 98–101; Lambert, 'Theft, Homicide, and Crime', pp. 36–7.

³ Keynes, 'The Fonthill letter', p. 56.

⁴ ASD 'riht-racu'.

deemed not ‘aþ-wyrþe’ (oathworthy) and thus without the means to defend themselves or their property in court’.⁵ Helmstan’s neighbour accuses him of theft after noticing scratches on Helmstan’s face, which was caused by a bramble, suggesting Helmstan possibly had tried to crawl under or through a fence to steal his cattle. As punishment, the reeve seizes Helmstan’s property at Tisbury. Ordlaaf then takes control of Helmstan’s property, exchanging it with the bishop of Winchester for estates of equivalent value. However, Æthelm Higa remains relentless and renews his claim to Helmstan’s property. In response, Ordlaaf petitions King Edward to dismiss Higa’s claim once and for all, and a note on the letter’s records that Higa eventually withdrew his suit, suggesting Ordlaaf’s petition was successful. Helmstan is somewhat restored to his former status and granted some property by King Edward following Alfred’s death, after swearing an oath to King Edward at Alfred’s grave.

One of the most striking moments in the *Fonthill Letter* where the power of reputation and good personal connections comes to the fore is when Helmstan stands trial stealing a belt. Ordlaaf, his godfather steps in to defend him by requesting permission to swear an oath of innocence on his behalf because he: ‘onfongen æt biscopes honda’ (received him [Helmstan] from the bishop’s hand), when he stood sponsor for Helmstan at his confirmation.⁶ This suggests that the witness was the thief’s godfather. Thereafter, it is revealed that Ordlaaf convinced Alfred to intercede with the accusation made towards Helmstan, in order to exculpate him from the crime.⁷ As a result, Helmstan was able to maintain his reputation and his estates. The idea that a good reputation (ryhtrace), was enough to exonerate Helmstan is made evident in this passage from the letter:

Ða spæc ic him fore 7 ðingade him to Ælfrede cinge. Ða God forgelde his saule ða lyfde he ðæt he moste beon ryhtes wyrðe for mire **forspæce 7 ryhtrace** wið Æðelm ymb ðæt lond.⁸

Then I spoke for him [Helmstan] and interceded for him with King Alfred. Then, God may reward his soul, that he [Alfred] granted that he [Helmstan] has the right to the land, in relation to Æthelm, because of my **advocacy** and **reputation**.

⁵ Rabin, *Crime and Punishment*, p. 49. See also Marafioti, ‘Unconsecrated Burial and Excommunication’, p. 74. On the laws which declare this, see I Ew 3; II As 26.

⁶ S 1445.

⁷ The procedure whereby one swore an oath to deny culpability of an accusation of a crime can be referred to as either ‘exculpation’ or ‘compurgation’. See Oliver, *The Beginnings of English Law*, pp. 174–6; Hudson, *The Oxford History of the Laws of England*, pp. 81–4; Lambert, *Law and Order*, 253–61.

⁸ S 1445.

While Helmstan is lucky to get off the first time because of his good personal connections, the second time he is caught stealing cattle, he forfeited his legal right to swear an oath and became no longer *aðwyrþe*. Without an honest reputation, Helmstan would be viewed with suspicion, and thus his word would carry no weight in the eyes of the law. Expressing doubt over an individual's ability to swear an oath was, in essence, equivalent to questioning their honour, their 'integrity', as Hyams puts it.⁹ However, despite the loss of personal credibility, individuals like Helmstan were not necessarily doomed to conviction. The presence of the reputable 'forespeca' (advocate) – a trusted oath-helper like Ordlafr who could swear on the accused's behalf – could serve as means to obtain legal redemption.¹⁰ Securing the support of respected members of the community meant that the accused could begin the process of restoring their damaged reputation.

The broader point here is that the credibility of an oath was largely dependent on the communal aspect of justice, where a person's fate in such disputes was greatly influenced by their social networks and public image. It seems, then, that this was a system in which people could manipulate their reputation or leverage the support of others to escape legal consequences. This has led some scholars, such as Lambert, to conclude that, 'denying a charge was a relatively easy thing to do in this period, at least for free people of good reputation'.¹¹ To leverage honour as a tool for evading charges would have undermined the integrity of the justice system, as those with favourable reputations could avoid accountability in ways that others could not. Alfred's laws, for instance demonstrate that status must have been a valuable marker legal privilege, as in the case of homicide, an oath required additional reinforcement based on the status of those involved.¹² However, as James Whitman has observed, we should be careful not to overstate the notion that denying a charge was relatively easy as medieval justice rarely required modern-style investigations to determine exactly *who* committed and offence. Rather, as he explains, 'the ordinary case...was not a case requiring sleuthing 'just like today'. It was a

⁹ Rabin, *Crime and Punishment*, p. 49.

¹⁰ On oath-support, see Lambert, *Law and Order*, pp. 255–68; Hudson, *The Oxford History of the Laws of England*, p. 81; Oliver, *The Beginnings of English Law*, pp. 144–6; Rabin, *Crime and Punishment*, p. 49; Rabin, 'Old English forespeca and the Role of the Advocate in Old English Law', *Mediæval Studies*, 69 (2007), 233–54.

¹¹ Lambert, *Law and Order*, p. 256. See also, Hudson, *The Oxford History of the Laws of England*, pp. 81–84; Oliver, *The Beginnings of English Law*, pp. 144–6; Rabin, *Crime and Punishment*, p. 49.

¹² AGu: '7 gif man cyninges ðegn beteo manslihtes, gif he hine ladian dyrre, do he ðæt mid XII cininges ðegnum; gif mon ðone man betyhð, ðe bið læss maga ðone se cyninges ðegn, ladige he hine mid XI his gelincena 7 mid anum cyninges ðægne...' (If anyone accuses a king's thegn of homicide, if he dares to exculpate himself, he shall do so with twelve king's thegns [as oath-helpers]. And if anyone accuses a man who belongs to a lower class than that of king's thegn, he shall exculpate himself with eleven of his equals and one king's thegn...)

case in which the community was fairly sure of someone's guilt'.¹³ Essentially, Whitman argues that historians who tend to imagine these cases as procedures for solving factual mysteries are guilty of anachronism, because we are not dealing solely with fact-finding procedures here. In most Old English legal disputes, there was no grand investigation to figure out who committed a crime and evidentiary witnesses could be called in addition to those who vouched for the accused's character.¹⁴ In Helmstan's second trial, for example, he was not convicted because he lacked supporters but because he still had scratches on his face from the bramble. As a result of the importance placed on honour and status, historians, such as Lambert, are often quick to assert that the system would have been vulnerable to abuse, with the very concept of honour – meant to uphold justice – being twisted to serve personal interests. Yet, even if reputation mattered, it probably was not quite as easy to get away with an offence as we might think.

As we shall see, while honour certainly still had an important role to play in allowing individuals to evade punishment, it was with ecclesiastical intervention which made evasion through good reputation even more difficult. To deter sinners from attempting to deceive others through false oaths, the Church promoted shame as a form of social control. By prescribing severe punishments for perjury, ecclesiastical authorities sought to instil an internalised sense of shame and fear of divine judgement in those who sought to exploit the system.¹⁵ As will be made clearer below, the fear of divine judgment provided a way for both kings and ecclesiastics to enforce a form of accountability that transcended mere reputation.¹⁶ Over time, this tension between the abuse of honour and the threat of shame helped shape the legal jurisprudence, meaning that the consequences of perjury could have dire spiritual implications, which could not be easily escaped through the manipulation of honour.

Additionally, serious legislative attempts were made over time to punish those who broke their oaths, and as we shall see, this reflected the growing centrality of oath-swearing in secular spheres. While a distinction between 'breaking an oath' and 'perjury' is generally unclear in the sources, it is apparent that royal legislators and ecclesiastics were less concerned with drawing technical boundaries

¹³ James Q. Whitman, *The Origins of Reasonable Doubt: Theological Roots of the Criminal Trial* (New Haven: Yale University Press, 2008), pp. 73–4.

¹⁴ Rabin, *Crime and Punishment*, pp. 49–50.

¹⁵ On punishment for perjury in the penitentials, see *Poenitentiale Theodori* I. 6; *Poenitentiale Bedae* 8; *Scriftboc*, p. 187; *Old English Penitential*, pp. 31–32; *Canons of Theodore*, p. 15.

¹⁶ On punishments for perjury in royal law codes, see I Ew 3; II As 26; I Em 6; V Atr 25; VI Atr 7, 28.2, 36, VIII Atr 27; Cn 1020 15; I Cn 5.3; II Cn 6, 36; EGu 3, 11.

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between these acts than with condemning the breach of sworn oaths as a moral and social danger. As Foxhall-Forbes puts it 'Anglo-Saxon penitentials and law codes both refer rather vaguely to false oaths or perjury without specifying whether this includes oath-breaking as well as swearing an oath while knowing that the information sworn to is false'.¹⁷ Yet, both were nonetheless considered serious offences in the law codes and by the Church, and as we shall see, attitudes and punishments generally overlap.

This chapter contends that kings and the clergy worked together to impose a more holistic approach to justice – one that reconciled the right to use one's reputation and status to exculpate oneself from an accusation, yet reconcile it with shame through the spiritual consequences of sin should anyone abuse this power. The chapter aims to expand on existing scholarship that focuses on honour and reputation in oath-swearing by examining the Church's influence on the punishment of oath-breaking and perjury in both penitentials and royal laws. While some attention has been given to honour in relation to oaths, less has been said about how the Church shaped the penalties for breaking an oath and committing perjury by introducing a sense of shame as part of that overall justice.¹⁸

To investigate this shift in emphasis, sections 1 and 2 of this chapter examine the legal significance of oath-swearing in seventh-century royal laws, demonstrating how honour and reputation were valuable merits, useful to deny an accusation. Section 3 shifts the focus to the influence of religious and ecclesiastical ideas on matters of perjury. It demonstrates how this influence led to the enforcement of penance for perjury, placing it on par with other serious crimes such as homicide. It is argued here that ecclesiastics sought to instil fear of divine punishment to anyone looking to abuse the system with deceit. Section 4 then explores the increasing severity of breaking an oath and the consequences of perjury in later royal laws. It looks at two ways in which shame was heightened in response to tackling oath-breaking and perjury that stem from merging ecclesiastical influences. First, it looks at Alfred's emphasis on the importance of upholding oaths, with punishments for breaking oaths being penance and imprisonment. Secondly, it examines the consequences of perjury in the reign of his grandson, Æthelstan and the punishment of denying consecrated burial for perjurers. The final section looks at divine judgment and trial by ordeal as a humiliating experience for perjurers and those considered to be

¹⁷ Foxhall-Forbes, *Heaven and Earth*, pp. 155–6.

¹⁸ On the themes of honour, status, and reputation in matters of oath-swearing, see Lambert, *Law and Order*, p. 259; Baker, *Honour, Exchange and Violence*, pp. 167–76; Miller, *Bloodtaking and Peacemaking*, pp. 254–5; Gwara, *Heroic Identity*, pp. 154–8. Hudson, *The Oxford History of the Laws of England*, pp. 81–84. Oliver, *The Beginnings of English Law*, pp. 144–6; Rabin, *Crime and Punishment*, p. 49.

untrustworthy to swear an oath. The chapter concludes that while this system was always vulnerable to potential abuse, the growing influence of shame imposed by kings and ecclesiastics over time shifted the focus towards an ideal deeper fear of divine punishment.

1. Reputation, Status, and the Social Dynamics of Oath-Swearing up to the Seventh Century

Similar to the events at Fonthill, it appears that a good reputation was just as essential in the late ninth and early tenth centuries as it had been in the late seventh century. In the seventh-century, the capacity to swear an oath, and crucially, to have that oath accepted as credible, depended on the reputations of those willing to stand alongside them. In the late seventh-century law codes, we can identify two distinct but related ways in which honour was embedded in oath-swearing procedures. The first was through the good reputation of the oath-supporters themselves. Much like in the *Fonthill Letter*, where the credibility of Helmstan's oath was bolstered by the support of Ordlafr, the laws of Hloþhere and Eadric (c. 685–6) also explicitly tie the effectiveness of an oath to the reputation of those who swore alongside the accused. Their law code demands that oath-supporters had to be 'godum æwdum' (good witnesses), or men of 'good repute'.¹⁹ Those already accused of committing a crime were disqualified from what was considered to be 'of good character' or 'suitable' to make an oath.²⁰ Hyams observes that 'the repeated emphasis on oath-helping bespeaks a reliance on public reputation that would compel men to cultivate friendship networks seriously'.²¹ In other words, having a good network that could support one's honesty was paramount. A man without friends or kin of good standing was dangerously vulnerable, for justice itself could only function through these networks of reciprocal obligation and shared sense of honour. If someone brought an accusation against another, then it was crucial that these were honest witnesses supporting them, as they bore a legal responsibility for the validity of the oath they supported, for it was their honour and reputation that was also assessed.

The second way in which honour can be linked to the legal process of oath-swearing is determined by the status of the accused themselves. While the laws of Hloþhere and Eadric emphasise the importance of reputable character among oath-helpers, the late seventh-century law codes of Wihtred (r. 690–725) and Ine (r. 689–726) offer insight into how honour and oath-swearing operated within hierarchical structures. Though honour in the sense of personal integrity was vital, it was not

¹⁹ HI 2, 4.

²⁰ Rabin, *Crime and Punishment*, p. 36; Wormald, 'Oaths', in *The Wiley Blackwell Encyclopedia*, p. 345.

²¹ Hyams, *Rancour and Reconciliation*, p. 92.

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evenly distributed. Those of higher status – kings, bishops, nobles – possessed an inherent credibility in the eyes of the law that made their oaths carry greater legal weight. Their elevated position in society was perceived not simply a matter of wealth or power, but was tied to a presumption of trustworthiness. As Foxhall-Forbes puts it, ‘some decrees suggest that certain types of people were considered to have an innate authority or trustworthiness’.²² Wihtréd’s code, for example, shows the ease of exculpation according to rank. At the top of Wihtréd’s hierarchy are those who are considered to be the most honest, with the most honourable reputations to defend – a status that could be perceived to be less grounded in moral standing than in the authority and power that supported the king. His law states that a bishop and king could exculpate themselves by an oath that is incontrovertible – what we might call a ‘clean oath’ – one that is without the additional need of witnesses.²³ Their word alone, by virtue of their office and presumed moral standing, was considered incontrovertible. A priest, monk, and deacon, though not granted the same privilege, could nonetheless clear themselves by standing before an altar and declaring the verse: ‘Veritatem dico in Christo, non mentior’ (I speak the truth in Christ, I do not lie).²⁴

It is below the most important ranks, then, that we begin to see a difference in legal privilege according to the value of one’s oath. A commoner could clear themselves by swearing an oath on an altar with three good oath-supporters of the same class: ‘Ceorlisc man hine feowra sum his heafodgemacene on weofode; 7 ðissa ealra aft sie unlegnæ’ (A ceorlish man may clear himself on the altar with three of his own class; and those oaths shall be incontrovertible).²⁵ While these oaths were considered incontrovertible as a collective, the addition of three good oath-supporters suggests that the accused commoner’s word was not regarded as being as honest as those ranked above them, and the fact that their oath-supporters had to be of the same class meant that it took more than one commoner’s oath to be considered trustworthy.

Servants and slaves appear not to have been considered oath-worthy enough to perform their own oaths at all. If a slave had a charge brought against them, then the lord of that servant or slave had to do the exculpation for them by their own oath.²⁶ If a charge was brought against a servant belonging to a

²² Foxhall-Forbes, *Heaven and Earth*, p. 154.

²³ Wi 16: ‘A bishop’s or a king’s word, shall be incontrovertible with oath’ (Biscopes word 7 cyninges sie unlægne buton aþe’.

²⁴ Wi 18. ‘Veritatem dico’ (I speak the truth), see *Romans* 9:1.

²⁵ Wi 21.

²⁶ Wi 23.

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bishop or king, the law allowed for the possibility of exculpation through oath-swearing, but with significant restrictions that reflected their subordinate status. Unlike their masters, these servants were not permitted to swear an oath on the altar.²⁷ Instead, the law prescribed that they could clear themselves only by swearing upon the hand of the shire-reeve, the local royal official: ‘Gif man biscepes esne tilhte oþþe cyninges, cænne hine an gerefan hand oþþe hine grefa clense, oþþe selle to swinganne’ (If a person brings a charge against a bishop’s servant or the king’s, let him clear himself by the hand of the reeve, and either let the reeve clear him, or give him up to be flogged).²⁸ The altar, the most sacred and authoritative setting for oath-taking, was deemed beyond the reach of slaves, presumably because their social standing was considered too low to warrant such proximity to divine judgement. One could also argue that because they were deemed at greater risk of committing perjury, this was a way of protecting the altar from a form of desecration. Their capacity to swear truthfully was thus not limited simply by their behaviour, but by their rank within the social order. It was only through the intervention or validation of the reeve that their oath could carry any weight. Moreover, the threat of flogging as the alternative outcome is itself important here. If the reeve refused to support the accused servant’s oath, the default assumption was that he was guilty. Justice here is conditional, not objective; it is filtered through status and the availability of reputable backing.

In the West Saxon tradition, a similar principle arises, though applied differently through the concept of ‘oath-values’.²⁹ In Ine’s law, the accused has the legal right to deny the charge by swearing an oath of exculpation, provided the oath holds is equal to a certain value. For example, if a commoner was accused of harbouring a fugitive, they would need to clear themselves by swearing an oath of equal value to their own *wergild*: ‘Gif mon cierliscne monnan fliemanfeorme teo, be his agnum were geladige he hine’: (If a commoner is accused of harbouring a fugitive, let him clear himself with [an oath equal to] his own *wergild*).³⁰ In the following examples, we see that depending on the nature of the crime either the status of the accused or the victim were taken into consideration. The required oath-value required for breaking into a fortified dwelling was determined according to the status of the victim. If one breaks into a king or bishop’s dwelling, the accused was required to pay 120 shillings, or swear the

²⁷ Oliver, *The Beginnings of English Law*, p. 169.

²⁸ Wi 22.

²⁹ On the logic of oath-values, see Lambert, *Law and Order*, p. 256; Jurasinski and Oliver, *The Laws of Alfred*, p. 381; Hudson, *The Oxford History of the Laws of England*, pp. 82–3; Chadwick, *Studies on Anglo-Saxon Institutions*, pp. 134–53.

³⁰ Ine 30.

same value as an oath of denial. However, if one breaks into an ealdorman's dwelling, then they had to pay an 80 shillings fine or swear an oath equivalent; for a king's thegn 60 shillings, and for a landowner or anyone else of noble rank, 35 shillings.³¹ Moreover, depending on the nature of the crime, one might also swear an oath-value equivalent to a specific number of hides of land.³² To exculpate oneself from being accused of partaking in a raid with thieves, specifically in numbers ranging from seven to thirty-five, the accused had to swear an oath of 120 hides, or they could pay compensation to the victim.³³ If these numbers went beyond thirty-five, then the accused needed to redeem themselves with either their wergild as compensation, or swear an oath equivalent to their wergild.³⁴

All this suggests that having the right persona necessary for exculpation could generally provide anyone with a significant advantage in this legal system. Honour was thus a socially recognised and performative attribute. It could be demonstrated publicly and, crucially, leveraged in legal contexts. One could argue that being viewed as deserving of greater honour was a legal privilege that functioned within and strengthened the preexisting hierarchical structure. What we have here in these legal texts are examples of how status directly influences perceived worth and the weight an oath could carry. Honour, in this context, was not equally distributed. Rather, hierarchical value was conceptualised in terms of 'weorð' meaning not just 'value' in an abstract sense, but more literally 'worth', as in measurable a social value.³⁵ A higher *weorð* translated into concrete legal advantages, allowing elite individuals to navigate accusations and disputes with greater ease and flexibility than their social inferiors. Andrew Cowell's examination of honour and status determines that medieval warriors, aristocrats, and other high-ranking members of medieval society possessed many legal privileges as a consequence of their status.³⁶ Their oaths, like their bodies, lands, and lives, were valued more highly

³¹ Ine 45. This same clause is repeated in Af 40. However, Alfred adds that ceorl's enclosure is at 5 shillings. A ceorl's enclosure being a hedge or any type of fence. See Ine 40 for this description.

³² Scholars have pointed out the difficulty of assessing how this value might be tallied, though it has been noted that the value of hides is often equivalent to the number of shillings involved in either compensation or fine. See Attenborough, *The Laws of the Earliest English Kings*, p. 184; Chadwick, *Studies on Anglo-Saxon Institutions*, pp. 134–5. 'Hides' meaning a unit of measurement for land. See Rosamond Faith, 'Hides', in *The Wiley Blackwell Encyclopedia*, pp. 243–4.

³³ Ine 14. Clause 13 of Ine's law declares that a group of up to seven men are considered to be thieves, seven to thirty five are a band, and more than thirty five is considered to be a troop.

³⁴ Ine 15.

³⁵ See Julian Calcagno, 'The Value of Weorð: A Historical Sociological Analysis of Honour in Anglo-Saxon Society', *JAEMA*, 17 (2021), 43–65.

³⁶ Cowell, *The Medieval Warrior Aristocracy*, pp. 37–39.

than those of lesser men. Thinking about Miller's analysis of the medieval 'economy of honour', whereby honour was a prized commodity which depended on the ability to generate prestige and status is also helpful here.³⁷ Simply put, a thegn possessed more measurable honour and thus also possessed a great deal of power which could be exercised through oath-support if needed. The more people of high status one was in contact with, the less oath-supporters they needed to exculpate themselves from a crime. In this manner, those of higher status were able to exculpate themselves and preserve their honour and reputation more easily.

2. Slander and Reputation: The Implications of Calling Someone a Perjurer

Although much can be interpreted about the importance of honour in the oath-swearing process, there is less clarity regarding the role of shame as a punishment for breaking such oaths. In Ine's law, the specific punishment for perjury is not detailed, though it can be inferred that the penalty might involve the forfeiture of the value of the oath sworn. This suggests that the breach of an oath could result in a loss of the value that the oath represented, but the exact nature of the punishment remains vague. There is one clause in Ine's law that hints at a form of punishment when an individual refuses to take a second oath, which is prompted by suspicion that the first oath was false.³⁸ In this case, a fine is suggested, but it is unclear whether this fine applies to other situations involving broken oaths or if this specific scenario represents an exception. This ambiguity leaves room for interpretation, but it does point to the possibility that fines were seen as a way to address violations of oath-swearing, at least in some cases.

What is explicit in Hloþhere and Eadric's code, however, is punishment for calling someone else a perjurer:

³⁷ Miller, *Bloodtaking and Peacemaking*, pp. 30–1.

³⁸ Ine 35.1: 'Gif mon to þam men feoh geteme ðe his ær oðswaren hæfde, 7 eft oðswerian wille, oðswerige be ðam wite 7 be ðæs feos weorðe; gif he oðswerian nylle, gebete þone mænan að twybote' (If a man has been summoned to give an oath for property which he earlier has denied on oath, and he wishes to deny it by swearing an oath again, let him deny it [with an oath] equal the fine and by [an oath] equal to the property. If he does not wish to deny it [for the second time], then let him pay for swearing a false oath, two-fold). There is also some debate here as to whether the clause refers to double compensation or double fine. Jurasinski and Oliver argue that the logic here supposes that it is the fine that doubles. See *The Laws of Alfred*, p. 403.

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Gif man mannan an opres flette **manswara** hateþ oððe **hine mid bismærwordum scandlice grete**, scilling agelde þam þe þæt flet age, 7 VI scill' þam þe he þæt word togecwæde, 7 cyninge XII sell' forgelde.³⁹

If one man calls another a **perjurer** in the household of another or **shames him with words**, then he must pay a shilling to the owner of the house, six shillings to the man to whom he spoke the word of insult, and twelve shillings to the king.

Here we see the affront in the form of slander which warrants a financial penalty because it falsely brings the victim's honesty into question, thereby devaluing their honour. As Oliver puts it, Hlophere and Eadric's provision leads to the 'loss of reputation brought about by insult', which in the words of the laws themselves were indeed considered to be shameful insults (**bismærwordum scandlice**).⁴⁰ In this sense, accusations of perjury 'may have been a risky business', to borrow Lambert's words.⁴¹ Because honour was tied to public credibility, anyone accusing another of lying under oath risked severe consequences should that accusation prove false. A failed accusation of perjury could rebound on the accuser, leaving them vulnerable to a charge of slander and liable for financial compensation to the victim. It was, in a way, a gamble of reputations. Only those confident in their case, or supported by their own network of reputable oath-helpers, could safely risk making such claims. Jurasinski and Oliver argue that there was a profound legal weight placed on speech in early medieval England, as it could lead to severe consequences for those who misuse their words.⁴² Slander could lead to a breakdown of trust within the community and damage reputations. It thus threatened not just personal honour, then, but the broader social trust on which oath-based justice depended. It is for this reason that later kings introduced increasingly severe penalties for slander, recognising its potential to cause social disorder. The laws of Alfred, Edgar, and Cnut prescribed the removal of the tongue if the accused were unable or unwilling to compensate the person they had insulted.⁴³ As the tool of slander, the tongue became the object of punishment:

³⁹ HI 11.

⁴⁰ Oliver, *The Beginnings of English Law*, p. 136.

⁴¹ Lambert, *Law and Order*, p. 256.

⁴² Jurasinski and Oliver, *The Laws of Alfred*, p. 109. Also, see Sherif Abdelkarim, 'The Terms of Hypocrisy in Early English Law and Literature', in *Law, Literature, and Social Regulation*, p. 254.

⁴³ Af 32; III Eg 4; II Cn 16.

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Gif mon folcleasunge gewyrce, 7 hio on hine geresp weorðe, mid nanum leohtran ðinge gebete þonne him mon aceorfe þa tungon of, þæt hie mon na undeorran weorðe moste lesan, ðonne hie mon be þam were geeahtige.⁴⁴

If someone commits ‘folceasunge’ (public slander), and he is found guilty, let him pay with no lighter compensation than the removal of his tongue, and it shall not be redeemed for a lesser worth than it is estimated according to the man’s wergild.

Yet, we might also consider that it is not just the slandered person that might be affronted in such situations. Hlophere and Eadric’s provision also states that the household owner also needed to be compensated for this affront, suggesting that third parties could also suffer ramifications from the actions of others. As notions of royal jurisdiction appear to have changed, violation of the law had become more about offences against the king’s authority, rather than solely against members of the household. Insulting someone or calling them a perjurer was an affront not just to the victim’s honour here, but also to the household owner. Here the connection between honour, hospitality, and protection is key.⁴⁵ Kerr argues that a well-respected host could accrue honour by enhancing their reputation through their generosity.⁴⁶ This was advantageous to both guest and host, as the host’s reputation was bolstered by their ability to provide a welcoming environment. However, this came with certain legal responsibilities. The host was expected to maintain order and protect the integrity of his guests. If guests became disorderly or unruly, then the host’s original intentions to appear honourable could be sullied, affecting his reputation the reputation his guests. Everyone under his roof fell under his protection (*mund*), thus any disturbance reflected poorly on him, because the act of slandering someone within the household was seen as a direct affront to the household owner’s honour. Because the offender slandered another in the household of the ‘protector’, it was viewed as an insult to the protector as well as the person slandered. Thus, to recuperate the loss of honour, the host also had to be financially compensated.

⁴⁴ Af 32.

⁴⁵ The relationship between honour and hospitality has been well established by historians. For example, see Alban Gautier, ‘Hospitality in pre-Viking Anglo-Saxon England’, *Early Medieval Europe*, 17:1 (2009), 23–44; Julie Kerr, ‘The Open Door: Hospitality and Honour in Twelfth/Early Thirteenth-Century England’, *History*, 87 (2002), 322–35. Also, Kerr, ‘Food, Drink and Lodging: Hospitality in Twelfth-Century England’, *Haskins Society Journal*, 18 (2006), 72–92.

⁴⁶ Kerr, ‘The Open Door’, pp. 322–35.

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As a final punishment, the clause also specifies that the offender must also pay an additional *wite* (fine) to the king. This was essentially a penalty for disturbing the peace.⁴⁷ Like Æthelberht's *wite* for those who commit theft, Hlophere and Eadric emphasised severe measures for affronts that impacted the wider community. Though it is not the king's honour which is affronted here, it is his prerogative to impose strict measures of punishment to curtail public acts of dishonesty. Thus, while the king's honour was not directly at stake here, these fines were a way of reinforcing his role as the enforcer of justice and protector of the common good. By imposing a *wite*, the king was making it clear that public dishonesty would not go unpunished because of the threat it posed to the community as a whole.

What we see here, then, is a system primarily concerned with honour, with little emphasis placed on shame. The following section will thus explore how religious ideas and ecclesiastical influence gradually shaped the punishment of perjury within the legal culture. The task now is to demonstrate how the clergy worked to extend the consequences of perjury beyond the immediate, visible punishments of the secular world. By advocating for penance and deploying shame-inducing rhetoric, the clergy sought to internalise moral accountability within the perjurer. Here I demonstrate how ecclesiastics developed a discourse that sought to haunt even those who had managed to escape earthly justice, warning them that unconfessed sin would bring about divine judgement.

3. Imposing Shame through the Sacredness of Oaths

A false witness shall not be unpunished: and he that speaketh lies, shall perish. (Proverbs 19:9)

This biblical verse emphasises the clerical conviction that perjury was a serious offence that warranted divine retribution. Ecclesiastics reinforced this conviction by asserting that God would inevitably unveil the truth, ensuring that no sinner could evade the consequences of perjury. In Gregory of Tours' *Historia*, he recounts the story of a man who had a habit of committing perjury and believed he could escape punishment once again by swearing a false oath inside a church, this time to avoid a charge of theft.⁴⁸ However, as soon as the man entered the sacred space, he was immediately struck down by God and, in his sudden affliction, confessed his sin without hesitation: 'And the wretch confessed with the very words with which he had come to excuse the perjury' (*Confessusque est miser verbis propriis quae venerat excusare periuriis*).⁴⁹ The story of the habitual perjurer who attempts to swear a false oath within

⁴⁷ Lambert, *Law and Order*, pp. 59–62; Oliver, *The Beginnings of English Law*, p. 85.

⁴⁸ Gregory of Tours, *Decem Libri Historiarum*, VIII. 16, in *MGH*, p. 383.

⁴⁹ *Ibid.*

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a church is a cautionary tale to those who think they can deceive God. It is also a dramatisation of how shame *ought* to function in an ideal moral world: as something that clings to the guilty, inevitably rising to the surface. Gregory's account makes this dynamic explicit. The man's immediate physical affliction upon entering the sacred space is a symbolic unmasking. Crucially, this public suffering compels him to confess openly. In this way, shame becomes a force of moral correction, returning the sinner to a state of clarity only through the public admission of shame. In this circumstance, the church, as a sacred space, functions almost like a protective crucible: it draws sin out into the light, stripping away secrecy and exposing falsehood. Thus, the burden of unconfessed sin was imagined as a kind of latent shame that would, under the right conditions, manifest itself outwardly.

A similar account of divine intervention can also be found in Byrhtferth of Ramsey's *Vita S. Ecgwini*, an eleventh-century hagiographical account of the eighth-century monk Ecgwine of Evesham. In this narrative, Byrhtferth recounts a miraculous event attributed to St. Ecgwine, in which divine justice intervenes against a deceitful peasant who attempted to unlawfully claim monastery land.⁵⁰ The peasant, driven by greed, sought to secure ownership of the property through a false oath. In a desperate attempt to deceive, 'at the devil's instigation' (*instigante diabolo*), he placed soil from his own land in his shoe, intending to swear that he stood on his own ground while making the solemn oath over the relics of St. Ecgwine. However, his attempt at perjury was thwarted in a dramatic way when, as he swung his scythe into the ground, divine punishment struck. The scythe, meant to be used to cultivate the land, became the instrument of his demise as he accidentally beheaded himself. This unexpected death, while exaggerated in its presentation, carried a clear didactic message: God does not tolerate perjury or false oaths. As Byrhtferth states in the account: 'This unseemly deceitful action was concealed at the time, but afterwards it was revealed: because what is true cannot be false, nor what is false be true. But this is most certain (and established) to be true, which the Lord said: 'There is nothing hidden that will not be revealed (Matthew 10:26)'.⁵¹ Later, the monks then witnessing this divine sign, were quick to rejoice in the sanctity and power of St. Ecgwine, casting the peasant's body from the land without a proper burial and returning to the monastery in triumph.

These stories, and many others like them, are steeped in the belief that divine justice is an all-encompassing force that ultimately exposes deceit and dishonesty, especially when it involves matters

⁵⁰ *Vita S. Ecgwini*, IV. 10, ed. and trans. Michael Lapidge, *The Lives of St Oswald and St Ecgwine* (Oxford, 2009), pp. 290–6.

⁵¹ *Ibid*, p. 294.

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of sacred oaths. The message conveyed to the audience was not just that perjury would be punished, but that the shame of such a sin would eventually be made public – in this case, through the dramatic, unavoidable consequences of divine intervention. While reputation and good oath-swearers afforded certain individuals legal privileges, particularly those of high status, divine justice was not bound by social rank or reputation. Divine justice was an equalising force that transcended earthly systems of honour and reputation.

The principal reason for these anxieties about dishonesty was because ecclesiastics viewed perjury as a grave sin, one that, like anger, was also considered a capital sin.⁵² Swearing a false oath was regarded as especially sinful if it invoked God's name, as this was perceived as a direct violation of divine law. This belief aligns with the biblical commandment in Exodus 20:7, which states: 'Thou shalt not take the name of the Lord thy God in vain: for the Lord will not hold him guiltless that shall take the name of the Lord his God in vain'. If an oath was sworn before God, it was perceived as a form of blasphemy. There is a clear reason, then, why the early Church Fathers classified perjury among the 'sins of the tongue,' placing it alongside sins such as pride, gluttony, and slander.⁵³ It was viewed as a corruption of speech, which was an ability uniquely granted to humanity by God. Language was supposed to be a conduit for truth, yet perjury turned it into a tool for deception.

One of the first signs that the oath-swearing process was beginning to be influenced by such Christian ideas appears in Hlophere and Eadric's law. Although the code does not specify a punishment for perjury, it does show that religious settings were becoming more central to the act of swearing oaths. Clause 16 of Hlophere and Eadric's code decrees that disputes over property needed to be settled with oaths of honesty in order to mitigate accusations of theft. When a man of Kent buys property in London, the legitimacy of the transaction is ensured by requiring trustworthy witnesses – two or three men or the reeve of the king's estate – all of whom could verify the honesty of the sale.⁵⁴ If a claim is later made against the man regarding the property, then there is an obligation to summon the seller as a witness. However, if the seller cannot be located, the burden of proof shifts to the buyer, who must swear an oath on the altar, backed by a witness or official from the king's estate.⁵⁵ This solemn

⁵² See *Poenitentiale Egberti* 1.

⁵³ Corran, *Lying and Perjury*, p. 4; Edwin D. Craun, *Lies, Slander, and Obscenity in Medieval English Literature Pastoral Rhetoric and the Deviant Speaker* (Cambridge: Cambridge University Press, 1997), pp. 14–24.

⁵⁴ HI 16–16.1.

⁵⁵ HI 16.2.

declaration, made in a public and religious setting, was designed to bind the oath-taker to the truth and to leverage his reputation as a guarantee of his integrity. The introduction of oath-taking at the altar, recorded for the first time here, marks a significant transition. Fruscione argues that this points to early stages of Christianisation, whereby legal and moral accountability from civic spaces, such as the king's hall (to cyngæs sele), were transferred to sacred ones, such as the altar (in wiofode).⁵⁶ This transition suggests a growing emphasis on divine authority in legal matters. Oliver further supports this interpretation, asserting that swearing a false oath in such a setting would instil a deep fear in the accused as severity of perjury in this new religious context meant that breaking an oath was now a threat to one's soul.⁵⁷

A surviving legal tract containing oath-formulae provides an example of how this might have worked. The legal tract, *Hu se man sceal swerie* (How one shall swear), more commonly referred to as *Swerian* for simplicity, is dated approximately to the tenth century and it is the only document in Old English of its kind.⁵⁸ Wormald has even suggested that many of the transactions covered by *Swerian* were at least as old as the seventh-century laws, suggesting some possible overlap in the formulae.⁵⁹ Because it is such a rarity, it is useful to demonstrate the case in point concerning how someone might have sworn his or her oath of exculpation. Though, we should nonetheless be wary of its later origins. The tract begins with an invocation to God as witness of the oath. With words of affirmation put to the divine, the oath-taker swears that: 'On ðone Drihten, ic eom unscyldig ægðer ge dæde ge dihtes æt þære tihtlan ðe [N] me tihð' (On the Lord: I am innocent both in deed and intent of the charge of

⁵⁶ Fruscione, 'Beginnings and Legitimation of Punishment', p. 38. Hl 16.2: '...gekyþe ðanne in wiofode mid his gewitena anum...' (let him declare then at the altar with one of his witnesses).

⁵⁷ Oliver, *The Beginnings of English Law*, pp. 174–6. Similar arguments are made by Foxhall-Forbes, who says that 'the legal process of swearing oaths was utterly dependent for its efficacy on all parties concerned knowing and believing that perjury in all its senses would be punished severely at the Last Judgement, even if perjurers were not discovered during their own lifetimes'. See *Heaven and Earth*, p. 156. See also Emily Corran, *Lying and Perjury in Medieval Practical Thought: A Study in the History of Casuistry* (Oxford: Oxford University Press, 2018), pp. 3–5; Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford: Clarendon Press, 1986), p. 30.

⁵⁸ Wormald contends that although the document is likely to be tenth century, the formula contains a 'variety of dates'. See *The Making of English Law*, p. 384. For Wormald, 'the date of the collection as a whole cannot of course be earlier than the latest formula it contains' – namely those regarding 'loyalty and witnessing' which must be post-Alfredian.

⁵⁹ Ibid. For example, Wormald cites Hl 7 and 16 which involve bringing sureties before the king's residence. Rabin also points out the overlap in the formulae from *Swerian* found in Edgar's law. See 'Witnessing Kingship: Royal Power and the Legal Subject in the Old English Laws', in *Kingship, Legislation and Power in Anglo-Saxon England*, (eds.) Gale R. Owen-Crocker and Brian W. Schneider (Woodbridge: The Boydell Press, 2013), p. 233.

which [name of the plaintiff] accuses me).⁶⁰ In *Swerian*, oath-supporters are also mentioned as having to assert that what the defendant says is true: ‘On ðone Drihten, se að is clæne 7 unmaene, ðe [N] swor’ (In the Lord: the oath which [name of defendant or plaintiff] swore is pure and without falsehood).⁶¹ The tract shows that swearing an oath was not merely a formality, but a solemn affirmation of one’s commitment to honesty in front of their peers. In some instances, one might swear on religious icons, such as crosses or altars to further substantiate their honesty.⁶² These too acted as further assured authenticators of affirmation which upheld honesty and could also demonstrate the sincerity of one’s commitment to it.

So, while the threat of eternal damnation in early royal laws was a powerful deterrent – one that reinforced Christianity’s role in instilling fear in those who might lie under oath – the absence of explicit legal punishments for perjury in these texts makes it difficult to know how enforcement was handled. It is possible that punishment was handled at the local level or through ecclesiastical authority, and so this raises the question of whether penance was imposed informally or if it had simply not yet been incorporated into royal law. Turning to the penitentials for further insight, we can observe more structured consequences for perjury. Both the *Poenitentiale Theodori* (c. 700) and the later *Poenitentiale Bedae* (c. 8th century) prescribe very similar lengths of penance for committing the sin of perjury. In both penitentials, perjury warranted a three year punishment.⁶³ The same penalty applies to anyone who swears falsely on various sacred objects or persons, including the hand of a bishop, a presbyter, a deacon, on an altar, or a consecrated cross. However, if that cross is not consecrated, then he shall do one year penance instead of three, with the *Poenitentiale Bedae* also adding that some ecclesiastics may choose to make it 4 months instead.⁶⁴ The emphasis on swearing oaths on sacred objects reveals the Church’s effort to bind individuals to their word through divine authority. The belief in the sanctity of these objects, and the penitential consequences of swearing falsely upon them, was central to discouraging perjury. The involvement of sacred objects in particular intended to prevent people from swearing falsely.⁶⁵ Those making the oaths had to have some belief in the sacredness of the objects they

⁶⁰ *Swerian*.

⁶¹ *Swerian*.

⁶² See HI 16.2; Wi 8, 18, 19, 20, 21; III Atr 2.1, 3.1; II Cn 36. See also *Mircna laga* (Mirce) and the declaration of the *Cambridge Thegn’s Guild*.

⁶³ *Poenitentiale Theodori* I, 6.5; *Poenitentiale Bedae* 8.5.

⁶⁴ *Poenitentiale Theodori* I, 6.4; *Poenitentiale Bedae* 3.2.

⁶⁵ Foxhall-Forbes, *Heaven and Earth*, pp. 152–3.

were swearing on if for the spiritual consequences that could befall them were to be taken seriously at all.

Now that the role of shame has been made clear in the case of perjury, the next step is to examine how this framework influenced subsequent advancements in the late royal laws. It is especially important to examine how later kings laws strengthened the spiritual and reputational risks connected to breaking an oath. As we shall see, these laws increasingly framed perjury as a crime against God and royal authority.

4. Oaths of Loyalty and the Implications of Oath-Breaking and Perjury from the Late Ninth Century to the Eleventh Century

So, how did this ecclesiastical influence the development of royal law concerning perjury? And what role did kings play in ensuring that people upheld their oaths, particularly as these obligations aligned with emerging religious views on the sanctity of truth-telling? In the late ninth century, Alfred imposed strict requirements for all individuals to uphold their oaths and pledges:

Æt ærestan we lærað, þæt mæst ðearf is, þæt æghwelc mon his að 7 his wed wærlice healde.

First we instruct, that it is most needful, that each man should prudently keep his oath and his pledge.⁶⁶

Alfred's assertion that enforcing oaths was 'mæst ðearf' (most needful) is telling enough, but it has been a point of contention in the scholarship as to what precisely Alfred means by 'að' and 'wed' (oath and pledge) specifically. These words are not simply interchangeable. According to Matthias Ammon, the difference is that whereas oaths are assertory statements, used to confirm or deny something, pledges are promissory statements, meaning it is given as a commitment to future action.⁶⁷ So, what was the correlation between these two in Alfred's legal framework? According to Wormald, Alfred's demand for pledging an oath of fealty to him, was influenced by Carolingian practices, whereby all men over the age of twelve were required to swear loyalty to the king.⁶⁸ A breach of the peace was seen as a

⁶⁶ Af 1.

⁶⁷ Matthias Ammon, 'Ge mid wedde ge mid aðe': The Functions of Oath and Pledge in Anglo-Saxon Legal Culture', *Institute of Historical Research*, 233:86 (2013), 515–35, at pp. 515–18.

⁶⁸ Wormald, 'A Handlist of Anglo-Saxon Lawsuits', p. 284; Wormald, 'Oaths', pp. 345–6; Wormald, *The Making of English Law*, p. 148; Wormald, *Papers Preparatory to the Making of English Law*, pp. 119–25.

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violation of this oath, effectively amounting to treachery. As a result, serious offences like perjury and theft were regarded as acts of disloyalty to the king.⁶⁹

However, this understanding of Alfred's law by Wormald has been met with contention by scholars. Some argue that such an oath is not necessarily implied in the wording, rather that it is only reinforced later by his son, Edward the Elder.⁷⁰ They point to a clause in Edward's laws that explicitly emphasises the importance of a national oath: 'if anyone neglects this and breaks their oath and pledge, which the whole nation has given, he shall pay such compensation as the written laws [Alfred's *Domboc*] declare'.⁷¹ This suggests that by Edward's reign, the expectation of a general oath had become a more formalised aspect of governance, with clear legal consequences for failing to uphold it. Whether Alfred himself introduced such an oath or whether it was later expanded by Edward remains open to debate, though Lambert points out that whether it began in Alfred's era or not is 'something of a distraction', considering 'Edward the Elder's code makes it clear that a general oath of some sort did exist shortly after his reign and – crucially – it implies that it could be breached by certain types of wrongdoing'.⁷² Thus, the overall point here is that there certainly was an attempt in the later period to keep people honouring their social obligations to their lords and community.

Nevertheless, the focus here is on the implications of breaking this oath, which reveal a clear convergence of royal and ecclesiastical authority, as both the king and the Church sought to instil a shame upon offenders:

Gif he þonne þæs weddie þe hym riht sy to gelæstanne 7 þæt aleoge, selle mid eaðmedum his wæpn 7 his æhta his freondum to gehealdanne 7 beo feowertig nihta on carcerne on cyninges tune; ðrowige ðær swa biscep him scrife, 7 his mægas hine feden, gif he self mete næbbe.⁷³

If he then pledges himself to that which is lawful to carry out and that proves to be false, let him humbly hand over his weapons and possessions to his friends to keep, and let him stay 40

⁶⁹ Compare with II As 1. As we shall see in the subsequent chapter on theft, Æthelstan, the grandson of Alfred, doubled down on this oath emphasising the crime of theft in particular as the major threat to this social obligation.

⁷⁰ Ammon, 'Ge mid wedde ge mid aðe', pp. 518–19; Pratt, *The Political Thought of King Alfred*, p. 236; Jurasinski and Oliver, *The Laws of Alfred*, pp. 102–3; Lambert, *Law and Order*, pp. 210–3.

⁷¹ II Ew 5: 'Gif hwa ðis oferhebbe 7 his að and his wæd brece, ðe eal ðeod geseald hæfð, bete swa domboc tæce'.

⁷² Lambert, *Law and Order*, p. 212.

⁷³ Af 1.2.

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nights in prison at the king's estate, and there undergo what the bishop prescribes him, and his kinsmen shall feed him if he has no food for himself.

Daniel Thomas argues that the blend of ecclesiastical penance with legal punishment initiated a fundamental change in attitudes towards justice.⁷⁴ In the case of perjury, the punishment outlined here integrates shame and redemption. The stipulation that the offender relinquish his weapons (*selle mid eaðmedum his wæpn 7 his æhta his freondum to gehealdanne*) points to the role of public penance, which according to Thomas, is similar to what we see in Continental documentation.⁷⁵ The ritual disarmament of an offender before confinement was likely intended to momentarily strip away the offender's honour. This punishment is further compounded by the stipulation of forty nights imprisonment (*7 beo feowertig nihta on carcerne on cyninges tune*). The specified duration of forty nights hints at the *Domboc*'s religiously inspired *topoi*. Forty nights imprisonment represents the Lenten period during which those undertaking penance were excluded from the Church.⁷⁶ Also, in the Bible, the Great Flood occurs for forty days and forty nights, the Israelites wander in the wilderness for forty years, and forty days is the amount of time Jesus spends in the desert.⁷⁷ It is also critical then that the perjurer undergo what the bishop prescribes (*ðrowige ðær swa biseþ him scrife*). It has been established that perjury warranted a three-year punishment, and so it is likely then that forty nights was not the duration of one's penitential sentence. Should the perjurer escape from prison, however, the Alfred's code further decrees that: 'Gif he losige, sie he afliemed 7 sie amænsumod of eallum Cristes ciricum' (If he escapes, let him be banished and excommunicated from all churches of Christ).⁷⁸ Failure to carry out the recommended penance prescribed by the bishop meant that the perjurer was continuing to live in sin. The act of imprisonment, then, is not just punitive. It is a necessary component of the process of redemption. Through undergoing the prescribed penance, the offender is provided with an opportunity to face their shame and confess their sin.

While there is a clear indication that kings aimed to internalise a sense of shame through penance and the removal of weapons as an offender entered imprisonment, understanding a further relationship between shame and incarceration remains difficult to reconstruct due to the scarcity of narrative sources.

⁷⁴ Thomas, 'Incarceration as Judicial Punishment', pp. 104–110.

⁷⁵ Ibid, p. 104.

⁷⁶ Ibid, p. 105.

⁷⁷ Acts 1.1; Numbers 13:25; Genesis 7:4.

⁷⁸ Af 1.7.

Imprisonment alone could function as a visible and embodied experience of shame. In Stephen of Ripon's *Vita Sancti Wilfrithi*, the saint is said to be imprisoned multiple times, and in one instance Stephen records that 'they decided to imprison him [Wilfrid] and keep him for nine months without any honour' (in custodiam ducere et novem menses sine ullo honore custodire censuerunt).⁷⁹ Still, direct references to imprisonment in early medieval England, especially for non-saintly figures, remain rare. Hagiography occasionally depicts imprisonment, but usually in the context of saintly suffering rather than ordinary judicial punishment.

Moreover, the majority of explicit references to imprisonment in the *Anglo-Saxon Chronicle* emerge only after the Norman Conquest, and primarily in the context of political imprisonment.⁸⁰ The Norman rulers appear to have favoured incarceration over feud or execution when dealing with political rivals.⁸¹ This contrasts with the earlier period, where the judicial use of imprisonment for common criminals is much less visible in the sources. Thomas suggests that the absence of frequent references to the imprisonment of ordinary offenders might reflect either the ubiquity of such punishments, meaning that they were so commonplace as to go unremarked, or, conversely, that its relative rarity was due to the logistical challenges.⁸² The very ambiguity surrounding imprisonment in pre-Conquest England is demonstrated in Æthelstan's early tenth-century law code, which concedes the possibility that no suitable prison might be available: 'oððe gif he in carcern ne cume, 7 man nan næbbe...' (if he is to be put in prison, but none being available...).⁸³ Nevertheless, regardless of how frequently imprisonment was actually used, its very presence in royal law is significant. That kings considered it an appropriate response suggests its purpose was closely tied to ideas of penance. When imprisonment did occur, it appears to have functioned less as a purely punitive measure and more as a means of encouraging reflection, repentance, and ultimately redemption through the internalisation of shame. In

⁷⁹ *The Life of Bishop Wilfrid by Eddius Stephanus*, ed. and trans. Bertram Colgrave (Cambridge: Cambridge University Press, 1927), p. 70.

⁸⁰ ASC D, 1076. King William imprisons Earl Roger and Earl Waltheof; ASC E, 1086. King William puts thegns in prison alongside his own brother, Odo; ASC E, 1112. King Henry causes Robert of Bellême to be imprisoned; ASC E, 1137. King Stephen imprisons Roger, bishop of Salisbury, Alexander, bishop of Lincoln, the chancellor, Roger and his nephews. The chronicle also details the cruelty and methods of torture in the prison; and ASC E. 1140, Robert, Earl of Gloucester is imprisoned in Bristol.

⁸¹ See John Gillingham, '1066 and the Introduction of Chivalry into England', in *Law and Government in Medieval England and Normandy: Essays in Honour of Sir James Holt* (Cambridge: Cambridge University Press, 1994), pp. 31–55.

⁸² Thomas, 'Incarceration as Judicial Punishment', pp. 95–96.

⁸³ VI As 12.2.

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this way, imprisonment closely paralleled the penitential process: a period of enforced withdrawal from society, marked by deprivation and reflection, intended to produce a humbled, morally reformed individual restored to the community in a position of obedience.

The intensification of punitive measures against perjury under Æthelstan can be understood within the broader context of this emerging royal ideology of oath-swearing that sought to tether loyalty directly to the king's peace. His legislation reflects a growing anxiety about the reliability of sworn promises in a newly unified but still politically volatile kingdom. After the unification of England following the Battle of Brunanburh in 937, Æthelstan used his law codes to address social issues that threatened the stability of the newly formed kingdom.⁸⁴ The unification of England was still fragile, and Æthelstan sought to resolve problems that could potentially lead to social disintegration and undermine the cohesion of the wider nation. Among the most pressing of these issues were theft and perjury, both of which posed significant risks to social cohesion. While theft was arguably viewed as the more immediate and severe problem – an issue that will be discussed in the following chapter – perjury, nonetheless, was also a critical concern, and by no means a minor issue to tenth century kings.

Those who broke their oaths were considered to be capable of contributing to the collapse of social order because they eroded trust within communities, making it harder to maintain justice.⁸⁵ Æthelstan's laws reflect an understanding that perjury, if left unchecked, could tear apart the social fabric that held the wider nation together, which is why the king felt it necessary to clarify in *V Æthelstan*, the reasons in that compelled him to legislate in the first place: 'The cause [leading to the issuance of this decree] is, that all the oaths, pledges, and sureties which were given there [at Grately], have been disregarded and violated, and we know of no other course which we can follow with confidence, unless it be this'.⁸⁶ Thus, even though theft is often regarded as the greater of the two, perjury was by no means a minor issue, and its potential to cause social breakdown made it a matter of serious concern for Æthelstan's reign and the tenth and eleventh centuries more broadly.

⁸⁴ Sarah Foot, *Æthelstan* (New Haven: Yale University Press, 2011), pp. 136–48.

⁸⁵ On the notion that oaths were central to maintaining peace, see Ibid, pp. 141–3; Pratt, *The Political Thought of King Alfred*, pp. 233–40; Lambert, *Law and Order*, pp. 210–3; Wormald, 'Oaths', pp. 345–6; Wormald, *The Making of English Law*, p. 148.

⁸⁶ *V As* 3: '...ðæt is ðonne forþon ðe ða aþus 7 þa wedd 7 þa borgas synt ealle oferhafene 7 abrocene, ðe þær gesealde wæron. 7 we nytan nanum oðrum þingum to getruwianne, butan hit ðis sy'.

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Though Alfred's law confines those who break their oath within the boundaries of imprisonment, his grandson Æthelstan takes this principle a step further. In the mid-tenth century, Æthelstan issued a law code at Grately, which ruled that perjurers who fail to make amends were to be buried in unconsecrated ground:

And if any man swears falsely, and it becomes known, he shall never again be considered oath-worthy, and he shall not lie in any hallowed ground when he dies, unless he has the bishop as his witness, in whose diocese he is in, that has made such amends, as prescribed to him.

And his confessor shall make known to the bishop within thirty days whether he has been willing to make amends. If he [the confessor] does not do so, he shall pay such compensation as the bishop is willing to allow him [to pay].⁸⁷

Like Archbishop Oda, who played a role in shaping Edmund's law code, the Archbishop of Canterbury, Wulfhelm (d. 941) contributed to the development of Æthelstan's law, which suggests that the clergy was beginning to have influence over what was to be done with oath-breakers and perjurers.⁸⁸ Æthelstan's provision highlights the equal importance of both royal and ecclesiastical authority in punishing oath-breakers and perjurers, with Æthelstan playing a key role in standardising the process. However, the responsibility for administering penance as a punishment rests with the clergy. This means that the clergy were entrusted with determining the appropriate remedy, and penance becomes the means by which a person can seek to alleviate the shame associated with such a punishment. Hence, at the heart of this penalty is the notion that the perjurer becomes someone who is no longer 'aðwyrþe' (oath-worthy), thus rendering them barred from legal participation. Moreover, the refusal to make amends brings shameful consequences in both life and death. It was particularly severe because being buried outside of 'gehalgodum lictune' (hallowed ground) meant that the individual's soul was believed to be unable to achieve salvation, thereby condemning it to eternal unrest. This could cause grief to their remaining kin over the potential damnation of the offender.⁸⁹ Marafioti argues that the 'deprivation' of these last rites 'may have been imposed in order to shame the offender (or his survivors) and thus

⁸⁷ II As 26–26.1: 'Ond se ðe manað swerige, 7 hit him on open wurþe, ðæt he næfre eft aðwyrþe ne sy, ne binnon nanum gehalgodum lictune ne licge, þeah he forðfore, buton he hæbbe ðæs biscopes gewitnesse, ðe he on his scriftscire sy, þæt he hit swa gebet hæbbe, swa him his scrift scrife. 7 his scrift hit gecyþe þam biscope binnon xxx nihta, hweþer he to þære bote cirran wolde. Gif he swa ne do, bete be þam þe biscop him forgifan wille'.

⁸⁸ Wormald, *The Making of English Law*, pp. 299–300.

⁸⁹ Gates and Marafioti, 'Introduction: Capital and Corporal Punishment', p. 9.

discourage others from replicating his offense'.⁹⁰ The fear of being denied these rites acted as a significant deterrent because it implied eternal separation from God and the community as a whole. Lambert expands on this by suggesting that the denial of burial in sanctified ground was to 'purify' the broader community by distancing it from sinners, who were regarded as being outside the bounds of Christian society.⁹¹ Refusing burial to violent offenders was also a stark reminder of the spiritual stakes involved. The sinner's exclusion from burial served as a deterrent, encouraging others to seek penance and confess their sins to avoid such a fate. To free oneself from this punishment, then, at the heart of all this was the Church's promotion of confession to relieve oneself from punishment. Only by confessing their sins, violent offenders could achieve redemption and be rid themselves of the impurity before they died.

We should also dwell on what 'unconsecrated ground' means and how this in itself aimed to shame perpetrators. The term can refer to the deliberate defilement or mishandling of the body after death. Such punishment invoked a profound fear, as unconsecrated bodies were often left exposed, unprotected by blessed ground, and subject to natural decay.⁹² It is for this reason that King Æthelred (r. 978–1016) acknowledged that there would be an expectation that kinsmen would attempt retrieve their kinsman's body from unconsecrated ground and give it a proper burial due to the significance of proper burial rites.⁹³ The law thus recognised both the desire and duty of kin to honourably inter their dead, even if the individual had committed a crime that warranted posthumous punishment. For onlookers, the sight of a neglected corpse, exposed to the elements, represented the ultimate fate awaiting those who defied royal authority or religious authority. The spectacle of unconsecrated burial warned of the painful isolation waiting the sinner's soul. This is vividly illustrated in the *Anglo-Saxon Chronicles*. For example, King Harold Harefoot's death (d. 1040), who had ruled England from 1035 to 1040, had originally been interred with honour at Westminster. However, when his half-brother Harthacnut (r. 1035–42) ascended to the throne, he commanded Harold's body to be exhumed from its

⁹⁰ Marafioti, "Punishing Bodies and Saving Souls", p. 52.

⁹¹ Lambert, *Law and Order*, p. 222. See also Blair, 'The Dangerous Dead in Early Medieval England', in *Early Medieval Studies in Memory of Patrick Wormald*, pp. 552–3.

⁹² Marafioti, "Unconsecrated Burial and Excommunication", p. 62. S1447 refers to a grave as "clean".

⁹³ III Atr 7.1: "Gif he clæne beo æt þam ordale, nime upp his mæg..." See Marafioti's commentary on this in "Unconsecrated Burial and Excommunication", p. 62; Victoria Thompson, *Dying and Death in Later Anglo-Saxon England* (Woodbridge, 2004), 176.

burial site at Westminster and discarded into a swamp in 1040 near the Thames.⁹⁴ The chronicler, John of Worcester (d. 1118) hints at personal motivation behind this act, suggesting that Harthacnut sought revenge for his half-brother Alfred, who had been mutilated on Harold's orders.⁹⁵ This desecration thus more than likely aimed to diminish Harold's standing even in death, dishonouring both his memory and his supporters and family.

The *Anglo-Saxon Chronicle* also recount the fate of Eadric Streona (d. 1017), whose body was hurled from the city walls and left without the dignity of a consecrated burial. Such a public act of disposal stripped Eadric of any claim to social or religious honour that should have been fitting for a man of his status. Burial was intertwined with the remembrance and honour of the deceased. Gates discusses the shameful treatment of Eadric's body, arguing that the gesture not only pained his kin but also intended to leave his name and memory in disgrace.⁹⁶ Moreover, leaving his body exposed to the elements added another dimension to this humiliation, as it allowed his bodily disintegration to become a morbid spectacle visible to all those who witnessed it. As Gates observes, this abandonment was a further 'assertion of law and royal authority', serving as a reminder of the sovereign's reach.⁹⁷ This conveyed a stark warning about the consequences of disloyalty to the crown and emphasised the king's ability to manipulate death and the body as symbols of royal control.

By the eleventh century, the treatment of perjury reveals a further intensification of the rhetoric of shame and social exclusion surrounding false oaths. In Edmund's laws is the clear emphasis on perjury as a crime of deception that demands repentance. Indeed, Edmund's equation of perjury with sorcery is revealing: 'Ða ðe mansweriað 7 liblac wyrcað beon hi a fram ælcum Godes dæle aworpene, buton hi to rihte dædbote gecirran þe geornor' (Those who commit perjury and sorcery shall be cast out

⁹⁴ ASC 1040. See Marafioti's commentary on this in *The King's Body: Burial and Succession in Late Anglo-Saxon England* (Toronto: University of Toronto Press, 2014), p. 126.

⁹⁵ 'Insuper etiam non sui consilii nec sue uoluntatis fuisse quod frater eius cecatus fuisset, sed dominum suum regem Haroldum illum facere quod fecit iussisse cum totius fere Anglie principibus et ministris dignioribus regi iurauit' (In addition, he also swore to the king, with the ealdormen of almost all England and the greater thegns, that it had not been by his advice or at his wish that his brother was blinded, but that his lord King Harold had ordered him to do what he did). *The Chronicle of John of Worcester*. Vol. 2: *The Annals from 450–1066*, 3 vols. (eds.) Reginald R Darlington and Patrick McGurk, trans. Jennifer Bray and Patrick McGurk (Oxford: Clarendon Press, 1995), pp. 530–2.

⁹⁶ Gates, 'The 'Worcester' Historians and Eadric Streona's Execution', in *Capital and Corporal Punishment*, p. 172.

⁹⁷ Ibid.

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of God's fellowship, unless they proceed to earnestly repent).⁹⁸ Perjury, much like sorcery, then, was believed to operate in secrecy. It had the potential to destabilise society through hidden, malicious manipulation and workings from the devil. To commit perjury was therefore to place oneself in the company of those who sought to disrupt the divine order of society through deceit. Thus, exclusion from the 'fellowship of God' (fram ælcum Godes dæle) becomes the ultimate experience of shame as the offender is considered irredeemable. Wulfstan ultimately builds on this rhetoric, with his logic presenting perjury as a corrupting and 'polluting' force, comparable to homicide: '7 æghwīlc unriht awurpe man georne of þisum earde ... 7 swicollice dæda 7 laðlice unlaga ascunige man swiðe, þæt is: falsa gewihta 7 woge gemeta 7 læse gewitnessa 7 fracodlice ficunga' (And every injustice shall be cast away from this earth ... and deceitful deeds and hateful injustices shall be strongly detested, that is: false weights, false measures, and lying testimonies, and shameful frauds).⁹⁹ Like unrestricted violence, Wulfstan perceived perjury as one of the key reasons why his nation was suffering divine punishment, as his nation was swamped by Viking raids. In his homily, Wulfstan directly connects the breaking of oaths with a broader crisis engulfing England:

As we said before, more than should be are lost through oath-breakers and pledge-breakers and through various lies; and non-observances of church feasts and fasts which widely occur time and again. And also there are here in the land God's adversaries, degenerate apostates, and hostile persecutors of the Church and too many grim tyrants, and widespread despisers of divine laws and Christian virtues, and foolish deriders everywhere in the nation, most often of those things that the messengers of God command, and especially those things that always belong to God's law by right.¹⁰⁰

Wulfstan groups oath-breakers alongside some of the most morally reviled figures of his day – 'God's adversaries', 'degenerate apostates', and 'despisers of divine law'. Perjurers are constructed as active agents of the moral decay which, in Wulfstan's view, is eroding the foundations of Christian society in the eleventh century. Crucially, this association also intensified the shame attached to breaking an oath.

⁹⁸ I Em 6.

⁹⁹ V Atr 23–24. See also V Atr 25, VI Atr 7, 28.2, 36; VIII Atr 27; Cn 1020 15; I Cn 5.3; II Cn 6, II Cn 36.

¹⁰⁰ '...swa we ær cwædan, þurh aðbricas 7 þurh wedbrycas 7 þurh mistlice leasunga forloren 7 forlogen ma þonne scolde; 7 freolsbricas 7 fæstenbrycas wide geworhte oft 7 gelome. 7 eac her syn on earde apostatan abroþene 7 cyrichatan hetole 7 leodhatan grimme ealles to manege, 7 oferhogan wide godcundra rihtlaga 7 cristenra þeawa, 7 hocorwyrde dysige æghwær on þeode oftost on þa þing þe Godes lage gebyriað mid rihte'. *Sermo Lupi Ad Anglos*, pp. 47–8.

In this sense, Wulfstan's rhetoric demonstrates how shame was increasingly weaponised as a means of social control, framing the oath-breaker as a cornerstone of the decay of his society.

5. Divine Judgement and Public Humiliation: Ordeal in the Tenth and Eleventh Centuries

A central question worth raising here that has been left out of the discussion thus far, is what happens in cases where someone is suspected of lying, but there is no conclusive means of determining their guilt or innocence. In earlier royal law codes, it seems that a person's established reputation within the community might have been sufficient to clear them of suspicion as honour functioned as a kind of social proof. However, what we see in reign of Edward (r. 899–924), son of Alfred, is a significant shift in how disputed truth claims were handled. The task here is to investigate the role of shame in matters of trial by ordeal, whereby divine judgement became central to determining truth.

Under Edward the Elder's legal system, those accused of perjury were no longer considered 'oath-worthy' (aðwyrðe), that is, fit to clear themselves by swearing before witnesses. They had become instead only 'ordeal-worthy' (ordales wyrðe), meaning that they were only fit to have their case decided by divine intervention:

Eac we cwædon be þam mannum ðe mansworan wæran, gif ðæt geswutelod wære, oððe ofer cyðed wære, þæt hy siððan **aðwyrðe** næran, ac **ordales wyrðe**.¹⁰¹

We have further declared, with regard to men who have been accused of perjury: if the charge has been proved, or if the oath on their behalf has collapsed, or has been overborne by more strongly supported testimony, never again shall they have the privilege of clearing themselves by oaths, but only by the ordeal.

Here, perjurers were required to submit to the ordeal – a ritualised and physically dangerous test – to prove their honesty. On the one hand, some scholars argue that ordeals relied fundamentally on the belief in divine providence, which was supported by the presumption that God would directly intervene in human affairs to determine whether the accused was guilty or innocent.¹⁰² God, through miraculous

¹⁰¹ I Ew 3.

¹⁰² Hyams, 'Trial by Ordeal: The Key to Proof in the Early Common Law', in *On the Laws and Customs of England: Essays in Honor of Samuel E. Thorne*, (eds.) Morris S. Arnold et al. (University of North Carolina Press, 1981), pp. 90–126; Foxhall-Forbes, *Heaven and Earth*, pp. 158–9; David Rollason, 'Ordeal', in *The Wiley Blackwell Encyclopedia*, pp. 353–3; Bartlett, *Trial by Fire and Water*; Margaret H. Kerr, et. al., 'Cold Water and

intervention, would expose the hidden sins of the accused or vindicate them. As such, suffering through an ordeal was perceived as a form of divine retribution for hidden guilt, or conversely, as a sign of divine protection for the innocent. On the other hand, Whitman argues that while ordeals could acquire some truth that only God could know, they were not merely magical tools for uncovering hidden truths, since in many cases there was no real disagreement about what had happened. Rather, their main function was to relieve the community of the burden of passing judgement themselves.¹⁰³ Appealing to divine intervention meant that the ordeal placed the task of condemning the accused in God's hands, sparing human participants from the heavy responsibility of directly judging one another

Before examining divine aspects of intervention further, it is worth first looking at how the humiliation experienced by the accused could be greatly exacerbated by the public nature of these ordeals. While the precise details of how public these events were may be uncertain, the royal laws indicate that a significant number of witnesses were required to validate the ordeal's outcome. Æthelstan's law gives us some hint as to how public these were and what was required from the witnesses in order to appease God: '... and everyone who is present in both parties shall fast according to the command of God and the archbishop. And there shall not be more than twelve on either side. If, however, the accused man is one of a party greater than twelve, the ordeal shall be invalidated, unless they will leave him'.¹⁰⁴ If we go by what Æthelstan's law states, then repercussions of the experience would have been intensified by the fact that they were somewhat public. According to Miller, it can be assumed that these could be 'humiliating' endeavours, because of the physical degradation of the ordeal itself.¹⁰⁵

Although knowing the particular type of trial by ordeal is crucial for assessing this degradation, Edward's law, unfortunately, makes no mention of it. It can be assumed that it was one of the three that we see in the laws. There are three types of secular ordeals mentioned in the laws: trial by hot iron, trial by hot water, and trial by cold water. Regarding trial by hot iron, a piece of iron would be heated and the accused was then required to carry the red-hot iron from 'stake to mark' (of þam stacan to þære

Hot Iron: Trial by Ordeal in England', *The Journal of Interdisciplinary History*, 22:4 (1992), 573–95, at pp. 573–4.

¹⁰³ Whitman, *The Origins of Reasonable Doubt*, pp. 56–7.

¹⁰⁴ II As 23.2: '...and beo þæra ælc fæstende on ægþera hond se ðær mid sy, on Godes bebode 7 ðæs ærcebiscopes; 7 ne beo ðær on naþre healf na ma monna þonne XII. Gif se getihtloda mon ðonne maran werude beo þonne twelfa sum, þonne beo þæt ordal forod, buton hy him from gan willon'.

¹⁰⁵ Miller, 'Ordeal in Iceland', *Scandinavian Studies*, 60:2 (1988), 189–218, at pp. 208–12.

mearce) over a distance of three feet, and these feet were measured to the size of the criminal's feet.¹⁰⁶ After completing this task, the accused's hand was bound and examined three days later. If the wounds showed signs of infection, the defendant was deemed guilty.¹⁰⁷ There were variations of this ordeal demanding greater feats. An ordeal by iron could warrant a threefold punishment. In the threefold ordeal of hot iron, the accused had to carry the hot iron rod for nine feet instead of three.¹⁰⁸ Regarding trial by hot water, a stone was cast into a cauldron of boiling water which the accused had to retrieve successfully.¹⁰⁹ The deliberation was the same for the hot iron, the wounds were bound and then checked afterwards.¹¹⁰ A threefold punishment for this ordeal meant that the criminal had to put their hand up to their elbow in the cauldron of boiling water, rather than just the length of their hand, resulting in more severe burns and scars.¹¹¹ Trial by cold water is only mentioned in *II Æthelstan* and so it is not entirely known how common it was in comparison.¹¹² It involved submerging the accused into holy water, with the outcome hinging on whether they sank or floated. Sinking indicated innocence, while floating indicated the accused was guilty. It is not known as to whether a threefold punishment for this existed. In addition to the three secular ordeals, there was also an ecclesiastical ordeal specifically designated for churchmen: the ordeal of consecrated bread. In this ordeal, the accused had to swallow blessed bread.¹¹³ If the offender choked, they were considered guilty. Regardless of which specific ordeal Edward's law refers to, it can be presumed that all of these trials were designed to be profoundly humiliating, physically damaging, and, in some cases, potentially lethal. Each ordeal, whether it involved handling hot iron, immersing oneself in boiling water, or undergoing the cold water test, was meant to subject the accused to intense bodily harm.

We also gain insight into the experience leading up to the ordeal itself. The customs of public humiliation and the necessary rites of purification are vividly illustrated in a rare example from the *MS Cotton Claudius BIV* manuscript, which contains the *Old English Hexateuch*. This source provides valuable detail about the ritualised humiliation that preceded the ordeal, highlighting how shame and

¹⁰⁶ Ordal 1. Also, see Attenborough's explanation in *The Laws of the Earliest English Kings*, p. 188.

¹⁰⁷ Ordal 1.5.

¹⁰⁸ Ordal 1.

¹⁰⁹ Ordal 1.1

¹¹⁰ Ordal 1.5.

¹¹¹ Ordal 1.2.

¹¹² II As 23.1.

¹¹³ VIII Atr 22, 24; I Cn 5.2a, 5.2c.

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purification were deliberately staged as part of the process.¹¹⁴ In this manuscript, a man is depicted being whipped while awaiting his trial by ordeal, specifically the test involving a hot iron bar. Although no law code explicitly mandates that an accused person must be whipped before facing the ordeal, this image suggests that public humiliation might have been a common aspect of the process, likely aimed at increasing the gravity of the trial and heightening the shame the accused would experience before the ordeal even took place. It amplified the already intense emotional burden the individual faced, as it demonstrated to onlookers that they were being subjected to divine retribution before the actual trial even began. This public punishment functioned as both an immediate humiliation and a psychological preparation for the ordeal.

Additionally, Æthelstan's law underscores the significance of the purification process that the accused had to undergo before participating in the ordeal. Before facing the trial, the accused was required to swear an oath to signal their honest intentions and commitment to the truth. This oath was a solemn declaration of innocence, meant to assure the court – and, importantly, God – that the person seeking to undergo the ordeal was acting in good faith.¹¹⁵ However, the public display of the oath was not enough in itself. Æthelstan's law further required the accused to purify themselves before the test of divine judgment could take place. This purification involved a religious ritual designed to cleanse the accused spiritually, aligning with the belief that divine judgment could only be fair and effective if the person was spiritually prepared. This purification process involved a visit to a priest, who would consecrate the accused, preparing them for the ordeal through religious rites. The purification required the accused to consume only specific foods: bread, water, salt, herbs, and communion.¹¹⁶ These foods were meant to cleanse the body and soul. They created a connection between the physical act of preparing for the ordeal and the spiritual readiness to stand before God.

Fortunately we are left with a recorded instance of trial by ordeal which can be found in Lantfred's *Translatio et Miracula S. Swithuni*, about a slave who undergoes trial by hot iron.¹¹⁷ While the slave's guilt is undetermined, it is likely that he was not able to swear an oath of innocence anyway because of his status as a slave. As we saw in Wihtrud's law, slaves were not considered oath-worthy

¹¹⁴ See *MS Cotton Claudius BIV*, f80r. <<https://www.bl.uk/>>.

¹¹⁵ II As 23.

¹¹⁶ *Ibid.*

¹¹⁷ *Translatio et Miracula S. Swithuni*, pp. 308–10. On the rarity of this instance, see Rabin, 'Uncertain Judgment': The Ordeal in Hagiography and Law', in *Law, Literature, and Social Regulation*, pp. 115–34.

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and needed someone to swear the oath on their behalf. Nevertheless, the story goes that a wealthy merchant, Flodoald, had a beloved slave who was accused of a crime and arrested by the king's reeve, Eadric of Calne. The reeve ordered the slave to undergo trial by ordeal, carrying a red-hot iron bar to prove his innocence. Despite Flodoald's pleas and offers of silver to spare the slave, Eadric refused, forcing the ordeal. The slave's hand was badly burned, and he seemed condemned. However, Flodoald and his companions prayed fervently to St. Swithun for divine intervention. Miraculously, by the third day, the slave's hand was completely healed. Even his enemies declared him innocent, seeing no trace of injury. Overjoyed, Flodoald and his companions praised God, attributing the miracle to St. Swithun's intercession. In gratitude, Flodoald donated the freed slave to the saint.

Though the story is clearly hagiographic in nature, meant to showcase the miraculous powers of St. Swithun, it provides useful information about how contemporary readers would have perceived shame and divine intervention in the context of trial by ordeal. According to Brien O'Keefe, there is no need for a formal confession in this case; the body itself – through the trial by ordeal – 'reads' the guilt of the accused.¹¹⁸ In other words, the slave's physical suffering turns into an external expression of their internal shame. In the miraculous healing, we see that the body can be redeemed by divine intervention, which also implies that physical evidence of guilt was not absolute. For the slave, the trial initially brought great shame and his humiliation would have been compounded by the belief that his physical injury marked him as guilty in the eyes of society. As Rabin argues, 'it was not merely the proband who was on trial, but also those witnesses who, in affirming the results of the ordeal, affirmed also the laws, rules, and norms by which the community was governed'.¹¹⁹ Even though he may have believed himself innocent, the process of the ordeal forced him into a position where his very flesh was seen as an outward reflection of his presumed crime. Yet, through the miraculous intervention of St. Swithun, this shame was reversed, and the slave was effectively absolved of the accusation, not through human judgment, but through divine will.

The eleventh-century laws substantiate this idea that such severe punishment could be imposed even on individuals who might be innocent, based merely on suspicion or perceived untrustworthiness. The laws of Æthelred and Cnut demonstrate how suspicion alone could justify such treatment. These laws emphasise the importance of trustworthiness (*getrywð*). Those with good reputations were permitted to swear oaths in legal disputes, as their credibility could be reinforced by their honour within

¹¹⁸ O'Brien O'Keefe, 'Body and Law', p. 225.

¹¹⁹ Rabin, 'Uncertain Judgment', p. 134.

the community.¹²⁰ But for those burdened by a reputation for dishonour, those considered ‘ungetrywe’ (untrustworthy), or already tainted by previous failure in oath or ordeal, a much harsher standard applied.¹²¹ These individuals were subjected to the triple ordeal, which as noted above, made the ordeal much more difficult to succeed and would have further consequences of shame and humiliation added to it. In cases where such a person was suspected of wrongdoing and lacked a surety or kin-group willing to vouch for them, the law was unequivocal: they were to be slain outright and buried in unconsecrated ground.¹²² The pollution of suspected perjury or unreliability was so severe that the mere possibility of sin was treated as grounds for such exclusion. What is also particularly revealing is the extension of this penalty to anyone who dared to defend or support the suspected individual.¹²³ To defend the untrustworthy was to risk inheriting their shame and pollution. This practice appears to have been especially targeted at the socially isolated, meaning those without kin or lordly protection. The fact that suspected individuals could be killed and denied Christian burial even if they might be innocent speaks to an underlying anxiety about the presence of moral pollution within the community. The risk of retaining a potentially perjured or treacherous person within society – and the possibility that their sin might taint others – was seen as far greater than the risk of executing an innocent person. It was thus considered better practice to excise a possible source of corruption than to allow even the suspicion of shame to fester within the community.

6. Conclusions

Thus, there is a clear evolution in the treatment of perjury in the late royal laws, whereby royal and ecclesiastical interests merged, creating an increasing emphasis on shame and redemption. Initially, ecclesiastics focused on promoting spiritual awareness regarding the religious implications of perjury, necessitating penance and the confession of hidden lies and deception. They sought to instil in people the understanding that perjury was not just a legal offence, but a sinful transgression with severe spiritual consequences that could imperil one’s soul. The ecclesiastical perspective acknowledged that while the right to deny charges under oath was designed to protect the innocent by allowing them to clear their name without additional proof, it also created opportunities for exploitation. Dishonest

¹²⁰ II Cn 22.

¹²¹ I Atr 1.1.

¹²² I Atr 4–4.1

¹²³ I Atr 4.2.

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individuals, particularly those intent on avoiding legal repercussions, could abuse this protection by swearing false oaths to escape punishment.¹²⁴ Such individuals could perjure themselves with little immediate fear of retribution, as their primary concern was preserving their honour and reputation and avoiding earthly punishment rather than contemplating the eternal ramifications of their deceit.

As the tenth century progressed, theological ramifications were increasingly emphasised as a deterrent against perjury. This ultimately marked a shift from a focus on supporting honour to imposing shame. The prevailing belief was that only God could truly discern guilt or innocence. Underscoring the spiritual consequences of perjury meant that kings, in collaboration with ecclesiastics, sought to instil a deeper fear of divine judgment among their subjects. However, this transformation did not render honour and reputation any less significant in the context of oath-swearing. On the contrary, the increased emphasis on shame and sinfulness made the preservation of honour even more critical. An individual proven to be a liar was not merely dishonoured but also condemned as a sinner, facing both social and spiritual repercussions.

Even into the eleventh century, Wulfstan recognised that those in power were expected to uphold the highest standards of oath-taking, as their honour was intrinsically tied to their legal and social standing. Honour was not supplanted by shame; rather, the two became important aspects that added weight to the credibility of oaths and the moral obligations associated with them. For Wulfstan, the relationship between status and oath-values was integral to his broader vision for society. He articulated this perspective in his writings, particularly in his treatises on the significance of status in relation to oaths and wergilds, demonstrating that societal structures and hierarchies were deeply connected to the perceived worth and credibility of an individual's sworn word. Through this lens, honour remained a crucial component of legal and social order, evolving alongside the increasing influence of ecclesiastical doctrine on legal practices. In the legal tract, *Gepyncðo*, Wulfstan stresses the importance of oath-values and status:

Hit wæs hwilum on Engla lagum, þæt leod 7 lagu for be gepincðum; 7 þa wæron leodwitan weorðscipes wyrðe, ælc be his mæðe, eorl 7 ceorl, þegen 7 þeoden.¹²⁵

¹²⁴ Lambert, *Law and Order*, p. 261.

¹²⁵ *Gedyncðo*.

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In the laws of the English, it was once [the case] that people and law were ordered by status and the people's councillors were treated with honour, each according to his rank, noble and layman, thegn and lord.

The term ‘geþyncðo’ can be translated as ‘rank’, ‘status’, ‘dignity’, or ‘honour’.¹²⁶ In a practical sense, Wulfstan’s aim was to establish proper oath-values in addition to other legal privileges enjoyed by the nobility, their ‘weorðscipes’ (honour). Wulfstan’s lament for the loss of proper dignities can be seen as an appeal to the rightful social order apparently lacking during his time. His political and legal tracts reinforce an ideal society in which status and honour values should be kept, at least in principle. Rabin argues that Wulfstan uses this term to ‘conflate notions of social status and moral worth in order to invoke a nostalgic picture of a properly organised society’.¹²⁷ We should understand the purpose of the *Gepyncðo* in line with Wulfstan’s vision of an ordered ideal society.¹²⁸ A functioning Christian society needed order and well-established oath-values during what Wormald argues was a time of ‘social disintegration’ in 1014, when slaves could take up raiding and become Vikings, thus acquiring the wergild of a thegn, while noble thegns on the other hand could become enslaved with no wergild payable to them.¹²⁹ Wulfstan was thus concerned that thegns could lose their oath-values, and like a criminal or slave, they would be disposed of their status and legal privileges.

Wulfstan’s preoccupation with oath-values and status is prominent in many of his legal declarations. His compilations on honour and status were a group “with an amoebic tendency to divide and multiply”, as Wormald put it.¹³⁰ In many of his works, oath-values are hierarchically valued so that honours are conferred according to rank. For instance, the *Hadbot* refers to legal compensation for the ordained. In this eleventh-century text, Wulfstan states that the oath of a mass-priest and a secular thegn were to be of equal value.¹³¹ Both the warrior and ecclesiastical class were equal according to Wulfstan’s logic.¹³² Compensation thus needed to reflect their status. Additionally, the *Mircna laga* (Mercian-Oath)

¹²⁶ Rabin, *The Political Writings of Archbishop Wulfstan* (Manchester: Manchester University Press, 2015), p. 68.

¹²⁷ Ibid.

¹²⁸ According to Rabin, ‘when each category fulfils its divinely appointed role, the result is an ordered society populated by virtuous citizens’. Ibid, p. 102.

¹²⁹ Wormald, *The Making of English Law*, p. 391.

¹³⁰ Ibid.

¹³¹ Had.

¹³² According to Wulfstan, ‘A mass-priest's oath and a secular thegn's are considered equal in English law because of the seven Church degrees that the mass-priest has acquired through the grace of God. Sevenfold are the gifts

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contains a very similar injunction which refers to the equality of oath-values between a mass-priest and a thegn.¹³³ Again, to have the same oath-value suggests that these two groups were worthy of similar status, and thus, should possess equal oath-values. Wulfstan's legal codes share a logic of legal privilege similar to that which is encapsulated in much of West-Saxon law.

Thus, while honour continued to play a crucial role in the process of exculpation, the concept of shame was increasingly employed as an additional burden to intensify the severity of punishment. Overall, these developments reflect the broader transformation we have observed thus far, in which earlier royal laws primarily emphasised financial payment and the preservation of honour as mechanisms for maintaining order. Over time, however, these systems evolved to incorporate elements of punitive justice, moral correction, and spiritual discipline. This shift illustrates the increasing influence of religious and ethical considerations on legal practices, as well as a movement towards a more religious and ecclesiastical approach to regulating behaviour and administering justice.

of the Holy Spirit; and seven are the steps of ecclesiastical ranks and holy orders; and seven times daily should God's servants praise God in church and diligently advocate for all Christian people'. See Rabin, *The Political Writings of Archbishop Wulfstan*, pp. 72–3.

¹³³ Mirce.

4.

Theft

In a detailed defence of capital punishment in Ælfric of Eynsham's (c. 955–1010) homily on the Old Testament figures Ahitophel and Absalom, Ælfric describes the fate of thieves:

The thief will now be slain and shamefully punished, and his miserable soul will journey to hell afterwards, to the eternal torments, in dark chains. We know that the all-ruling saviour will be merciful to the wicked thief if, with all his heart and inward lamentation, he cries to almighty God and requests his mercifulness before the sharp sword sways to his neck; and if he bemoans his sins more than his life; and if, while weeping, he desires the mercy of the all-ruling one. But the treacherous devil, who deceived the thief and ever led him astray until his life's end, will not at all easily allow him, at his end, to turn with true repentance and with inward weeping to the good-willed saviour, but he will consider with all his craft how he might pull him from Christ.¹

It is clear that Ælfric was not opposed to capital punishment. The 'shameful' (sceame) punishment Ælfric mentions that awaited thieves according to the laws might have been either hanging or beheading.² Yet, Ælfric's treatment of the thief does not purely surround external shame in the form of capital punishment; he allows for the possibility of salvation, but only through the internalisation of shame in the form of penance that was grounded in an emotional performance of shame which aligns with what we have seen outlined in the penitentials: 'and gif he bemænð his synna swyðor þonne his lif, and mid wope gewilnað þæs eall wealdendes miltsunge' (and if he bemoans his sins more than his life; and if, while weeping, he desires the mercy of the all-ruling one). We should also take note that the

¹ 'Se sceaða bið nu ofslagen and to sceame getucod, and his earme sawl syððan syðað to helle to ðam ecum suslum on sweartum racenteagum. We wenað swaðeah þæt se eall wealdenda hælend wille gemiltsian þam manfullan sceaðan, gif he mid eallre heortan and incundre geomerunge clypað to ðam ælmihtigan gode and his arfæstnysse bit, ærðan þe þæt scarpe swurd swege to his hneccan, and gif he bemænð his synna swyðor þonne his lif, and mid wope gewilnað þæs eall wealdendes miltsunge. Ac se swicola deofol þe beswac ðone þeof, and æfre forlærde oð his lifes ende, nele naht eaðe on his ende geðafian þæt he þonne gecyrre mid soðre behreowsunge, and mid incundum wope, to þam wel-willendan hælende ac cunnað mid eallum cræfte hu he hine criste æt-brede'. *Ælfric's Lives of Saints I*, pp. 424–31.

² While some law codes explicitly prescribe hanging as the punishment for thieves – for example, VI As 6.3, 12.2 and III Em 4 – beheading is not mentioned in the legal texts as punishment. However, archaeological evidence may suggest that beheading was also practiced in certain cases; see Marafioti, 'Punishing Bodies and Saving Souls', pp. 46–7.

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thief's battle at the moment of death is with the devil, who operates as a keeper of shame, working to prevent the sinner from turning to God in humility. Ælfric's image of the devil striving 'with all his craft' (mid eallum cræfte) to pull the thief away from repentance suggests that the devil is a figure that immobilises sinners and keeps him bound in sin, unable to seek mercy.

In Æthelberht's seventh-century law code, theft was resolved through financial compensation, with neither external shame through capital punishment nor internal shame through repentance. Although this approach is expected in early Kentish law, Ælfric's idea of justice becomes more prevalent in later law codes, which place greater emphasis on capital and corporal punishment. While penitential texts do reinforce the idea that thieves could reconcile with their victims through compensation, they strongly advocate for the internalisation of shame through penance and confession as necessary for true reconciliation. By the tenth century, royal law codes began to limit opportunities for reconciliation and the restoration of honour, increasingly framing theft as a disruptive crime that warranted execution. Under Æthelstan in the early tenth century, the opportunity for reconciliation diminished further, with harsh penalties extended even to those who aided thieves. Additionally, legal reforms like the abolition of sanctuary for thieves made the focus shift from restoring honour to imposing shame. By the late tenth and eleventh centuries, Christian influences brought new forms of punishment that heightened the focus on internalising shame through the use of punitive mutilation.

Hence, the argument in this chapter is that while kings did make efforts to reconcile both honour and shame as parallel modes of justice within their legal frameworks, these attempts were limited to specific circumstances and became increasingly rare. Honour, once central here, gradually gave way to shame as the dominant ideal as to how thieves were to be treated. This shift away from reconciliation and the restoration of honour is traced in section 1 by beginning with early restorative justice methods focused on honour and compensation. It then shifts to the late seventh century, when laws began to prioritise punitive measures to deter theft. Section 2 shows where a parallel system of justice emerged, as ecclesiastics advocated for mercy, emphasising compensation, reconciliation, and internalising shame through penance and spiritual correction. Finally, sections 3 and 4 demonstrate how the law codes increasingly shifted away from reconciliation, except in increasingly more narrow circumstances, instead favouring harsh corporal and capital punishments.

1. Early Restorative Justice and the Emergence of Punitive Justice in the Seventh-Century Royal Law Codes

The earliest legal approach to theft outlined in Æthelberht's seventh-century law demonstrates restorative attitudes that centre on honour and status. By requiring compensation for stolen goods, Æthelberht's law emphasises the restoration of the victim's honour. His code first prioritises theft against the Church and members of the clergy, followed by theft from the king down to the lower orders of society. Theft from a church incurred the highest penalty, requiring compensation twelve times the value of the stolen goods; a bishop's property was valued at elevenfold, a priest's at ninefold, a deacon's at sixfold, and a cleric's at threefold.³ In contrast, the king's property required compensation at ninefold, which is lower than the Church's, but equal to that of a priest and above a deacon or cleric.⁴ The higher compensation rates for Church property reflect the elevated status ascribed to religious institutions. Although it is uncertain when this clause was added to the laws, especially given that the code largely stems from oral tradition as discussed, that the king's own status had now been subordinated to that of the Church in terms of monetary compensation to both the growing influence of ecclesiastical authority and the influence the clergy had in shaping and writing the laws.⁵ This is recognised by Bede who acknowledges that Æthelberht's laws were designed to 'provide protection to those whom he had accepted and whose teachings he had welcomed'.⁶ This is all fairly straightforward and aligns with Æthelberht's broader approach of protecting honour according to social status.

However, for freemen, there is a noticeable difference in procedure: 'Gif frigman freum stelþ, III gebete, cyning age þæt wite ealle þa æhtan' (If a freeman steals, he must repay threefold; the king takes the fine or all of the thief's possessions).⁷ In addition to paying compensation for the original affront to the victim, the thief had to pay a 'wite' (fine) to the king. Lambert speculates that the fine may have been equivalent to 50 shillings, the value of the king's 'mundbyrd' (protective fee), implying that the king was entitled to this fine to ensure the safety and protection of his subjects.⁸ The use of the 'wite', then, suggests that the king's role in theft cases extended beyond that of a neutral arbiter of justice. The

³ Abt 1.

⁴ Abt 4.

⁵ Brooks, 'The Laws of King Æthelberht', pp. 111–16.

⁶ '...uolens scilicet tuitionem eis, quos et quorum doctrinam susceperat, praestare'. Bede, *HE*, II.5, p. 151.

⁷ Abt 9.

⁸ Lambert, *Law and Order*, pp. 59–61. See Abt 8.

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king was seen as the protector of the social order and the enforcer of peace, with the right to claim fines as a means of preserving the kingdom's stability. By enforcing an additional *wite*, the king ensured that personal honour was maintained, protecting both the individual and the community from any dishonour.

It is important that forfeiture of possessions, then, also function as an additional potential punishment in this clause: 'cýning age þæt wite ealle þa æhtan' (the king takes that fine or all of the thief's possessions). If the king was seen as unable to fully rectify the wrong through enforcing financial compensation, then he could be seen as failing to protect the honour of his subjects. The next best thing he could do, then, was to seize all the thief's remaining possessions, thereby creating the most equitable restitution possible. This effectively degraded the perpetrator's status. In such cases, the thief would need to rely on kin for support or, as Oliver suggests, may be forced to bind themselves to another as a servant or slave.⁹ The forfeiture of property in this clause thus shows an early example of punitive justice. Although Æthelberht's law predominantly relies on restorative justice through financial compensation, this clause provides an additional form of punishment when full compensation is not possible. This alternative ensures that the theft is addressed in a manner that aims to restore honour as well as possible, even if it does not fully restore the victim's loss. The act of seizing property and possessions goes beyond simple measures of compensatory justice by serving as a means of degrading the thief's status and honour within the community. This degradation was a form of social shame, where the thief's loss of property also symbolises the loss of personal honour and status.

As for the treatment of the unfree, however, Æthelberht's law distinguishes between slaves and servants who steal and free persons, as the former were already in a state of slavery or servitude. In their case, Æthelberht's law shows that the unfree had different levels of accountability. His laws required slaves who committed theft to pay twice the value of the stolen goods, instead of three times the value as decreed for freemen.¹⁰ The lower fine for slaves and servants who commit theft can be seen as a recognition of their reduced autonomy and social standing. Essentially, it acknowledges that they have fewer resources to repay the stolen goods. Of course, this leniency does not diminish the fundamental principle that even those of lower status are expected to make restitution and take responsibility for their actions nonetheless. However, the question of how slaves and servants could meet such compensatory demands brings attention to this restorative aspect of the law. With limited information

⁹ Oliver, *The Beginnings of English Law*, p. 94.

¹⁰ Abt 90.

on whether slaves or those in servitude could own property in seventh-century Kent, it remains unclear whether they were expected to pay the fines directly or if the responsibility fell on their masters. Scholars such as Jurasinski, Pelteret, and Oliver have all suggested that slaves may have been able to acquire some property or finances.¹¹ Additionally, the *Poenitential Theodori* includes a clause stating that it is not permissible for a man to take money from a slave if the slave has earned it through their own labour.¹² If slaves possess money, then it could support the argument that Æthelberht considered the practical need for leniency in these laws.

However, as Oliver argues, this ambiguity could instead indicate that the legal system implicitly assumed masters would bear financial responsibility for the actions of their slaves – a concept later seventh-century laws appear to support.¹³ For example, if we look to the late seventh-century laws of Æthelberht's descendants, Hlophere and Eadric (r. 685–86), there are more explicit references to the responsibility of masters for the actions of their servants, at least in cases of homicide. Two clauses in their laws state that: 'Gif mannes esne eorlcundne mannan ofslæhð, þane ðe sio þreom hundum scill gylde, **se agend** þone banan agefe do þær þrio manwyrð to' (If a person's servant slays a nobleman, whose wergild is three hundred shillings, **the owner** [of the servant] shall surrender that murderer and [in addition] pay three man-worths); and 'Gif mannes esne frigne mannan ofslæhð, þane þe sie hund scillinga gelde, **se agend** þone banan agefe oþer manwyrð þær to' (If a man's servant slays a free man, whose wergild is one hundred shillings, **the owner** [of the servant] shall surrender that murderer and [in addition] pay one man-worth).¹⁴ In both clauses, the master is expected to pay for the fault of the servants. If Oliver's assumption is correct, then this understanding of masters' liability could logically extend to theft as well. The lack of clarity in Æthelberht's law about who exactly was responsible for compensating the victim could indicate that it was self-evident to the people of the time that the master, not the slave, would bear the financial responsibility for the slave's actions. This is consistent with the broader logic of the social structure, where slaves were not treated as autonomous, but were seen as property of their masters, with limited personal agency.

¹¹ Jurasinski, 'The Old English Penitentials and the Law of Slavery', in *English Law Before Magna Carta: Felix Liebermann and Die Gesetze der Angelsachsen* (eds.) S. Jurasinski, L. Oliver, and A. Rabin (Leiden: Brill, 2010), pp. 109–10; Pelteret, *Slavery in Early Mediaeval England*, p. 104; Oliver, *The Beginnings of English Law*, p. 94.

¹² *Poenitential Theodori*, II. 13.3: 'Non licet homini a servo tollere pecuniam, quam ipse labore suo adquesierit'.

¹³ Oliver, *The Beginnings of English Law*, p. 115.

¹⁴ HL 1 and 3.

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This has an important implication for honour. If masters were indeed expected to cover the fines for their slaves or servants, this would shift the focus of honour from the individual wrongdoer to the master. The master's honour, then, could be seen as linked to the actions of their dependents. In this context, slaves and servants lacked the autonomy to uphold their own honour, the responsibility for maintaining their honour, as well as for restoring the victim's honour, which would fall to their masters. Thus, the ambiguity in Æthelberht's law could indicate an interesting cultural assumption about the relationship between master and servant, where the master's honour was intricately tied to the actions of their dependents. In this context, dependants would also encompass woman and children, whose conduct – like that of servants and slaves – could similarly reflect upon and shape the standing and reputation of the male head of the household. This also raises the concomitant issue that a master could incur dishonour from the wrongful actions of their dependents. If honour and status were relational, a dependent's transgression not only harmed the victim but also reflected poorly on the male head of household. It could potentially diminish their standing in the community. Their obligation to pay compensation might have functioned as a means of damage control, preventing further dishonour by demonstrating their commitment taking responsibility for those under their authority. However, if a master repeatedly had to pay fines for the misdeeds of their dependents, this could too suggest a failure to properly control their household, bringing reputational harm. Thus, Æthelberht's law demonstrates social pressures and potential dishonour that those with dependants faced when their subordinates acted as such.

What stands out in these early Kentish laws is the consistent focus on restoring the honour of those wronged by theft. Even in 685 and 686, during the reigns of Hlophere and Eadric, this focus appears unchanged, as there is no mention of additional punitive punishments for theft. Written in 695, less than a decade later, Wihtréd's law code reflects the rise of punitive justice by endorsing capital punishment for theft. By permitting the execution of thieves caught in the act and explicitly stating that the slain thief 'lie without wergild' (*licge buton wyrgelde*), Kentish law appears to have moved the focus from restoring honour to enforcing a shame-based programme.¹⁵ The adoption of a supposedly 'new' stance on punishing theft in Wihtréd's law may appear striking, especially given that less than ten years had passed since the end of Eadric's reign in 686. So, why did Wihtréd permit the slaying of thieves caught in the act? The endorsement of such violent responses may have signalled a sense of unease over the use capital punishment. Catching a thief in the act removed any uncertainty about his guilt, meaning

¹⁵ Wi 25.

that those who judged him were not imperilling their souls by risking the execution of an innocent man. The answer also might lie in the transmission of laws from Wihtred's West-Saxon contemporary, Ine. The first recorded royal West Saxon responses to theft appear in Ine's laws, likely dating between 688 and 694. Like Wihtred, Ine's law code allows for the immediate execution of thieves: 'Gif ðeof sie gefongen, swelte he deaðe' (If a thief is caught, let him suffer death).¹⁶ While the language of Wihtred's law does not directly replicate Ine's, the endorsement of violent responses to theft might reflect earlier West Saxon traditions. Perhaps then, the abrupt shift to permitting capital punishment for theft may have been influenced by West Saxon practices. However, the challenge with this assumption lies in the lack of surviving West Saxon royal laws predating Ine. This absence of evidence makes it unclear how long this approach to theft had been practiced or whether earlier West-Saxon kings employed a similar or entirely different model of justice to earlier Kentish kings like Æthelberht.

Scholars are sceptical as to how novel this approach was. Lambert contends that the consistent severity of punishment for theft in early medieval English laws suggests that the crime held a uniquely serious status within native legal culture, independent of later Christian or continental influences.¹⁷ Lambert also argues that a severe response to curtail theft reveals the belief that because theft was a threat to the peace, kings promoted the right to retributive violence to ensure the feeling that one was 'protecting' the wider community.¹⁸ Moreover, its covert nature created suspicion, as the true perpetrator was often unknown and this ultimately could lead to distrust within communities. It is for this reason that Lambert argues that theft should be seen as a crime that is 'both an offence against an individual – an affront to honour and an offence against the community'.¹⁹ Whether it is the victim of theft, looking to protect their property and defend their honour through the affront of theft, or whether it is a person who sees the act taking place, but whose property is not being stolen, they could still be driven by the same violent imperative to protect the community from the thief.

In his analysis comparing homicide and theft, Lambert draws an important distinction between 'honourable offences' and 'dishonourably secret ones'.²⁰ If there was no intention to hide the slaying, a vengeful homicide could be culturally considered honourable, despite its potential to cause wider

¹⁶ Ine 12.

¹⁷ Lambert, *Law and Order*, pp. 99–100.

¹⁸ Lambert, 'Compensation, Honour and Idealism', p. 145.

¹⁹ Lambert, *Law and Order*, p. 107.

²⁰ Lambert, 'Theft, Homicide, and Crime', p. 9.

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disruption. As we saw with tenth century responses to curtailing violence, like King Edmund's, controlled feuding was still permitted due to this cultural understanding of approved honour, which demonstrated the mindset of a warrior class. In contrast, theft lacked such potential for cultural forgiveness. It was deemed reprehensible, and because it was often carried out in secret to avoid detection, it presented significant challenges for a legal system built on restitution and accountability. The lack of transparency in theft made it difficult to enforce compensation.²¹

With this in mind, Lambert's assertion that theft is a dishonourable crime is convincing given that violence is permitted in certain instances and theft is not. If we take a closer look at Ine's laws, they reveal an effort to prevent escalating violence by prohibiting retributive acts in cases of theft, which were actions that, in other situations, would have traditionally been acceptable, allowing an affronted kinsman the right to avenge a deceased relative:

Se ðe ðeof slihð, he mot aðe gecyðan, þæt he hine fleondne for ðeof sloge, 7 þæs deadan mægas him swerian **unceases** að. Gif he hit þonne **dierne**, and sie eft yppe, þonne forgielde he hine.²²

He who slays a thief must declare an oath that he whom he killed was a thief attempting to flee, and the kinsmen of the dead man shall swear an oath of **peace**. If he keeps it **hidden** [the homicide], and afterwards it is made known, then he shall pay for him.

By swearing an oath of peace (unceases), the kinsmen of the thief acknowledged that they would not take further violent action against the person who had killed their relative. This oath also implied that the thief's relatives recognised that the killing was justified and that the thief's dishonourable actions had led to this outcome. The very acceptance of this oath suggests that the thief's family agreed that their relative's crime was indeed a dishonourable act that warranted such a fate. If retributive violence was seen as 'honourable' in other contexts, then the prohibition against seeking vengeance in this case reinforces the idea that theft, unlike other crimes, was not deserving of an honourable retribution. By swearing an oath to cease hostilities, the thief's kinsmen were essentially being asked to accept that theft was unworthy of further vengeance. There is also an important caveat here. The term 'dierne' (hidden) in the law suggests that what could make the act illegitimate if the slayer chose to hide the act. The offender was required to openly declare the killing as an act of justice against a thief. This highlights

²¹ Ibid.

²² Ine 35.

the emphasis on transparency in the application of justice, whereby secrecy in such matters could be considered dishonourable on both sides. The act of hiding the homicide was an attempt to avoid accountability rendering the act as a homicide and therefore making the slayer liable for compensation.

Thus, whether or not Wihtréd was influenced by a more punitive West Saxon legal tradition, cannot be known for sure, but as I see it, Wihtréd's code does seem to signal a shift in the way justice was carried out. Rather than following the older practice of negotiating restitution, those who had been wronged now had the option to restore their honour through violent retribution. Crucially, however, this had to be declared. This reveals an interesting cultural phenomenon, where, as discussed in the previous chapter, violence was sometimes viewed as more satisfactory and more immediate than pursuing the often slow and complicated process of compensation. In this sense, violence was not just a punitive action, but a means to quickly address the violation and restore honour. By allowing individuals to kill thieves caught in the act, kings provided a more direct alternative. They offered a way for victims or witnesses to resolve the issue of theft without the need for prolonged legal proceedings or the potentially unsatisfactory outcomes of restitution.

Up to this point, the focus has been on the fate of thieves caught in the act. However, for those who chose not to use violence and spared the lives of thieves, Wihtréd's and Ine's law codes also outline the consequences of capturing a thief, the rewards for doing so, and the penalties for failing to apprehend them. According to Wihtréd's law, if a thief is caught in the act and spared, then the king is responsible for determining their fate, with three possible outcomes: 'either one should slay him, or sell him across the sea, or release him for his wergild' (oððe hine man cwelle, oþþe ofer sæ selle, oþþe hine his wergilde alese).²³ Ine's law includes similar provisions regarding the king as arbitrator, with Clause 28 specifying that a captured thief 'shall be given up to the king', which ultimately suggests a royal monopoly on justice concerning theft. In contrast, Æthelberht's involvement in theft cases appears to have been limited only to imposing a wite (fine).²⁴ Once captured, Ine's law stipulates that the thief may either face punishment or have their life redeemed through the payment of their wergild, in line with traditional honour-based practices of restitution.²⁵ Once in the king's custody, the thief was also denied the right to take an oath of denial, emphasising that dishonourable crimes are not entitled to an honest appeal.²⁶

²³ Wi 26.

²⁴ Ine 28.

²⁵ Ine 36.

²⁶ Ine 15.2.

The inability to swear an oath removes the thief's claim to credibility, marking them as unworthy of the honour-driven system of justice typically used to resolve disputes, such as oath-taking or compensation agreements.²⁷

Regarding the first punishment, execution, the details remain unclear, but it can be inferred that it would follow a practice similar to that in Ine's law, where penal slaves who fled were to be hanged.²⁸ Later laws do specifically state that thieves were to be hanged if not slain on the spot, and so it is reasonable to presume that hanging was the appropriate form of execution.²⁹ Regarding the punishment of being sold beyond the sea, this suggests that thieves could forfeit their status and become slaves, which is similar to the logic of punishment in Æthelberht's laws. Over the sea potentially meant to non-Christianised regions like Saxony or Scandinavia, though Christianised lands such as Ireland, might also have been considered.³⁰ However, this particular punishment may have been more specific to Kent, as Ine's laws prohibited the sale of slaves: 'If someone sells over the sea his own countryman, slave or free, even though he is guilty, let him compensate with his wergild'.³¹ By Ine's time, Christianity was gaining influence in Wessex. Selling slaves over the sea often meant they would be taken to non-Christian lands, potentially jeopardising their spiritual welfare and severing them from the Christian community. Ine's laws aim to protect Christians from the harm that such a fate could bring to their souls. Despite this, Ine's laws do allow for the enslavement of thieves in certain circumstances. One notable provision in Ine's law decrees that if a person steals without their wife and children knowing, then they were to be sold into slavery as punishment.³² This stipulation emphasises the collective dishonour theft brings not only to the thief, but also to their immediate family. Thus, the law frames the act as particularly dishonourable condemning them all to the same humiliation.

The third possible punishment, ransom, indicates that there was a financial incentive for capturing thieves. The rewards for capturing thieves differ between the two legal codes. Ine's law offers a fixed

²⁷ See chapter 3.

²⁸ Ine 11. Jurasinski and Oliver define the category of a penal slave: see *The Laws of Alfred*, p. 413.

²⁹ See VI As 6.3.

³⁰ Oliver argues that 'Anglo-Saxon slaves had the same origins as those in early Ireland: they were prisoners taken in battle, foreigners captured in marauding slave expeditions, or relegated to slavery due to the non-payment of debt or fine'. See *The Beginnings of English Law*, p. 179.

³¹ Ine 11: 'Gif hwa his agenne geleod bebycgge, ðeowne oððe frigne, ðeah he scyldig sie, ofer sæ, forgielde hine his were'.

³² Ine 7.1.

reward of 10 shillings, providing a clear and straightforward incentive for upholding justice.³³ The reward is accessible to any captor, regardless of the thief's standing. In contrast, Wihtréd's law ties the reward to the thief's value, creating a direct correlation between the worth of the individual thief and the financial gain for the captor.³⁴ Wihtréd's law stipulates that the person who captures and secures a thief is entitled to half the thief's value, however 'if he kills him' (gif hine man cwelle), then the captor is to receive 70 shillings.³⁵ It is unclear who carries out the killing in this instance. However, since this clause follows directly after the king's three options, it is possible, as Whitelock argues, that the 70 shillings serve as compensation for the captor for the loss of potential wergild ransom if the king chose execution.³⁶ This approach suggests that Wihtréd's law was more concerned with the individual thief's honour and status. The differentiation in rewards demonstrates the stark emphasis on honour and reputation in Kent. The variability of the reward adds a layer of prestige to the act of capturing higher-status thieves. This made the pursuit of justice a financially and socially rewarding endeavour.

Overall, late seventh-century laws in Kent and Wessex share several similarities. Importantly, both employ death penalties in response to theft. However, a key distinction between Ine's law and Wihtréd's lies in their use of corporal punishment in cases of theft. In Wihtréd's laws, corporal punishment is notably absent as a penalty for theft. Instead, Wihtréd reserves corporal punishment for slaves who commit religious offences.³⁷ In contrast, Ine's laws employ punitive amputation as a punishment for theft, stating that if a commoner, who has often been accused, is at last caught, his hand or foot shall be cut off.³⁸ Ine's use of amputation indicates a different approach to deterrence and public shaming through corporal punishment, a right that is not granted in Wihtréd's law, whilst also allowing individuals to take private justice into their own hands by killing thieves on the spot.

Ine's approach to punishing thieves reveals a more overtly nuanced aspect of shame inducing justice compared to Wihtréd's laws. The physical mutilation of a thief, if applied, subjected them to severe humiliation due to the permanent injury. Unlike other forms of corporal punishment, amputation left discernible traces on the skeleton. It is for this reason that amputation has been the focus of

³³ Ine 28.

³⁴ Wi 26.1.

³⁵ Wi 26.1.

³⁶ Whitelock, *English Historical Documents*, p. 398.

³⁷ See Wi 10, 13, 22, 23.

³⁸ Ine 18. Repeated in Ine 37.

considerable archaeological research.³⁹ Jo Buckberry emphasises this distinction, noting the differential impact on osteological remains compared to the effects of other forms of corporal punishment. She argues that while many punishments might have affected only soft tissue, leaving little or no trace on skeletal remains, amputation produces clear and definitive evidence in the archaeological record.⁴⁰ The removal of a hand or limb, then, offers rare but compelling material evidence of punitive mutilation, capable of surviving long after death. While it would be overly simplistic to assume that every grave containing amputated remains can be directly linked to the enforcement of Ine's laws, the presence of such evidence raises important questions about the lived reality of legal practice. It suggests that these laws were not purely ideological, and at least in some cases, may have been actively enforced.

The economic consequences of punitive mutilation were also profound. In a society reliant on physical labour and warfare, losing sight or a limb transformed an individual from a productive contributor to a burden on communal resources. As Firth puts it 'when a person's ability to contribute profitably to community life was compromised and became instead an encumbrance, that community as a whole suffered'.⁴¹ In context of productive labour, physical capacity was essential, and as Firth also points out 'the class-based nature of Anglo-Saxon society and its orientation toward self-sufficient agricultural communities meant that each person's usefulness was defined by their ability to contribute to their community'.⁴² The societal structure, oriented towards self-sufficient farming communities, required that each member contribute labour to sustain communal food production and economic stability. The physical incapacitation of a labourer was therefore also a communal setback by undermining the productivity of the community. Similarly, the military strength of early medieval England depended heavily of an able-bodied population to support the demands of warfare and defence. Fruscione argues that 'in an environment of expansion and warfare, numbers of physically able warriors were crucial; physical punishment and the death penalty, which would reduce a community's able-bodied population'.⁴³ The depletion of warriors through incapacitation weakened the communities

³⁹ In particular, Andrew Reynolds has identified some examples of amputation within the osteological records, spanning both early and late periods of early medieval England. See Andrew Reynolds, *Anglo-Saxon Deviant Burial Customs* (Oxford: Oxford University Press, 2009), pp. 85–88.

⁴⁰ Jo Buckberry, 'Osteological Evidence of Corporal and Capital Punishment in Later Anglo-Saxon England', in *Capital and Corporal Punishment*, pp. 144–7.

⁴¹ Firth, 'Allegories of Sight', p. 4.

⁴² *Ibid*, p. 2

⁴³ Fruscione, 'Beginnings and Legitimation of Punishment', p. 37.

defences. A maimed person became both physically incapacitated and economically diminished. They would have been unable to contribute fully to the agrarian or military efforts that defined the social and economic structure of early medieval England.

However, clauses 18 and 37 of Ine's laws, which prescribe amputation as punishment for theft, present a notable issue due to the significant ambiguity surrounding the rationale behind these provisions. This ambiguity, particularly regarding the decree that either the hand or foot could be amputated (*slea him mon hond of oððe fot*), is crucial for further understanding the imposition of shame within Ine's law-code. The logic suggesting the hand should be struck off, given that it is the body part that committed the illegal deed, is straightforward. However, the inclusion of the foot as an option raises questions. One possible explanation lies in the value assigned to each limb according to injury tariffs in the law codes. In Æthelberht's seventh century law code, the penalty for cutting off a leg warranted 50 a shilling fine.⁴⁴ There is no mention of a hand being struck off, only individual fingers and the piercing or breaking of an arm.⁴⁵ However, when the values of each finger are combined, the total fine also amounts to 50 shillings, with the thumb being the most valuable digit at 20 shillings. As Oliver has noted, a fingerless hand would not be of much use, thus justifying a fine equivalent to that of the entire hand's amputation.⁴⁶ Other Germanic law codes similarly equate the value of the hand and foot in most instances.⁴⁷ This suggests that both were of comparable importance.

Moreover, the laws do not specify which hand or foot should be amputated. This is a seemingly obvious distinction that would matter to the individual, given that the dominant hand would generally hold more value to a person than the non-dominant one.⁴⁸ In Alfred's ninth century law code, a hand, foot, and eye were all equal in value in terms of compensation.⁴⁹ The inclusion of the eye in Alfred's code likely draws inspiration from Matthew 18:8–9, which references these three as offending body

⁴⁴ Abt 69.

⁴⁵ Abt 53–54.

⁴⁶ Oliver, *The Beginnings of English Law*, p. 99.

⁴⁷ Oliver, *The Body Legal*, pp. 112–79.

⁴⁸ The Frisian laws do make this distinction, requiring compensation for injuring a hand 'of a harpist or goldsmith'. 'Qui harpatorem, qui cum circulo harpare potest, in manum percusserit, componat illud quarta parte maiore compositione, quam alteri eiusdem conditionis homini. Aurifici similiter.' *Lex Frisionum*, Iudicia Wulemari §10, in *MGH Legum*, pp. 699–700. See Oliver's discussion regarding this. Ibid, pp. 50–52, and at p. 141.

⁴⁹ Af 71.

parts.⁵⁰ Yet, despite the equal valuation of hands and feet in both Æthelberht's and Alfred's laws, the rationale for amputating the foot remains incongruent with the idea of punishing the specific body part that committed the act. Although both measures of amputation aimed to shame thieves in particular, only the amputation of the hand aligns with this logic. In her exploration of the relative impact of losing an arm versus losing a leg in early Germanic societies, Oliver contends that most professions, even to this day, rely more on the functionality of arms than legs. Moreover, the use of prostheses, she argues, used now and then, could more effectively replace the function of the leg to some extent than a prosthetic arm could.⁵¹ Given that the hand may have been considered more valuable in this context, one reason for allowing such a decision could have been to emphasise the shame of disfigurement in general, regardless of which limb was struck off. It is also possible that either the offender or the local authorities were given the choice, meaning the law could have aimed to offer the offender some agency or personal dignity despite the severe punishment, thus providing a sense of control in the face of humiliation. Alternatively, the law might have intended to place the humiliating decision in the hands of the authorities. In both Ine's and Wihtrred's laws, it was the king who determined the fate of thieves if they were caught. Therefore, in this context, it is reasonable to assume that the king made the final decision in such cases, or at the very least, one of his appointed authorities did. Hence, Ine's central role in determining punishment suggests that by the late seventh century, we are already dealing with a highly authoritative legal system in comparison to the predominantly kin-based approach to justice we see in the earlier Kentish laws.

2. Mercy and Reconciliation: Clerical Advocacy for Compassionate Justice

He that stole, let him now steal no more: but rather let him labour, working with his hands the thing which is good, that he may have something to give to him that suffereth need. (Ephesians 4:28.)

Early Christianity had a complex relationship with how to deal with thieves. On one hand, theft was framed as a capital sin, rooted in the Eighth Commandment, 'Thou shall not steal'.⁵² Exodus 22:3 even

⁵⁰ "And if thy hand, or thy foot, scandalize thee, cut it off, and cast it from thee. It is better for thee to go into life maimed or lame, than having two hands or two feet, to be cast into everlasting fire. And if thy eye scandalize thee, pluck it out, and cast it from thee. It is better for thee having one eye to enter into life, than having two eyes to be cast into hell fire". Oliver, *The Body Legal*, pp. 137–8, and at p. 172.

⁵¹ *Ibid*, p. 239.

⁵² On theft as a capital sin, see *Poenitentiale Egberti* 1.

goes so far as to sanction the slaying of thieves if they steal in the night, mirroring what we see in the laws of Wihtred and Ine: ‘But if he did this when the sun is risen, he hath committed murder, and he shall die. If he have not wherewith to make restitution for the theft, he shall be sold’.⁵³ On the other hand, while the New Testament reinforced the notion that theft was a severe sin, often tying it to greed, covetousness, and a failure to trust in God’s providence, Jesus’ teachings, however, emphasised the possibility of redemption through repentance and restitution. This is exemplified in Luke 19:8, where Zacchaeus, upon realising the gravity of his actions, repents and vows to restore fourfold what he has stolen.⁵⁴ Thus, while there was also biblical precedent for slaying thieves in specific circumstances, then, penance and reparations, were nevertheless at the forefront of Christian approaches to dealing with theft. Christian doctrine encouraged thieves to seek forgiveness through tangible acts of reparation, restoring both their victims’ losses and their own spiritual integrity.

Yet, the omission of punishment in Æthelberht’s laws is particularly noteworthy, especially since it was as early as Æthelberht’s reign that Augustine wrote to Pope Gregory asking for guidance on how to properly punish thieves in the newly Christianised Kingdom of Kent.⁵⁵ Gregory’s response reflects an approach to justice which blends traditional compensation, corporal punishment, and pastoral elements, advising one which various methods of restorative and punitive justice to use:

Your brotherhood must judge from the thief’s circumstances what punishment is needed to correct him. For there are some who commit theft when they have resources, and there are others who commit this crime because they are in need; hence it is necessary that some be corrected with fines, some with lashes, and some more severely, and some more leniently. And when it is done a little more strictly, it must be done out of charity and not out of anger, because this is done to the one who is being corrected, so that he is not delivered to the fires of hell.⁵⁶

⁵³ See *Vulgate Bible*.

⁵⁴ ‘But Zacheus standing, said to the Lord: Behold, Lord, the half of my goods I give to the poor; and if I have wronged any man of any thing, I restore him fourfold’.

⁵⁵ ‘Si debeant duo germani fratres singulas sorores accipere, quae sunt ab illis longa progenie generatae’ (I beg you to tell me how one who robs a church should be punished). Bede, *HE*, I.27, pp. 82–3.

⁵⁶ ‘Hoc tua fraternitas ex persona furis pensare potest, qualiter ualeat corrigi. Sunt enim quidam, qui habentes subsidia furtum perpetrant, et sunt alii, qui hac in re inopia delinquant; unde necesse est, ut quidam damnis, quidam uero uerberibus, et quidam districtius, quidam autem lenius corrigantur. Et cum paulo districtius agitur, ex caritate agendum est et non ex furore, quia ipsi hoc praestatur qui corrigitur, ne gehennae ignibus tradatur’. Ibid, pp. 82–3.

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Gregory's advice on flogging stands out in particular, as it contrasts with Æthelberht's laws, where the primary form of punishment is financial compensation rather than physical punishment. This divergence may reflect different conceptions of theft held by the royal elite and the Church. It makes sense that in Æthelberht's law, theft is framed primarily as a property offence, with restitution serving as a proportionate remedy to restore the affronted person. In contrast, patristic thinkers like Gregory viewed theft as a moral offence rather than solely a material one. Thus, for Gregory, the appropriate response was not simply restoration of property, but a penalty that addressed the state of the sinner's soul, thereby linking the act of theft to its moral consequences. Brooks suggests that this absence of corporal punishment in Æthelberht's laws likely reflects the difference between Roman imperial ideals, which often used corporal punishment, and the established early Kentish legal traditions.⁵⁷ The absence of corporal punishment in Æthelberht's laws may point to a cultural preference for methods that maintained the integrity of freemen, with shaming possibly reserved for those of slave status, as observed in the late seventh century laws of Wihtred.⁵⁸ However, that even by 686 we still see no sign of flogging mentioned in the Kentish laws suggests that while ecclesiastical influence was strong in some areas, it was not necessarily enough to entirely replace the customary approach to theft that had presumably been practiced in pre-Christian Kent.

Of course, this absence might just reflect a matter of emphasis. The absence of evidence for flogging in Hlophere and Eadric's laws by 686 does not necessarily mean it was not practiced elsewhere or still in Kent, but perhaps it could have been on a more localised level. Nevertheless, there appears to be no indication that Gregory's ideal punitive approach ever replaced the model of restorative justice that these early Kentish kings seemed to aim for in shaping their society. Gregory's pastoral approach, which considers the socio-economic status of thieves, thus contrasts with the more straightforward compensation system in the early Kentish laws. The absence of this focus on moral correction in the early Kentish laws suggests that their primary concern was restitution and the restoration of honour within the community, rather than public shame or the offender's spiritual salvation. The lack of emphasis on penance or understanding for those who 'transgress in this matter through poverty' exemplifies that the primary focus was on restoring honour, disregarding the Christian emphasis on

⁵⁷ Brooks, 'The Laws of King Æthelberht', pp. 113–14.

⁵⁸ See Wi 10, 13, 22, 23.

mercy and leniency for the poor. There is no mention of practices such as confession or penance, which might have been expected if Gregory's influence had been fully established by 686.

Hence, despite Gregory's aspirations, compensation as the central mechanism of justice in the early Kentish laws appears to have persisted. While Gregory's advice may not have drastically altered these legal practices in the short term, this kind of clerical emphasis on the physical and spiritual dimensions of punishment would be central to later legal developments. Over time, a gradual integration of physical punishment and spiritual correction alongside material restitution in later law codes can be observed, which reflects the ecclesiastical influence of Christian ideas about justice. Although the laws of Æthelberht and his successors remained focused on compensation at this point in time, Gregory's counsel foreshadowed a shift in the jurisprudence that would lead to a more holistic approach to justice in later centuries.

How ecclesiastics saw themselves as lenient on matters of theft is telling in the *Vita S. Eligii* by Saint Audoin (c. 609–684), a Frankish bishop, who recounts an incident in which a man, overcome by greed, seizes the opportunity to steal from a saint's sepulchre during a moment of inattention by the church's guardians.⁵⁹ Finding the basilica empty, he snatches a golden hanging, attempting to pull it down by its chain. However, the act triggers a loud, supernatural noise that reaches the ears of the guards stationed some distance away. Rushing to the scene, they find the thief physically frozen on the ground of the church, unable to move.⁶⁰ Divine intervention seemingly halts his escape and exposes his crime. When questioned, the thief confesses his wrongdoing and consumed with shame (*pudore*), returns the stolen item.⁶¹ He then begs for forgiveness with genuine contrition. In response to his act of repentance, he is miraculously released from his immobilised state and allowed to go free. One can interpret the thief's immobilisation by divine power as a representation of both the weight of guilt and the impossibility of escaping divine justice, while his release following repentance emphasises God's readiness to forgive those who sincerely atone for their misdeeds. The story thus concludes not with

⁵⁹ *Vita S. Eligii*, II.65, in *MGH*, p. 733.

⁶⁰ A similar event happens in Ælfric's 'Life of St. Edmund'. See Ælfric's *Lives of Saints: Being a Set of Sermons on Saints' Days Formerly Observed by the English Church*, 2 Vols, ed. Walter W. Skeat, Vol. 2 (London: 1881–1900), p. 329.

⁶¹ 'Sic ergo furtum cum pudore restituens veniamque facinoris sui toto corde deposcens, et ex loco moveri potuit, et ab eisdem misericorditer dimissus, liber discessit'. Thus, therefore, making restitution for the theft with shame and asking forgiveness for his crime with all his heart, he was able to move from the place, and, mercifully released by them, he departed free. *Ibid*.

punishment, but with divine mercy, portraying the thief as restored through his penitence. He is not externally shamed, but internally shamed.

Audoen clearly advocates for reconciliation over severe punishment and at first glance this might seem contradictory to Ælfric's message which was alluded to in the introduction. However, it must be remembered that Ælfric too stated that thieves needed to express their inner shame in order to be saved. Only then through honest confession, restitution, and heartfelt remorse, could they be saved. Both the *Poenitentiale Theodori* (c. 700) and the later *Poenitentiale Egberti* (c. 750) required thieves to perform penance for stealing. These penitentials outlined specific penance periods, and for theft, it was typically seven years.⁶² However, the duration of the penance was not fixed. The priest, acting as the confessor, had the discretion to adjust the sentence based on the offender's progress in making restitution and reconciling with their victims. If a thief could reconcile successfully with their victim and offer compensation, their penance could be reduced. Here we have an approach whereby the restoration of social harmony, rather than the imposition of corporal punishment, was paramount.⁶³ That the confessor could negotiate the sentence meant that they also were tasked with evaluating the offender's sincerity in repenting and making amends. The confessor's discretion was particularly significant in how shame was imposed upon the thief. A priest's judgement was key to determining how long the penitential sentence should be attached to the penance, taking into account the thief's status, the severity of their crime, and their efforts to reconcile.

In contrast to the secular laws of the late seventh century, which prioritised punitive measures such as execution or corporal punishment, eighth-century Latin penitentials reveal a different understanding of theft and its consequences. Central to ecclesiastical logic regarding theft was a diminished emphasis on the restoration of honour to those wronged where the wealthy and high-status individuals had traditionally benefited the most from compensation. The *Poenitentiale Theodori* provided specific guidelines for compensation, which exemplifies the Church's growing status in the determination of penalties. For example, a member of the clergy who stole from a church was required to pay fourfold compensation, while a layman would only pay twofold compensation.⁶⁴ These restitution requirements recognise that certain individuals, particularly those in positions of religious authority, had greater access to wealth and, consequently, a greater capacity for wrongdoing. This also

⁶² *Poenitentiale Theodori*, I. 3.3; *Poenitentiale Egberti*: 10.5.

⁶³ *Poenitentiale Egberti*: 10. 5: '...vel quod sacerdos iudicaverit' (or what the priest has judged).

⁶⁴ *Poenitentiale Theodori*: I. 3.2.

reveals the Church's concern with ensuring that those in power set the best example, suggesting that the clergy were not above the legal expectations of society.

Thus, there was also a stronger focus on creating a more equitable system of justice, one that considered the circumstances of the offender, particularly those of lower socio-economic status. While compensation remained a central aspect of this new system, it was now assessed according to the offender's ability to pay, and importantly, the necessity behind their theft. Penitential logic rather assumes that not all thieves were motivated by greed or malicious intent, and for those in poverty, theft could be a desperate act of survival. In such cases, the penalties – whether in terms of compensation or penance – were adjusted accordingly. Those who were poor were expected to pay less than their wealthier counterparts, which shows a more compassionate understanding of the socio-economic factors that might drive someone to commit theft. This approach aligns closely with the logic proposed by Pope Gregory a century earlier, who had advocated for a more contextually aware and compassionate approach to punishing thieves.

3. Severing the Path to Peace: Royal Escalation of Punishment for Theft in the Late Ninth and Tenth Centuries

By the late ninth century, much of the way in which theft was treated had not changed since Ine's law, and much of Alfred was inspired by it, yet it is the legitimisation of such punishment through biblical inspiration that Alfred uses in order to support the execution and punishment of thieves that makes it religiously warranted. By incorporating biblical principles into his legal framework, Alfred elevated the moral gravity of theft. This is evident in his Mosaic prologue, which includes explicit Biblical injunctions like 'Do not steal' directly echoing the Ten Commandments.⁶⁵ Alfred's laws also introduce capital punishment for the theft and sale of free persons, mirroring Exodus 21:16, which condemns such actions in the Old Testament.⁶⁶ The inclusion of capital punishment, particularly for the abduction of free individuals also marks a notable intensification from Ine's law, where such an act was punishable by compensation.⁶⁷ This demonstrates an amplification of the severity of penalties, aligning the legal consequences of this action as punishable by death. Severe measures are also implied should thieves dare to steal from a Church. In Æthelberht's law, stealing from a church necessitated a twelvefold

⁶⁵ Af El 7.

⁶⁶ Af El 15.

⁶⁷ Ine 11.

restitution of the stolen goods. Under Alfred, however, the punishment was harsher as the thief's hand would be taken unless they could pay their wergild to redeem it.⁶⁸ This alternative allowed for a choice between punitive and restorative justice, if they could afford to pay. In Alfred's *Mosaic Prologue* it is decreed that if a thief breaks into a man's house at night and is slain, the slayer shall be absolved of guilt for the homicide. Conversely, if the thief is killed after sunrise, it should be deemed a homicide unless the slayer did it out of necessity:

Gif ðeof brece mannes hus nihtes 7 he weorðe þær ofslegen, ne sie he na mansleges scyldig. Gif he siððan æfter sunnan upgonge þis deð, he bið mansleges scyldig 7 he ðonne self swelte, buton he nieddæda wære. Gif mid him cwicum sie funden þæt he ær stæl, be twyfealdum forgielde hit.⁶⁹

If a thief breaks into a man's house at night and is slain there, he [the slayer] shall not be guilty of the homicide. If he does this after sunrise, he is guilty of homicide and he will suffer death as well, unless he [the slayer] did it out of necessity. If he [the thief] is found with the stolen goods, he [the thief] shall pay twice its value.

This distinction hinges on the notion that nocturnal activities, occurring under the cover of darkness, are inherently secretive. Jurasinski and Oliver have commented on the influence of religious and biblical law that aligns with broader Christian doctrines found in the *Domboc*. In particular, they note that the *Collatio Legum Mosaicarum et Romanarum* (an amalgamation of Roman imperial law and biblical passages referring to the law of Moses) references the term *nocturnum furem* or 'a thief in the night'.⁷⁰ The passage Alfred and his court transmit also adds the notion of compensation at the end of the clause as punishment for the thief, suggesting that reconciliation was the preferred outcome, reflecting the

⁶⁸ Af 6.

⁶⁹ Af El 25.

⁷⁰ See Jurasinski and Oliver for further discussion on this in *The Laws of Alfred*, pp. 248-9. In their work they quote the *Collatio Legum Mosaicarum et Romanarum*: "Quod si duodecim tabularum nocturnum furem[, quoquo modo, diurnum] autem se audeat telo defendere, interfici iubent, scitote, iuris consulti, quia Moyses prius hoc statuit, sicut lectio manifestat. Moyses dicit: Si perfodiens nocte parietem inventus fuerit fur et percusserit eum alius et mortuus fuerit hic, non est homicida is qui percusserit eum. si autem sol ortus fuerit super eum, reus est mortis percussor: et ipse morietur" (Just as the Twelve Tables order a thief in the night to be killed in any case [or a thief in the daytime], if he dares to defend himself with a weapon, know oh Jurists, that Moses ordained this earlier, just as a close reading shows. Moses says: "If a thief is found digging through a wall by night and someone strikes him and he dies, he who struck him is not a murderer. If, however, the sun rises on him, he who struck is responsible for the death; and he himself will die). Quotation and translation is from *The Laws of Alfred*, pp. 248-9.

pastoral influence of the *Mosaic Prologue* itself. However, this was only if the thief was caught afterwards and not already slain in the act.

While Alfred explicitly tied punishment to sin, his grandson Æthelstan shifted focus to theft more so as a social crime which, like perjury, threatened the social order. In doing so, Æthelstan's laws mark a dilution of honour-based justice, replacing it with a more rigid system of external shame. Capital punishment, in particular, became central. The early tenth century was less about restoring honour, and more about publicly shaming and removing the criminal from the community altogether. By Æthelstan's reign, there was a clear shift in priorities, with theft becoming a central focus in the legal framework. The rule that any thief over the age of twelve, caught in the act with stolen goods valued at more than 8 pence, would face capital punishment, indicates a deliberate effort to redefine the boundaries of mercy. Æthelstan sought to establish more precise guidelines for when leniency could be applied and when harsher measures were warranted.⁷¹ As discussed, Æthelstan's approach to theft was part of the broader ideology of tenth-century punishment, where the king saw a breach of the peace as equivalent to treachery – essentially a betrayal of one's oath to the king or lord. For Æthelstan, theft was not just a criminal act, it was also a violation of personal loyalty and a disruption of the peace within his realm. The oath of loyalty, which every 12-year-old male was required to swear to the king, bound them to obedience and ultimately made theft a breach of that oath made with the king.

A breach of this oath carried significant additional implications of shame for thieves who fell into this category. First, Æthelstan denied proven thieves the right to sanctuary or appeal, effectively eliminating avenues for negotiation and the possibility of restorative justice.⁷² Removing the option of sanctuary, which traditionally allowed offenders to seek mediation or atonement, meant that Æthelstan could emphasise punitive justice as the sole recourse for dealing with theft. The phrase 'nullo modo vita dignus habeatur' (he shall by no means be considered worthy of life) is a direct repudiation of the thief's honour. To be deemed 'unworthy' of life epitomises the severity of this provision, branding thieves as unworthy of their status and the chance to socially reintegrate. A consequence of theft was the nullification of their wergild status, which traditionally served as a means for victims or families to receive compensation for the damage inflicted. By abolishing these possibilities, Æthelstan's law

⁷¹ II As 1.

⁷² IV As 6. On sanctuary, see Jurasinski, 'Sanctuary, House-Peace, and the Traditionalism of Alfred's Laws', *The Journal of Legal History*, 31:2 (2010), 129–47; Meens, "Sanctuary, Penance and Dispute Settlement, pp. 277–300; Trisha Olson, 'Of the Worshipful Warrior: Sanctuary and Punishment in the Middle Ages', *St. Thomas L. Rev.* 16(3) (2004), 473–550; Hyams, 'Feud and the State', pp. 26–30; Wulfstan's *Grið* (Concerning Sanctuary).

ideally aimed to prohibit any form of reconciliation. Only shame remained as the ideal form of justice, with the possibility to restore honour replaced. Second, when a thief was slain, their possessions were also confiscated, further compounding the shame of their crime. The confiscation of property further exemplified to others the offender's total erasure from society, stripping them of their status and leaving their household and kin in a state of disgrace.⁷³ Æthelstan's laws not only punished theft, but also aimed to send a broader message about the importance of loyalty, obedience, and the consequences of violating oaths.

Just as the act of theft was considered treasonous, so too was it for those who aided and abetted thieves. Under Æthelstan's laws, individuals who protected thieves were required to either pay the thief's wergild as punishment or clear themselves with an oath of equivalent value, absolving them of the charge.⁷⁴ When the law held people accountable for sparing thieves, it sent a message that justice was not just the ruler's prerogative. Indeed, it was everyone's. *II Æthelstan* dictates that anyone who avenges a thief will be treated as a criminal, subject to the forfeiture of their life – the same punishment as the thief.⁷⁵ Æthelstan's law sought to prevent the escalation of violence that could result from personal vendettas, which were historically used by individuals or families to protect or restore their honour in response to what were considered dishonourable crimes. This approach mirrors a similar response in Ine's law, where an oath of inhospitality was required, forbidding any vengeance from being taken by the thief's kin. However, Æthelstan goes further by specifying that the avenger shall face the same punishment as the thief. In essence, Æthelstan is prohibiting the right to vengeful honour, not just because the crime was dishonourable, as Ine might have seen it, but also because it violated the oath. We will return to this concept by a charter from Æthelred's reign that addresses punishment for fighting in defence of a thief.

The intensification of punishment becomes further evident in the treatment of individuals who were not 12-year-old free men, particularly in the shameful methods of execution applied to women and slaves. In Wormald's words, Æthelstan's approach to lawmaking 'enhanced ambitions and upgraded techniques'.⁷⁶ These punishments were designed to serve as a form of public humiliation. For

⁷³ II As 20.3; VI As 1.1.

⁷⁴ II As 1.2.

⁷⁵ II As 6.2; VI As 1.5.

⁷⁶ Wormald, *The Making of English Law*, p. 304.

free women, the punishment for theft was either being thrown from a cliff or drowned.⁷⁷ There is no biblical basis for such punishments, suggesting that they likely originated from secular law, or were Æthelstan's own devising. These punishments were publicly humiliating and appear to be more severe than the capital punishment for free men, which was typically hanging.⁷⁸ The fact that women's punishments were often more severe than men's has precedents in other contexts, and as we shall see further below in Chapter Five, this was particularly so in cases of sexual impropriety. This general bias towards harsher punishments for women may help explain why women faced more severe capital punishments for theft.

As for the unfree, if male slave steals, then he shall be stoned by eighty other slaves.⁷⁹ This collective act of execution served as a reinforcement of social control amongst slaves. The public nature of stoning, especially if performed by the slaves' peers, added a layer of communal shame to the act, as it forced the slaves to participate in the implementation of shaming the perpetrator and the overall process of humiliation. If any of those slaves fails three times to hit him, then that slave shall be scourged three times. This further ensured compliance and participation in the act. Failure to do so meant that they too could be publicly shamed. Once the slave had been put to death, each of those slaves needed to pay three pennies to his lord.⁸⁰ It is presumed, then, that the lord's slaves should pay compensation to their lord for carrying out the execution. The total amount is equal to that of a slave. For 120 pennies, the lord is able to purchase a new slave.⁸¹ Similarly, if a female slave steals, her execution involved being burned alive by the help of 80 female slaves. Female slaves were expected to participate in the slaying of female thieves, just as men were expected to slay male slaves. Failure to pay the three pennies after the death resulted in three floggings.⁸² Alternatively, if they refused, they too would suffer a humiliating fate by being whipped.

Both clauses here prescribing eighty male or female slaves present practical difficulties. It is unlikely that most households during this period would have access to such a large number of slaves, making it doubtful that these punishments could be regularly carried out. Instead, these clauses appear

⁷⁷ IV As 6.4.

⁷⁸ VI As 12.2.

⁷⁹ VI As 6.5.

⁸⁰ IV As 6.6.

⁸¹ See Attenborough, *The Laws of the Earliest English Kings*, p. 211.

⁸² IV As 6.7.

to be more symbolic than prescriptive, functioning as dramatic statements of royal authority than realistic penal procedures. Æthelstan's clauses here seem designed to assert the king's right to execute rather than to actually mandate death in every case.

Another broader symbolic point here suggests that such approaches sought to compel an entire class of people to self-regulate their behaviour to avoid collective punishment, thereby reinforcing accountability. The intent behind these measures extended beyond mere punishment: it was fundamentally about disrupting networks of slave loyalty that posed a threat to the social order. Unlike freemen aged 12 and above, who swore an oath of allegiance to the king and could thus be held accountable through their oaths, slaves did not take such pledges. This lack of formal allegiance necessitated alternative methods to test and ensure their loyalty. Consequently, measures to suppress 'rebellious slave behaviour' were devised. As Janel Fontaine argues, the elite harboured significant fears of slave resistance, understanding that unified defiance could destabilise their authority.⁸³ As a result, punishments for slaves were deliberately made more extreme and shameful, designed to instil fear across the slave population. This combination of harsh penalties and public humiliation functioned as a deterrent, discouraging rebellion and maintaining control over a class whose loyalty was perceived as precarious.

Æthelstan's laws also highlight the concept of accountability, particularly when lords are complicit in thefts committed by their slaves. The provision states that a lord who enables or profits from a slave's theft faces severe consequences: the loss of the slave and forfeiture of the lord's wergild for a first offence, and the complete confiscation of the lord's possessions for a repeat offence.⁸⁴ By directly linking punishment to a lord's economic and social status, Æthelstan's law aimed to deter such behaviour by targeting the lord's wealth, reputation, and influence. As for the slave, it can be assumed that they would face the harsh punishments mentioned earlier, and were not deemed powerful enough to claim legal privilege to avoid fines if they coerced another slave into committing theft.

Moreover, whereas slaves were subject to humiliating punishments, Æthelstan's laws reveal that powerful lords who are complicit in theft were not subject to capital punishment, but instead were to be

⁸³ Janel Fontaine, 'Slave Resistance in Early Medieval England', *Anglo-Saxon England*, 48 (2022), 1–32, at pp. 17–19.

⁸⁴ II As 3.1

exiled.⁸⁵ Exiling individuals who were too powerful to be punished otherwise reflects a different form of humiliation, aimed not just at removing the wrongdoer but also at stripping them of their status. The reference to individuals who are ‘so rich or of such great lineage that he cannot be punished’ highlights the social dynamics at play.⁸⁶ Wealth and noble status conferred a certain level of protection in the social hierarchy, but Æthelstan’s laws sought to undermine this privilege by using exile as a countermeasure. Moreover, the law’s directive that such individuals should be ‘treated as if he were a thief caught with his hands full’ if they returned signals that their punishment was one which rendered their status to that of a commoner suggesting that they were to be killed on the spot.⁸⁷

This intensified treatment of theft extended into the reign of Æthelstan’s brother, Edmund, whereby the new king expressed his gratitude for the immunity from thefts thanks to Æthelstan’s rule: ‘I thank God and all of you, who have given me full support, for the immunity from thefts which we now enjoy’.⁸⁸ Edmund’s proclamation suggests a movement towards a collective sense of security and stability, where the absence of crime is the result of a shared commitment to the public peace much like his brother had aimed to do. However, it is not certain that Edmund simply continued Æthelstan’s punitive approach unchanged. Æthelstan’s laws faced some resistance for their severity, and thus it is possible that Edmund sought to temper this harshness with a somewhat different legal strategy. Edmund’s provision on the punishment of slaves who commit theft, illustrates the continuation of the harsh punitive framework set forth by Æthelstan, but with a distinct emphasis on the use of bodily mutilation as a form of public shaming. By declaring that the leader of a group of slaves who commit theft shall be killed or hanged, Edmund set a clear precedent for capital punishment as a means of deterring theft amongst slaves. The more significant aspect of Edmund’s provision on theft lies in the treatment of the other slaves involved in the theft. Though they are spared death, their punishment involves intense corporal damage: they are to be scourged three times and have their scalp removed and their little finger mutilated.⁸⁹ The removal of the scalp and the mutilation of the little finger serve as visible, permanent reminders of their criminality. It made a somewhat acceptable substitution instead of removing an arm that could be equally shameful, yet allow the slave to perform their labour duties.

⁸⁵ III As 6; IV As 3.

⁸⁶ III As 6: ‘adeo dives vel tantæ parentelæ ut castigari non possit’.

⁸⁷ IV As 3: ‘sit tamquam in manus habens fur inventus’.

⁸⁸ II Em 5: ‘ic ðancie Gode 7 eow eallum, ðe me fylston, ðæs friðes ðe we nu habbað æt ðam ðyfdam’.

⁸⁹ III Em 4.

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This focus on maintaining order and protecting public security through severe punishments for theft and treason continued under Æthelred's rule at the end of the tenth century and into the beginning of the eleventh. Æthelstan's emphasis on this was upheld and even intensified in Æthelred's laws. One such provision in *VI Æthelred* echoes Æthelstan's approach, stating that 'public security shall be promoted in such a way as shall be best for the householder and worst for the thief'.⁹⁰ This directive illustrates the ongoing commitment to protecting property and social order. Similarly, we see the same punitive attitudes persisting in Cnut's eleventh century laws. Cnut's legislation directly reiterates this approach, explicitly stating that thieves shall be slain.⁹¹ Furthermore, *II Cnut* makes it clear that thieves who have been proven guilty will not be allowed to seek sanctuary, reinforcing a no-tolerance stance towards theft.⁹² Also, while Æthelstan's law only implies that those who avenged thieves faced the death penalty because such actions violated the oath they swore, Cnut's law explicitly states it: 'everyone over 12 shall swear that they have never been an accomplice to a thief'.⁹³ Despite these shared themes, there are notable differences in the rhetoric between Æthelred's and Cnut's laws and those of the earlier tenth century, particularly in how thieves are treated. A significant shift is seen in the way thieves are sentenced as outlaws and exiles. Although outlawry was not a new punishment – having been applied to thieves before, as seen in the case of Helmstan (the convicted thief in the Fonthill Letter)– the language surrounding thieves becomes more aligned with that used for violent offenders and the notion of purity and sin. In the laws of Æthelred and Cnut, Wulfstan calls for thieves to be declared outlaws and driven from the land, reflecting what we have seen in relation to both violence and perjury.⁹⁴ Similar to his stance on unrepented homicides and murderers, Wulfstan believed that England needed to rid itself of sin in order to gain God's favour.

Nevertheless, while Wulfstan undoubtedly amplified the rhetoric surrounding the sin of theft, it is important to acknowledge that ultimate authority rested with the king, who held the power to make decisions and determine individuals' fates. This exercise of royal power in the late tenth century mirrors the authority demonstrated by kings such as Alfred and Edward in the late ninth and early tenth centuries, as seen in their handling of cases like Helmstan's. In 995, Æthelred granted land to his thegn,

⁹⁰ VI Atr 32: 'Swa ymbe friþes botw swa þam bondan sy selost 7 þam þeofan sy laþost'.

⁹¹ II Cn 4.2.

⁹² II Cn 26.

⁹³ II Cn 21: 'We wyllað þæt ælc man ofer twelfwintre sylle þone að, þæt he nyle ðeof beon ne ðeofes gewita'.

⁹⁴ I Atr 1.9a; V Atr 25; VI 28.2; II Cn 30.9.

Æthelwig, which had been confiscated by certain brothers for their involvement in defending a thief.⁹⁵ The thief had been caught stealing a bridle, and those who had lost it sought to kill him. In response, the thief's masters intervened and attacked the others. During the ensuing conflict, two of the brothers were slain, while the third sought refuge in the Church, which, as discussed in the previous chapter, could serve as a sanctuary from violence. The two slain brothers were given a Christian burial, despite the law that those who assisted thieves should be excluded from such a burial.⁹⁶ Æthelred, faced with this situation, however, chose not to strictly enforce the customary punishment of denying Christian burial for the sake of maintaining his relationship with Æthelwig, who was described as 'dear and precious' to the king.⁹⁷ Æthelred's decision once more underlines the king's discretionary power in mediating justice, particularly when it came to balancing the enforcement of laws with personal and political relationships. Much like in the case of Helmstan, Æthelred's intervention demonstrates that kings held the authority to mitigate or override customary punishments, even those intended to serve as humiliating consequences for offences like theft or its defence. Thus, while penalties for theft were increasingly severe, such as denying consecrated burial, as evidenced by this charter, their enforcement could, in certain cases, be set aside at the king's discretion. Again, this further shows that matters of honour, status, and loyalty played a pivotal role in determining the type of justice an individual might receive.

4. Balancing Punishment and Redemption in the Tenth and Eleventh Centuries

Although the general trajectory of this legal system appears to have limited opportunities for reconciliation we must consider that clerical leniency also had a part to play as it ran parallel to Æthelstan's stringent measures. That Æthelstan's law decrees that it is 8 pence that would render such punishments as we have looked at, then this leaves us wondering as to what impact the penitentials would have in circumstances whereby a thief stole less than this amount. In the vernacular translation, the *Old English Penitential*, it is declared that if someone steals something of 'middling value' (medeme þing) then the penance shall be one year on bread and water, and if they do not return the goods then

⁹⁵ S883.

⁹⁶ III Atr 7.1

⁹⁷ S883: 'Ego autem, nolens contristari Apelwig quia mihi erat carus et preciosus, una simul et sepultos cum Christianis requiescere permisi, et predictam terram eidem in hereditatem concessi perpetuam'.

the penance increases to three years.⁹⁸ Of importance here is the phrase ‘middling value’. Not discussed in the secular laws, the penitentials distinguish offences for small amounts of stolen goods. As mediators, confessors would suggest if the stolen goods were indeed of smaller value. The *Old English Penitential* thus makes provisions for thefts committed out of necessity. If any man steals food or clothes and hunger out of necessity, he had to fast for three weeks on bread and water, and if he was able to return what was stolen, then it is decreed that one should not punish him if he seeks out God’s forgiveness.⁹⁹ This suggests that the poorest people of society may have been forgiven if they made amends through penance, reducing the level of shame imposed as punishment which regularly would be seven years penance. This is echoed in the later writings of Wulfstan, the Archbishop of York who emphasises this notion in the laws of Æthelred that ‘Et sit omnis homo dignus iure publico, pauper et dives’ (and all men, whether poor or rich, shall be entitled to the benefit of the law’).¹⁰⁰ This statement shows the more equitable approach ecclesiastics took to justice, allowing even the poorest people in society to reconcile according to their means without excessive shame. On the other hand, higher standards of accountability were expected from those of higher ranking. If a shire-reeve stole, it was expected that he pay double compensation according to Wulfstan.¹⁰¹ It is therefore presumed that people in high social statuses should experience a greater sense of shame for their transgressions. Confessors thus played a crucial role in negotiating the severity of shame placed on to perpetrators based on the status of the victim to ensure that justice was tailored accordingly and that it was more in line with biblical instruction regarding the treatment of the poor. Thus, while pathways to restore honour through compensation and reconciliation were much more diluted in Æthelstan’s reign than in Æthelberht’s reign, there still remained a parallel clerical response which aimed at internalising shame and restoring honour for both victim and perpetrator.

While the later penitentials suggest a degree of leniency for the very poor, there was also one notable exception in the tenth and eleventh centuries, after the reign of Æthelstan, where punishment

⁹⁸ ‘Gif hwylc man medeme þing stele agife þa stale þam þe hi ahte fæste I ger on hlaf on wætere, gif he næbbe þa stale to agifanne fæste iii ger on hlaf wætere’. *The Old English Penitential*.

⁹⁹ ‘Gif hwylc man stele mete oððe claðas, hine hungor. oððe næced þær to drife, fæste iii wican on hlaf, on wætere, gif he þonne þa stale agifan mæge, ne neadige man hine to fæstene, ac do man him forgifenesse for godes lufan’. *The Old English Penitential*. It is interesting, however, that fasting is the punishment suggested for someone accused of stealing food. One explanation is that the accused person might have been trying to steal food considered to be a bit more lavish than bread, perhaps meat, for instance, which was punishable in secular law. See Ine 17.

¹⁰⁰ VII Atr 6.1.

¹⁰¹ VII Atr 6.3: ‘Et si quis praepositus eam fecerit, duppliciter emendet quod alii iudicaretur’.

that spared the thief's life was sometimes preferred over execution. This was the practice of punitive mutilation outlined in II Cn 30.4–5, in which the thief was allowed to live but was severely disfigured. As we have seen, this was a form of punishment intended not only to shame the body but also to offer the possibility of saving the soul. What we have here is essentially an attempt on behalf of ecclesiastics and kings to impose severe punishment for thieves, yet also aim to instil shame so that the offender repents. As discussed earlier in this thesis, this punishment carried a significant redemptive quality, aiming to 'save the soul' of the offender.¹⁰² Though penance was offered to those who stole less than 8 pence, Edgar and Cnut's laws suggest that this punishment functioned as a form of extreme penance, combining physical punishment with an opportunity for spiritual redemption.¹⁰³ O'Brien O'Keeffe argues that Wulfstan reframed mutilation and the accompanying shame as acts of mercy, presenting them as alternatives to capital punishment.¹⁰⁴ In doing so, the royal laws had moved beyond earthly justice and into the realm of spiritual salvation. Wulfstan's perspective on the matter held that the destruction of a person's body through execution could jeopardise their soul by depriving them of the chance to repent.¹⁰⁵ Although Wulfstan acknowledged that some individuals might succumb to these lethal injuries, the emphasis was on offering space for confession and repentance, ensuring they had the opportunity for salvation rather than sealing their eternal fate through death. Wulfstan's stance is exemplified in his declaration from *V Æthelred*:

It is the judgment of our Lord and his council that Christian men shall not be sentenced to death for minor crimes; but instead, more mild penalties shall be assessed to meet the needs of the people, so that the handiwork of God and what He purchased dearly for Himself not be destroyed for minor offences.¹⁰⁶

At its heart, this statement captures Wulfstan's wider vision for justice. Wulfstan did not wish to punish outright if it could be avoided. His support for non-lethal punishments was informed by his theological

¹⁰² II Cn 30.4–5.

¹⁰³ Rabin, 'Capital Punishment', pp. 191–2; Wormald, 'Archbishop Wulfstan and the Holiness of Society,' in *Legal Culture*, pp. 225–51, at 240; O'Brien O'Keeffe, 'Body and Law,' p. 216; Marafioti, 'Punishing Bodies and Saving Souls,' pp. 41–2.

¹⁰⁴ O'Brien O'Keeffe, 'Body and Law', p. 216.

¹⁰⁵ Marafioti, 'Punishing Bodies and Saving Souls', pp. 41–2.

¹⁰⁶ V Atr 3: '7 ures hlafordes gerædnes 7 his witena is, þæt muneca gehwilec þe ute sy of mynstre 7 regoles ne gime, do swa him þearf is: gebuge georne into mynstre mid eallum eadmettum, 7 misdæda geswince 7 bete swiðe georne þæt he abrocen hæbbe; gepence word 7 wed þe he Gode betæhte'.

ideas of justice that showed mercy to those who wanted it. Wulfstan is not saying that he disapproves of capital punishment either. After all, he wrote the laws of Æthelred and Cnut, which, at times, supports the right to slay thieves on the spot. What makes his approach different, is his insistence on leniency, something which he and Ælfric shared, if it meant that the soul could be saved, even if the body was slain. There was also considerable debate about whether Churchmen should be involved in the carrying out of secular punishments. In Ælfric's pastoral letters to Wulfstan, he explicitly warns against clerical participation in secular rulings. He argues that the involvement in criminal trials distracts clergy from their spiritual duties and, more importantly, taints them because they could have blood on their hands.¹⁰⁷ Together, both Churchmen attempted to balance the demands of earthly justice with the preservation of their spiritual integrity. For them, justice was as much about saving souls as it was about maintaining order.

5. Conclusions

By the eleventh century, the use of shame as both a deterrent and punishment for theft had clearly intensified. This shift noticeable especially in the tenth century under Æthelstan demonstrates that there was a growing concern with how theft should be handled. At first glance, it might seem like a turning point in early English justice: a decisive move away from compensation towards harsh physical punishments like amputation and punitive mutilation. However, this chapter has shown that this was perhaps more complicated. Shame as a response to theft had long-standing roots. As far back as the seventh century, theft was treated with serious moral weight, and we find that even homicide was not even treated so severely for cultural reasons surrounding honourable and dishonourable crimes. What made theft particularly serious was the way it attacked the foundations of communal trust. Homicide, though violent, could often be settled through *wergild*. Theft, by contrast, was more insidious, at least perhaps it was perceived this way culturally because of the severe penalties attached to it. This is likely why increasing measures of shame became such an important part of punishment in the tenth century.

In the midst here, the Church offered a different perspective the treatment of thieves, one that placed greater emphasis on internalised shame and penance rather than on retribution alone. In many ways, ecclesiastical logic echoed the spirit of Æthelberht's early laws, which favoured compensation over corporal punishment. Yet, the Church's vision went further by introducing an additional layer of

¹⁰⁷ Marafioti, 'Secular and Ecclesiastical Justice in Late Anglo-Saxon England', *Speculum*, 94:3 (2019), 774–805, at pp. 784–7.

penance. The sinner, even if spared physical mutilation or death, was not absolved without consequence; instead, shame was internalised through penance. That is not to say that church authorities were wholly opposed to corporal or capital punishment. As we see in the laws of Wulfstan and in the words of Ælfric, they often acknowledged its necessity, particularly in cases where secular and spiritual interests aligned. However, in their eyes, the purpose of justice was not just to punish but to reform, to offer the sinner a path towards redemption. Meanwhile, kings had their own, often more pragmatic motives for promoting severe treatment of thieves. When kings let communities kill thieves on sight, they were essentially saying that some violence was acceptable. Yet, the question is how much did this interfere with the Church's model of reconciliation. One could not reconcile with a dead thief. There was no space for repentance, no opportunity for penance, and no pathway to moral redemption for the thief. In this light, royal justice curtailed the very possibility of honour being reconciled between the two parties. Thus, a real tension emerges between ecclesiastical and royal visions of justice. The Church sought to heal, to re-integrate, to offer the possibility of redemption; the king empowered individuals to reclaim their honour through direct action. Both systems were invested in the management of honour and shame, but they pursued that goal through fundamentally different means. One looked inward, towards the soul and its capacity for change; the other looked outward, towards the body and its capacity to symbolise guilt. Where we see a mergence of these two ideas is in the practice of punitive mutilation. In this circumstance, the thief was subjected to intense physical suffering that was so severe that death was a likely outcome, even if not officially prescribed. Yet, shared understanding of this punishment between kings and ecclesiastics was that the mutilated body was not simply a symbol of shame but also became a symbol of penitential suffering. It represented the sinner's fall from grace, but also their potential for redemption. In this sense, punitive mutilation functioned as a middle ground between the competing logics of the king and the Church. The king's desire for visible, retributive justice was satisfied through the infliction of pain and public shame, while the Church's aim of spiritual correction was served by preserving the sinner's life, if only briefly, to allow for acts of contrition.

5.

Sexual Impropriety

The scandal surrounding King Eadwig's (r. 955–59) coronation, as recounted in the *Vita Dunstani* by Eadmer of Canterbury (c. 1060–1126), an English historian and ecclesiastic, is a fictitious account which captures ecclesiastical anxieties surrounding sexual impropriety.¹ Eadmer portrays the young king as often openly engaging in moral depravity, stating that Eadwig frequently caressed two women in public 'without either of them **blushing in shame**' (neutrius aspectum **in hoc erubescens**).² On the night of his coronation feast, Eadwig is said to have abandoned his royal duties in pursuit of the two women, following them to the bedchamber. He was later dragged out at the behest of three ecclesiastics: Dunstan, Oda, and the bishop Cynesige.³ Eadmer characterises the intervenors as the protectors of virtue and propriety. Whereas Eadmer ascribes Eadwig as having a lack of shame, Eadmer presents Oda as an exemplary figure, describing him as someone who 'excelled the rest in **dignity**' (qui **dignitate** caeteris eminebat).⁴ To Eadmer, Oda's dignity is noteworthy of honour and moral superiority. It is for this reason that the others compel Oda to take the lead in bringing the king back to the feast. While their plan to drag the king out if his chamber falls through, due to fear of the king's wrath, it is left to Dunstan and Cynesige to do it physically themselves, berating the king as they do so.

Although the account is fabricated, a slanderous effort to condemn the king's 'authority and reputation', to borrow Weikert's words, it nonetheless puts us into the mindset of ecclesiastics who viewed the stigma of shame as a powerful way to discredit rulers.⁵ The fact that this story was the basis

¹ On the fabrications of Eadmer, see Katherine Weikert, 'Eadwig Has a Threesome: Sex and the Breaking of Authority in the Tenth Century', in *The Reigns of Edmund, Eadred, and Eadwig, 939-959: New Interpretations*, (eds.) Mary Elizabeth Blanchard and Christopher Riedel (Woodbridge: The Boydell Press, 2024), pp. 175–6; Firth, 'Deconstructing the Female Antagonist of the Coronation Scandal in B's *Vita Dunstani*', *English Studies*, 103.4 (2022): 527–546; Firth, 'Eadwig's coronation scandal: sexuality, rhetoric and the vulnerability of reputation', in *Premodern Ruling Sexualities: Representation, Identity, and Power*, (eds.) Gabrielle Storey and Zita Eva Rohr (Manchester University Press, 2024), 49–51.

² *Vita Dunstani*, pp. 96–7.

³ *Ibid.*, p. 96.

⁴ *Ibid.*

⁵ Weikert, 'Eadwig Has a Threesome', pp. 175–6.

of such slander suggests that clerics viewed sexual impropriety as a serious shameful accusation – one that was capable of tarnishing a king's legitimacy as a leader.

This is not the only fabricated story Eadmer wrote. Eadmer also informs us of Eadwig's successor, and younger brother, Edgar (*r.* 959–75), and his sexual depravities. Eadmer writes that Edgar abducted and violated a noble virgin who attempted to protect herself from his advances by donning a nun's veil.⁶ This would have been a grave scandal given Edgar's existing marriage to Æthelflæd. We are told that as a consequence this Dunstan refused to formally greet Edgar by pulling back his hand thus humiliating Edgar. This compelled Edgar to beg for forgiveness and throw himself at the bishop's fee. Outraged by this, Dunstan berates the king:

He [Dunstan] said, 'You have set aside all shame and committed adultery; disrespecting God you did not show respect to the sign of chastity, and you despoiled the virginity of a young girl; and you ask me why I will not present to your impure hands my hand which sacrifices the Son of the Virgin to the highest Father?'⁷

For the sin of adultery, Dunstan, embodying spiritual authority, imposes seven years of penance upon the king. Edgar willingly accepts this punishment.

Contrasting the legacies of Edgar and his brother Eadwig, Firth argues that while Edgar's sexual transgressions are acknowledged, they are framed as less impactful on his legacy, largely due to his penance and submission to ecclesiastical authority. In contrast, Eadwig's actions are depicted as a more blatant rejection of ecclesiastical expectations, particularly in the scandal surrounding his coronation.⁸ Edgar's contrition following Dunstan's rebuke is presented as a way to redeem his reputation, demonstrating his willingness to reconcile with this shame by undertaking penance and show respect for religious authority. This portrayal of these two distinct fates reveals the political influence of Dunstan and his faction and ultimately shapes the way their reigns were remembered.

While Eadwig's reputation was severely tarnished by his contemporaries due to the scandals surrounding his sexual conduct, some of the women involved in these affairs suffered even greater

⁶ *Vita Dunstani*, pp. 134–6.

⁷ 'Ait: "Tu, postposito omni pudore, adulterium commisisti, tu, despecto Deo, signum castitatis non ueritus, uirgini suam integritatem praeripuisti, et cur manum, summo patri uirginis filium immolantem, impuris manibus non tradam quaeris?" Ibid, p.136.

⁸ Firth, 'Eadwig's Coronation Scandal', pp. 60–2.

humiliation and social condemnation. In Eadmer's *Vita Odonis* (The Life of Saint Oda), he writes that after these events, Odo kidnapped one of Eadwig's transgressive consorts, branding her face before exiling her:

Oda, exercising his pontifical authority, sent soldiers and abducted one of the women described earlier by force from the palace of the king where she was residing. She was the one who was disgraced, and made more notorious among men by her greater influence and more obscene impudence, and the king had more frequently cavorted with her in extremely rude embraces. Oda branded her with a white hot iron and disfigured her face, expelled her, and relegated her to perpetual banishment in Ireland. Nevertheless, sometime later when the flesh of her body had closed over her scar (though the deformity of her impure mind still gaped wide), she left Ireland, returned to England, and arrived at Gloucester, still tainted by the darkness of her blind heart. She was seized by the servant of God's men and hamstrung so that she could travel no further in pursuit of her vagrant and whorish way of life, and after a few days a bad death carried her off from this present life.⁹

The act of punitive mutilation described here mirrors that of which we have seen performed on thieves and recidivist criminals. The motivation was to both punish and 'purify' the sinner, to use Eadmer's words, thus eradicating her 'impure mind' so that her soul could be saved. Branding and disfigurement were used to permanently scar and maim her body so that she was reminded of her shame. It is because she does not repent, however, 'still tainted by the darkness of her blind heart', as Eadmer puts it, that she is condemned, and eventually, he adds that she died of her inflictions. Yet, we should be cautious in taking Eadmer's account entirely at face value. Like Dunstan, Eadmer was not above embellishing or even outright inventing stories to make a moral point.¹⁰ His narrative may therefore reveal more about the ideological power of mutilation as a symbol of penance than about the historical reality of the event

⁹ 'Quae miles Dei omnipotentis Odo aequanimiter ferre non ualens, iniquitatum illius publicus hostis effectus est. Siquidem ubi eum nec admonitionibus suis nec obsecrationibus suis nec increpationibus suis adquiescere uelle ut se corrigeret uidit, pontificali auctoritate usus, unam de praescriptis mulieribus quam et amplior potentia et obscenior impudentia dehonestabat, et notioem hominibus fecerat, quaque nimium contumeliosis amplexibus rex frequentius abutebatur, missis militibus, a curia regis in qua mansitabat uiolenter abduxit, et earn in facie deturpatam, ac candenti ferro denotatam, perpetua in Hiberniam exilii relegatione detrusit. Quae tamen cum post nonnullum temporis interuallum iam obducta in cicatricem corporis forma, sed adhuc hiant impudicae mentis deformitate, relicta Hibernia Angliam rediit, et Gloeestram caecati cordis obscuritate imbuta peruenit. Vbi ab hominibus serui Dei comprehensa, et ne meretricio more ulterius uaga discurreret, subneruata post dies aliquot mala morte praesenti uitae sublata est'. See *Vita S Odonis*, in *Eadmer of Canterbury, Lives and Miracles of Saints Oda, Dunstan, and Oswald*, pp. 26–8.

¹⁰ Firth, 'Eadwig's Coronation Scandal', pp. 57–8.

itself. Nevertheless, Eadmer's attitudes towards sexual impropriety provide a crucial lens through which to examine ecclesiastical attitudes towards shame and redemption. This chapter argues that laws regarding sexual crimes demonstrate a shift in emphasis from honour to a focus on sin and shame. While this influence affected both men and women, the emphasis on shame was disproportionately stronger for women, who faced heightened scrutiny, leading to lengthier penitential sentences and severer corporal punishments, such as punitive mutilation, than those which were applied to men accused of the same crime.

To support this argument, Section 1 analyses the earliest royal approaches to sexual impropriety. These laws reveal a restorative approach primarily between offending men and the male guardians responsible for the women involved. In these cases, sexual impropriety is framed as an affront to honour. Sections 2 and 3 explore the introduction of shame through confession and penance. These sections highlight where we see sexual impropriety as a sin as opposed to solely a matter of honour. It shows the ecclesiastical influence on late seventh-century royal laws, focusing on new terminology related to unlawful unions and how these laws reflected the values of a newly Christianised society. Punishment, rather than compensation, is emphasised especially for men involved in unlawful unions, in this case concubinage, which was a lingering Germanic custom. This section also addresses how women's culpability was increasingly addressed, with women often facing harsher punishments due to biblical and clerical misogyny, notions of original sin, as well as patriarchal authority which align with more traditional customs surrounding matters of inheritance rights. Finally, section 3 explores the evolution of later law codes from the ninth to eleventh century. First, it explores adultery as it now applied to the later royal law codes. Second, it looks at how honour developed in this period, with an emphasis on how women were not only held accountable for adultery and required to provide compensation, but were also the recipients of compensation for sexual assault and rape. Finally, examines how adultery came to be treated more severely for both men and women, though an emphasis is placed on how shame played a growing role, particularly for women, who faced harsher penalties such as mutilation, which men were not subject to.

1. Gendered Dimensions of Honour and Adultery up to the Seventh Century

Gregory of Tours recounts the story of a woman in Paris who had left her husband and consequently found herself at the centre of an adulterous accusation.¹¹ Rumours circulated that the woman was living

¹¹ Gregory of Tours, *Decem Libri Historiarum*, VI. 36, in *MGH*, p. 237.

with another man, to the rage of her husband's family, who felt themselves dishonoured by her actions. They demanded that the man prove her innocence or surrender her to death, as they could not bear what such a stain would bring upon their family: 'Aut idoneam redde filiam tuam, aut certe moriatur, ne stuprum hoc generi nostro notam infligat' (Either make your daughter suitable, or let her die, lest she inflict a mark of dishonour on our family).¹² However, the father, unwavering in his belief that his daughter was blameless, insisted that the rumours were nothing more than the spiteful words of malicious tongues. To put an end to the slander, he agreed to swear an oath on the tomb of Saint Denis. The husband's kin, determined to see the matter settled, accepted this challenge, and together they made their way to the sacred church. With his hands raised over the altar, the father solemnly swore that his daughter had committed no wrongdoing. But his oath did not satisfy the husband's supporters. They cried out that he had perjured himself. Tempers flared, and in an instant, swords were drawn. In the hallowed space before the tomb of the martyr, noblemen of King Chilperic's (r. 561–84) court clashed in a frenzy of violence. Gregory writes that blades cut through flesh, blood spattered the sacred walls, and the air filled with the cries of the wounded. It took great effort for the bishops to help restore peace, but the damage was done. It is then said that the Church, defiled by violence, could not hold services until the matter was brought before the king. Chilperic, unwilling to absolve any of those involved, sent them to the bishop, who demanded they pay compensation before they could be readmitted to communion. But the affair was not yet over. A few days later, the woman herself was summoned to trial. Perhaps knowing that no defence could cleanse her of the stain of dishonour, she chose instead to end her own life. With a rope around her neck, she silenced the accusations. Such a tragedy was fuelled by the weight of an unclean reputation and the unyielding demands of honour.

Gregory's account is an illustrative example as to how a woman's adultery in early medieval Francia was perceived as a severe dishonour to her kin.¹³ It is acknowledged that the husband's kin were the ones who viewed the alleged affair as a stain on their collective reputation, demanding either proof of her innocence or her death to restore their honour. The father's oath on Saint Denis' tomb alludes to the seriousness of the accusation and the extent to which a family had to go to defend its integrity publicly. However, the woman's eventual suicide suggests that, regardless of her actual guilt,

¹² Ibid.

¹³ On the scholarship surrounding women's adultery and honour, see Julia M.H. Smith, *Europe after Rome: A New Cultural History 500–1000* (Oxford: Oxford University Press, 2005), pp. 103–4; p. 177; and p. 209; Theodore J. Rivers, 'Adultery in Early Anglo-Saxon Society: Æthelberht 31 in Comparison with Continental Germanic Law', *Anglo-Saxon England*, 20 (1991), 19–25, at p. 20; Christine Fell, *Women in Anglo-Saxon England* (New York: Basil Blackwell, 1984), p. 74.

the stigma surrounding accusations of sexual impropriety could be unbearable. Family members were expected to defend their honour by punishing the transgression, and in this case, through violent means. The notion of ‘female honour’ can thus be seen at times as dependent on the concept of ‘familial honour,’ which is a reflection of the patriarchal order where women are subjugated to the legal authority of male figures. Julia Smith argues that while masculine honour was as intimately associated with displays of aggression, courage, and martial skill, feminine honour was bound up with sexual propriety.¹⁴ Although Gregory’s story is set in sixth century Francia, the attitudes towards honour and sexual impropriety align well with what we see in the early medieval English law codes in the seventh century, whereby compensation for dishonour was expected for crimes of sexual impropriety.

Punishment for acts of sexual impropriety in Æthelberht’s code took into consideration both the rank of the offended male and sometimes even importance of status of the woman involved. For instance, if a man engaged in sexual relations with the king’s maiden, he was required to pay 50 shillings compensation to the king.¹⁵ The term ‘maiden’ (mægð) here refers to an unmarried woman that is under the king’s protection (mund), most likely one of his daughters or a female member of his household. If a male offender sleeps with one of the king’s ‘grinding slaves’ (grindende þeow) – a woman whose job it was to grind corn – the compensation owed to the king for the offence is reduced to 25 shillings.¹⁶ However, if the woman belongs to the third class, the offender must pay 12 shillings. While compensation is always owed to the king, the amount is influenced by the woman’s social status. As the social rank of the woman’s male protector decreases, however, the compensation amount too decreases accordingly. If a man slept with an ‘eorles birele’ (a nobleman’s cupbearer), a trusted and important role bestowed onto a servant, he had to pay 12 shillings compensation.¹⁷ Although still a significant amount, the amount owed reflects the nobleman’s lower standing. If a man slept with an ordinary freeman’s cupbearer, he had to pay a smaller sum of 6 shillings to reflect his relatively modest status.¹⁸ In the same clause, if a man sleeps with a commoner’s slave of the second class, the fine is set at 50 sceattas, and if the slave belongs to the third class, the fine is 30 sceattas.¹⁹ What is to be observed here is that sexual

¹⁴ Smith, *Europe after Rome*, pp. 103–4; p. 177; and p. 209.

¹⁵ Abt 10.

¹⁶ Abt 11. On the term ‘grindende þeow’, see Oliver, *The Beginnings of English Law*, p. 89.

¹⁷ Abt 14.

¹⁸ Abt 16.

¹⁹ On the term ‘sceattas’ and how it differs from schillings, see John Hines, ‘Units of Account in Gold and Silver in Seventh-Century England: Scillingas, Sceattas and Pæningas’, *Antiquaries Journal* 90 (2010), 153–73.

impropriety, in this context, is primarily regarded as an offence against honour, rather than a purely moral or religious transgression. This makes sense, considering English Christianity was still in its infancy during this time.²⁰ Leyser summarises this perspective, stating: ‘casual sexual encounters are not so much condemned as priced’.²¹ This observation reveals the transactional nature of justice in this early period, where acts of sexual impropriety were treated as measurable breaches of honour that could be rectified solely through financial compensation.

A similar pattern emerges in cases of adultery. Though adultery does not constitute a breach of protection, it too stems from the dishonour inflicted upon the offending man as a violation of property rights. Two clauses address this issue. The first states that if a man sleeps with a servant’s wife while her husband is still alive, he must pay the servant twice the standard compensation which is twice his/her status value, because she is married.²² The second states that if a freeman slept with another man’s wife, the offender had to pay the husband’s (or the wife’s) wergild and ‘procure a second wife for the husband with his own money’ (oðer wif his agenum scætte begete 7 ðæm oðrum æt ham gebrenge).²³ Scholars have pointed out the ambiguity in Æthelberht’s laws, particularly regarding whether the compensation refers to the husband’s status or the wife’s status.²⁴ To substantiate his claim for a possible alternative translation, Attenborough draws comparisons to other Germanic law codes, such as the *Lex Baiwariorum* (The Laws of the Bavarii. c. 743–9), which explicitly states that it is the wife’s wergild that is to be paid: ‘If a man has intercourse with another man’s wife, who is free, if he is found, he shall make amends with the wergild of that husband’s wife’ (Si quis cum uxore alterius concubuerit libera, si repertus fuerit, **cum werageldo illius uxoris** contra maritum componat).²⁵ Although this law code is from a later period and belongs to a different kingdom, it may still reflect a continuation of early Germanic practices similar to those in Kent, where a woman’s wergild was paid as restitution. However, we must be cautious with this assumption. It could instead represent a deviation from an older practice in which a man’s wergild was used and evolved over time. Rivers provides an alternative explanation,

²⁰ Brooks makes this assumption about the infancy of Christianity regarding adultery in clause 31 of Æthelberht’s law. See ‘The Laws of King Æthelberht: of Kent’, pp. 31.

²¹ Henrietta Leyser, *Medieval Women: A Social History of Women in England 450-1500* (New York: St. Martin’s Press, 1995), p. 41.

²² Abt 85.

²³ Abt 31.

²⁴ Rivers, ‘Adultery in Early Anglo-Saxon Society’, pp. 19–26; Attenborough, *The Laws of the Earliest English Kings*, p. 9; Oliver, *The Beginnings of English Law*, pp. 109–110.

²⁵ Attenborough, *The Laws of the Earliest English Kings*, p. 177. See *Lex Baiwariorum* 8.1, in *MGH*, p. 353.

suggesting that the requirement for a man to pay the woman's wergild could be justified if her wergild was equivalent to her bride-price.²⁶ The offender needed to compensate the husband with the bride-price he originally paid for her so that he might procure another bride. Although a married woman's wergild is not addressed in Æthelberht's code, the dishonour caused by the offence implies that the compensation could be even higher if it reflected the wealth and status of the husband who pays the bride-price.²⁷ Rivers points out that among the continental Saxons, bride-price was equal to a woman's wergild.²⁸ If this reflects the tradition in Kent, then the offended man is compensated for the affront by acquiring another bride, while also receiving compensation based on the amount he originally paid for the bride-price.

The notion of honour is central to understanding this logic. Rivers acknowledges that it is, without a doubt, 'the husband's honour' that was 'slighted' through the wife's adultery.²⁹ In such a case, the compensation serves as both financial restitution and as a means of restoring the husband's reputation for infringing the husband's proprietary rights to his wife. As one's honour was closely linked to their social value, the husband's position in the social hierarchy is directly impacted by the dishonour brought upon him. A woman of higher status or wealth would, by virtue of her position, enhance the value of the marriage. Her dishonour, therefore, represents a more significant affront, which demands a more substantial financial restitution. The amount of compensation, whether it be in the form of a bride-price or wergild, reflects this imbalance and serves as a way to restore lost honour.

Given this, one might expect the woman involved to bear some culpability in matters of 'consensual' sex.³⁰ Noticeably, however, the absence of any mention of the woman's consent shows

²⁶ Rivers, 'Adultery in Early Anglo-Saxon Society', pp. 19–26. See Abt 81. This clause refers to the practice of bride-price or 'morning-gift'. Also, see Fell's discussion of 'morning-gift' in *Women in Anglo-Saxon England*, pp. 56–7.

²⁷ Only the wergild for a 'mægþ' (maiden) is mentioned. It is decreed that the wergild for a maiden was as the same as a freeman. Abt 74: 'Mægþbot sy swa friges mannes' (A woman's [compensation] shall be the same as a freeman). See Oliver's commentary on this term and clause in *The Beginnings of English Law*, pp. 107–9.

²⁸ Rivers, 'Adultery in Early Anglo-Saxon Society', p. 24.

²⁹ *Ibid*, p. 20.

³⁰ It should be noted that in early England there was no clearly defined or consistent concept of consent in cases of sexual impropriety. Rather than presuming a woman's lack of consent, the legal framework often suggests that the burden of proof lay with the woman to prove that she had not consented, unless proved otherwise. The assumption being, then, that the woman bore guilt in such situations unless her oath was believed or well supported. See Hough, 'Alfred's domboc and the Language of Rape: A Reconsideration of Alfred, Ch. 11', *Medium Ævum*, 66 (1997), 1–17; Coleman, 'Rape in Anglo-Saxon England', in *Violence and Society*, pp. 193–204; Shari Horner, 'The Language of Rape', in *Old English Literature and Law: Views from the Anglo-*

that early medieval Kentish law primarily framed sexual misconduct in terms of male insult, rather than female agency or culpability. Instead, Æthelberht's laws, reveal that women's actions regarding sexual behaviour are not solely considered within the context of personal autonomy, but instead as matters of male honour. The laws focus on the male figures, such as husbands, fathers, or even the king himself, whose honour is perceived to have been affronted by the woman's actions. In this system, women's honour is defined not by their own sexual integrity, but by how their behaviour reflects on the men who have authority over them. The woman's role is reduced to being the bearer of male honour, her actions either reinforcing or undermining the reputation and standing of the male figures in her life. The absence of a focus on the woman's personal dignity indicates that her value was secondary to the reputational concerns of the men who controlled her.

The legal status of women should be considered here. Contemporary discourse has shown that there is little to suggest that women enjoyed a relatively high legal status, at least in comparison to other neighbouring medieval societies.³¹ One of the earliest criticisms of the traditionalist view, which supports the idea that women did indeed have comparative high level status, was offered by Anne Klinck who argued that 'the Anglo-Saxon age should not be regarded as a time when women enjoyed a pristine Germanic and essentially non-Christian liberty'.³² For Klinck, there is little evidence to suggest that women and men shared equal liberties, as the evidence depicted in the later law codes show that punishments were severer for women in many instances.³³ Pauline Stafford also criticised the traditional scholarly approach to understand the Norman conquest, arguing that we should 'jettison' the idea of an 'Anglo-Saxon Golden Age', whilst more recently, Clare Lees and Gillian Overing argued that the status

Saxon(ist)s', in *Sex and Sexuality in Anglo-Saxon England: Essays in Memory of Daniel Gillmore Calder*, (eds.) Carol B. Pasternack and Lisa M.C. Weston (Tempe: Arizona Center for Medieval and Renaissance Studies, 2004), pp. 149–181.

³¹ Recent scholarship includes: Hough, 'The Early Kentish Divorce Laws': A Reconsideration of Æthelberht, chs. 79 and 80', in *An Ald Reht*, pp. 130–49; Hough, 'Two Kentish Laws Concerning Women: A New Reading of Æthelberht 73 and 74', in *An Ald Reht*, pp. 87–110; Clare Lees and Gillian R. Overing, *Double Agents: Women and Clerical Culture in Anglo-Saxon England* (University of Pennsylvania Press, 2009), revised edition, p. 109; Anne L. Klinck, 'Anglo-Saxon Women and The Law', *Journal of Medieval History*, 8 (1982), pp. 107–21; Janet L. Nelson, 'The Wary Widow' in *Property and Power in the Early Middle Ages*, (eds.) Wendy Davies and Paul Fouracre (Cambridge: Cambridge University Press, 1995), pp. 82–113; Mary P. Richards and B. Jane Stanfield, 'Concepts of Anglo-Saxon Women in the Laws', in *New Readings on Women in Old English Literature*, ed. Helen Damico and Alexandra Hennessey Olsen (Bloomington, 1990), pp. 89–99.

³² Klinck, 'Anglo-Saxon Women and The Law', pp. 118–9.

³³ Most recognisably, the punishment for adultery in Cnut's second law-code. See *Ibid*, p. 111.

of women was certainly inferior at best.³⁴ However, a question less often raised is whether women were considered part of the economy of honour.

Æthelberht's law code supports the notion that women living seventh-century Kent did share some relatively high status with their male counterparts. In his law, compensation for a 'maiden' (mægð) is equivalent to that of a free man: 'Mægþbot sy swa friges mannes', suggesting that a freewoman's perceived honour was ideally equal to that of a freeman.³⁵ The same applies to women in the Frankish laws whose wergild was 200 soldi for both freemen and freewomen.³⁶ We must remember that we are examining Æthelberht's ideal vision of society, not necessarily what law looked like in practice. While it is written that a woman's honour value was inherently the same as a man's, it is plausible that when negotiating, this might not have always been the purveying sentiment. To borrow Lambert's words, 'The point of personal honour, after all, is that it is specific to a particular person. Even if the authority of the laws' statements was unquestioned there would have been room for disagreement about how they applied in any given case'.³⁷ There is also confusion as to who exactly the term 'mægð' applies to. Oliver points out that the term 'mægð' might refer not only to women of virginal status, but to freewomen in general.³⁸ If so, then, the potential egalitarian implications of this clause are intriguing, particularly given the lack of a specific ruling for married women. Yet, given this the ambiguity, Oliver ultimately leans towards the view that, despite the law suggesting an equivalence in restitution between men and women, it would likely only be in some circumstances.³⁹ It seems that for women, in comparison to men, their worth depended not just on social rank, but also on life circumstance. Social factors like marital and widow status are taken into consideration. A noble widow was valued at 50 shillings, while lower-status widows commanded lower compensations – 20, 12, and 6 shillings, depending on their rank.⁴⁰ This reveals that even within very specific groups, like widows, the laws carefully graded the compensation owed, reflecting the social standing of the woman in question.

³⁴ Pauline Stafford, 'Women and the Norman Conquest', *Transactions of the Royal Historical Society*, 4 (1994), 221–249, p. 249; Lees and Overing, *Double Agents*, p. 109.

³⁵ Abt 74.

³⁶ *Pactus Legis Salicae* 15.1, in *MGH*.

³⁷ Lambert, *Law and Order*, p. 38.

³⁸ Oliver, *The Beginnings of English Law*, p. 106.

³⁹ *Ibid.*

⁴⁰ Abt 75.

Complicating matters further is the agency of freewomen. One terminological issue arises from the fact that there are only a few examples where clauses are specifically applied to women, leading to the question of whether provisions for ‘freemen’ also apply to ‘freewomen’. In Æthelberht’s time, were women actively expected to participate in the economy of honour by making payments for offences they committed and receiving compensation for offences against them? Or does his law suggest that a woman’s value was merely a designated sum to be paid to a male authority figure on her behalf if she was wronged? Scholars, such as Oliver and Attenborough have, of course, speculated that the language leaves room for interpretation.⁴¹ One often comes across the term ‘gif man’ (if a man) in the text, which is employed at the beginning of most clauses in royal pronouncements, followed by the hypothetical action. It is significant to note that the term ‘man’ can be gender neutral in Old English.⁴² Though, it is unclear if this applied to ‘people’ in the broader sense of the word, or freemen specifically. It is, of course, entirely possible that it might have been self-evident to lawmakers that the laws applied to women just the same as they did to men in most instances, as Hough theorised.⁴³

This issue feeds into more ambiguity in Æthelberht’s code often surrounding language which often makes it unclear whether certain provisions refer to rape or consensual sexual relations. In contrast, as the analysis of Alfred’s later ninth-century laws will show, Alfred’s laws provide greater clarity by explicitly using terms for rape, whereas Æthelberht’s laws only hint at it euphemistically at times.⁴⁴ It is thus difficult to determine whether clauses which state, for example, that if a man lies with the king’s maiden actually imply rape, or whether Æthelberht’s laws were indifferent to whether the act was consensual or not. It is possible that Æthelberht’s laws reveal a culture in which no matter how the act took place, someone’s honour has been affronted, and therefore needed to be compensated, whether this was a husband, father, brother, or legal protector. Two clauses, however, give us a better idea that Æthelberht’s laws do indeed refer to rape, though euphemistically.

In the first of these two clauses, Æthelberht decrees that ‘Gif man mægþmon **nede genimeþ**’ (if a man **forcibly takes** a maiden), he had to pay her protector 50 shillings as compensation.⁴⁵ This law is

⁴¹ Attenborough, *The Laws of the Earliest English Kings*, p. 9; Oliver, *The Beginnings of English Law*, pp. 109–110.

⁴² See ‘man’ in *Bosworth–Toller’s Anglo-Saxon Dictionary Online*.

⁴³ Hough, ‘Women and the Law in Seventh-Century England’, in *‘An Ald Reht’*, p. 61.

⁴⁴ On sexual euphemism in Old English, see Julie Coleman, ‘Sexual Euphemism in Old English’, *Neuphilologische Mitteilungen*, 93:1 (1992), 93–98.

⁴⁵ Abt 82.

followed by additional stipulations: if this took place, the offender needed to pay the bride-price to the owner (a male relative) so that he could marry her. If she was already betrothed, he needed to pay an additional 20 shillings to her intended husband.⁴⁶ If he wished to give her back, he had to pay 35 shillings and 15 shillings to the king for breaking the peace.⁴⁷ A second, related clause applies to widows. Æthelberht decrees that ‘Gif man widuwan unagne **genimeþ**, II gelde **seo mund sy**’ (if a freeman forcibly takes a widow who does not belong to him, let him pay twofold compensation for **violation of protection**).⁴⁸ Regarding the terminology applied here, the use of the term ‘genimeþ’ (takes) may suggest ‘marriage by capture’, a practice in which a woman was taken with the expectation that marriage would follow, as the verb ‘geliegen’ (to lie with), which appears in other clauses of Æthelberht’s law on sexual impropriety, is absent here.⁴⁹ In the first of these clauses regarding maidens, the term ‘nede’ (force) could ideally be meant to be a euphemism for rape.⁵⁰ If this is the case, the requirement that the offender pay an additional fine, in addition to the 50 shillings for breaching the male victim’s protection, followed by the expectation of marriage, suggests that the crime was considered more severe than just abduction.

Overall, however, the principal takeaway from these clauses is that Æthelberht’s laws prioritise the violation of male authority and honour over a woman’s, even in cases of rape. The decree frames the abduction of a maiden as an offence against her male relatives, who held legal and economic claims over her, rather than recognising it as direct harm to the woman herself. This perspective shows that women were perceived as transferable property. Thus, the law emphasises the economic and social disruption caused by her forced removal. The required compensation functions not as restitution to the victim, but as a means of restoring male honour and control.

Despite the fact that victims themselves were not directly compensated, as restitution was typically given to their male guardians, there appears to be one possible exception to this which is worth noting before moving on. Æthelberht’s laws concerning the violation of a widow’s *mund* offer valuable insight into the possibility that women, too, could receive compensation when their dependents were

⁴⁶ Abt 83.

⁴⁷ Abt 84.

⁴⁸ Abt 76.

⁴⁹ See Hough, ‘The Widow’s ‘Mund’’, p. 14; Hough, ‘Women and the Law’, pp. 65–6. See also Christine Fell, ‘An Appendix to Carole Hough’s Article ‘A Reappraisal of Æthelberht 84’’, *Nottingham Medieval Studies*, 37 (1993), 7–8; Oliver, *The Beginnings of English Law*, p. 108.

⁵⁰ Horner, ‘The Language of Rape’, pp. 153–6.

wronged, meaning that because of their status, their honour too was held in high regard. Clause 75 of Æthelberht's laws categorises widows into three distinct classes and assigns different monetary values to breaches of their protection: 50 shillings for a noblewoman, 20 shillings for a woman of the second class, and 12 shillings for a woman of the third, giving widows own legal status and rank, independent of male guardianship.⁵¹ Hough challenges the traditional interpretation of *mund* as signifying a widow being under the protection of a male authority figure. Instead, she argues that *mund* in this context refers to the widow's own role as a protector of her household and dependents.⁵² Now, a widow with adult sons, or even stepsons, had to navigate her situation with far greater caution than a widower, due to what Janet Nelson describes as 'the durability of paternal authority'.⁵³ Although her kin might extend a degree of protection, Nelson suggests that widows could be subject to competing pressures, particularly the expectation that they should remarry. Yet, it was precisely this delicate position that could afford a widow a measure of 'independence, and even power'.⁵⁴ Nevertheless, if widows were legally acknowledged as heads of households, this would suggest that their honour, rather than that of a male guardian, was directly implicated in cases where those under their protection were harmed. While compensation for violations of honour was predominantly awarded to men, widows, because they also had legal dependents, could similarly receive restitution when their *mund* was violated. This indicates that widows occupied a unique legal position, one that allowed them to function, at least in some respects, on a similar plane as men when it came to matters of protection, authority, and compensation for transgressions against their household – an attitude that will persist as far as the eleventh century and beyond. The following section will now examine how religious and ecclesiastical principles increasingly shaped cultural and legal attitudes towards sexual impropriety. It is shown that as Christianity gained greater influence, concepts of shame, sin, and personal responsibility became central to discussions of sexual conduct. This shift led to a growing emphasis on women's consent.

2. Shame, Sex, and Impurity

Let marriage be honourable in all, and the bed undefiled. For fornicators and adulterers God will judge (Hebrews 13:4).

⁵¹ Abt 75.

⁵² Hough, 'The Widow's 'Mund'', pp. 1–16.

⁵³ Nelson, 'The Wary Widow', p. 110.

⁵⁴ Ibid.

Christianity had already reshaped Greco-Roman traditions long before they influenced Germanic ones. The early Church framed sexual behaviour within the context of public honour, shame, and social respectability, reorienting it towards personal sin and individual moral culpability.⁵⁵ Kyle Harper argues that a crucial aspect of this shift was the Christian emphasis on free will, which made sexual morality a matter of personal responsibility rather than communal enforcement. This approach categorised extramarital sex under the broad term *porneia* and condemned practices such as prostitution, which had been tolerated or even institutionalised in previous cultures of Late Antiquity. Early Christians worked to bridge traditional honour-based assessments of sexual conduct with divine judgment by cementing the idea that sexual transgressions were offences against God rather than merely breaches of social decorum.⁵⁶ Although this helps us form some assumptions about Christianity's views on sexual impropriety, it remains challenging to clearly distinguish which aspects of sexual morality are influenced by Christianity and which originate from Germanic tradition, from which our sources begin much later.

In early medieval England, the association between sex and impurity is evident in Augustine's correspondence with Pope Gregory, where they discuss purification rituals required after intercourse before one could enter a church:

A man who has had intercourse with his wife ought not to enter the church unless he has washed himself; and even when washed he ought not to enter immediately. Now the law commanded the ancient people that when a man had intercourse with a woman he ought to wash himself and should not enter the church before sunset; but this can be explained in a spiritual sense. A man has intercourse with a woman when his mind is united with her in thought in the delights of illicit concupiscence, so unless the fire of concupiscence is first quenched in his mind he should not consider himself worthy of the company of his brethren while he sees himself burdened by the sinfulness of depraved desire. Although different nations think differently in this matter and appear to observe different rules, yet it has always been the custom of the Romans from ancient

⁵⁵ Kyle Harper, *From Shame to Sin: The Christian Transformation of Sexual Morality in Late Antiquity* (Massachusetts: Harvard University Press, 2013), pp. 1–8.

⁵⁶ *Ibid*, pp. 82–92.

times, after intercourse with one's own wife to seek purification by washing and reverently to abstain from entering the church for a brief period.⁵⁷

The emphasis on ritual cleansing after sex shows how early medieval Christian thought positioned the body as both a site of sin and redemption, where purity had to be actively maintained through religious observance. Women's bodies in matters of purity were of particular concern. Medieval societies viewed the female anatomy as inherently impure.⁵⁸ As an example, Pope Gregory forbade women to engage in sexual intercourse while menstruating.⁵⁹ What seems clear is that the cultural ethos extending into the early medieval period viewed sex within the context of shame, seeing certain sexual activities as being 'impure'. This impurity required purification rites and reinforced religious views of sexual conduct as inherently tainting or transgressive.⁶⁰ The logic behind this is because Christianity essentially reframed sexual activity as a matter of personal sin, linking bodily impurity with sin. Wilcox argues that perception of the naked body as a vessel of shame in early medieval thought was rooted in Christian theology, particularly in the doctrine of the Fall. Bodily embarrassment, therefore, symbolised a more existential Christian shame: the awareness of human sinfulness before God.⁶¹ The ecclesiastical understanding about sex and the impureness of the body thus positioned the naked body as a constant reminder of human shame and the consequences of original sin.

Broader cultural attitudes also reinforced the link between women's sexuality and shame. Allen argues that early medieval societies connected female sexuality to dishonour, perpetuating women's subjugation through social norms. This association was evident in the ways female shame was portrayed in religious and literary texts, where it was frequently tied to sexual vulnerability and expressed through

⁵⁷ Vir autem cum propria coniuge dormiens, nisi lotus aqua, intrare ecclesiam non debet; sed neque lotus intrare statim debet. Lex autem ueteri populo praecepit, ut mixtus uir mulieri et lauari aqua debeat et ante solis occasum ecclesiam non intrare (quod tamen intellegi spiritaliter potest, quia mulieri uir miscetur, quando inlicitae concupiscentiae animus in cogitatione per delectationem coniungitur), quia, nisi prius ignis concupiscentiae a mente deferueat, dignum se congregationi fratrum aestimare non debet, qui se grauari per nequitiam prauae uoluntatis uidet. Quamuis de hac re diuersae hominum nationes diuersa sentiant atque alia custodire uideantur, Romanorum tamen semper ab antiquioribus usus fuit, post ammixtionem propriae coniugis et lauacri purificationem quaerere et ab ingressu ecclesiae paululum reuerenter abstinere'. Bede, *HE*, 1.27, p. 94.

⁵⁸ Ruth M. Karras, *Sexuality in Medieval Europe: Doing Unto Others* (London: Routledge, 2017), pp. 71–2.

⁵⁹ Bede, *HE*, 1.27, pp. 90–93.

⁶⁰ Brundage, *Law, Sex, and Christian Society*, p. 81.

⁶¹ Wilcox, 'Naked in Old English', pp. 308–9.

silence, shrinking, and passivity.⁶² Moreover, Allen contends that women who experienced shame were expected to internalise it. This meant that their disgrace manifested itself through withdrawal and inaction. In contrast, male shame was more often linked to social status and honour rather than sexuality. Men who experienced shame were more likely to respond with anger or action, seeking to reclaim their lost honour through retribution or assertion of violence.⁶³ This gendered distinction shows the fundamentally different ways in which shame was experienced and understood. Women's moral worth was primarily judged through their sexual conduct, with transgression leading to severe social and often legal consequences. Meanwhile, men's shame was tied to their public reputation and agency, with their response to shame shaping their standing within the community.

Moreover, there was the notion of original sin. In the early medieval period, there was a general perception of women as deceitful, based upon cultural stereotypes, and notions of original sin supported by biblical prescription.⁶⁴ Clerics were especially prone to such characterisations. Biblical narratives, such as that of Eve, reinforced that women were susceptible to moral failings.⁶⁵ This ultimately contributed to their increased suspicion. For example, women were often depicted as temptresses, who use their 'sexuality to control men', as Karras puts it.⁶⁶ Given the range of these cultural contexts, it is not surprising to find discrepancies in the severity of shame imposed on men and women for committing acts of sexual impropriety in the penitentials.

⁶² Allen, 'Waxing Red: Shame and the Body, Shame and the Soul', in *The Representation of Women's Emotions in Medieval and Early Modern Culture*, ed. Lisa Perfetti (University Press of Florida, 2005), pp. 191–2.

⁶³ Ibid.

⁶⁴ The literature concerning the pervasive cultural inheritance of misogyny in medieval Europe is vast and cannot all be included here, though notable examples include: Catherine Cubitt, 'Virginity and misogyny in tenth- and eleventh-century England', *Gender and History*, 12 (2000), 1–32; Clare A. Lees, 'Misogyny and the Social Symbolic in Anglo-Saxon England', in *Gender in Debate from the Middle Ages to the Renaissance*, (eds.) Thelma S. Fenster and Clare A. Lees (New York: Palgrave Press, 2002); Audrey Meaney, 'Women, Witchcraft and Magic in Anglo-Saxon England', in *Superstition and Popular Medicine in Anglo-Saxon England*, ed. by D.G. Scragg (Manchester: Manchester Centre for Anglo-Saxon Studies, 1989), pp. 29–31; Firth, 'The Character of the Treacherous Woman in the Passiones of Early Medieval English Royal Martyrs', *Royal Studies Journal*, 7:1 (2020), 1–21; Ralph H. Bloch, *Medieval Misogyny and the Invention of Western Romantic Love* (The University of Chicago Press, 1991).

⁶⁵ On Eve as the primary example of the temptress trope see Karras, *Sexuality in Medieval Europe*, p. 37; Dyan Elliot, 'Tertullian, the Angelic Life, and the Bride of Christ', in *Gender and Christianity in Medieval Europe New Perspectives*, (eds.) Lisa M. Bitel and Felice Lifshitz (University of Pennsylvania Press, 2008), pp. 20–5.

⁶⁶ Karras, *Sexuality in Medieval Europe*, p. 161.

Chapter Five – Sexual Impropriety

In his *Historia*, Gregory of Tours recounts the story of Urbicus, the Bishop of Clermont-Ferrand, who is depicted as a devout religious figure who lived separately from his wife in accordance with church customs.⁶⁷ However, his wife, also a religious woman, one day became overcome with desire and influenced by the Devil, sought to reunite with him, invoking biblical justification for marital relations. Urbicus ultimately gives in to her pleas, engaging in sexual intercourse but later feels shame and deeply regrets his actions. His response to this transgression is to atone for his sins. As Gregory tells it: ‘Then, slowly coming to himself and regretting the crime he had committed, he sought repentance and sought a monastery in his diocese, and there, with groans and tears, he washed away what he had committed’.⁶⁸ This type of shame associated with sexual impropriety, which necessitated confession and spiritual reconciliation, is explicitly addressed in early medieval English penitentials. These texts, designate penance for a wide range of sexual transgressions.

In the *Poenitentiale Theodori*, the prescribed penalties for male adultery vary according to the status of the woman involved. If a man commits adultery with a married woman, he must fast for three years, two days a week, and during three forty-day fasting periods.⁶⁹ If he has intercourse with a virgin, the penance is reduced to one year, during which he must abstain from meat, wine, and mead.⁷⁰ However, if he defiles a vowed virgin, the penalty is significantly more severe, amounting to three years of penance. This reflects the heightened gravity of violating a woman consecrated to religious life.⁷¹ In contrast, if the woman is a slave, the penance is only six months, indicating that the severity of the sin, and its corresponding punishment, is contingent upon the honour and status of the woman involved.⁷² This ranking system, very much like the royal laws, demonstrates a clear hierarchy of sexual transgressions in penitential thought. The different penalties suggest that the moral weight of the sin was determined by the status of the woman involved, with greater penalties for violations of those belonging to different social statuses. In stark contrast, the penitentials offer no comparable ranking system for women who commit adultery. A woman who engages in adultery, regardless of the circumstances or the status of the man involved, is subject to a fixed punishment of seven years of

⁶⁷ Gregory of Tours, *Decem Libri Historiarum*, I. 44, in *MGH*, pp. 28–9.

⁶⁸ ‘Dehinc tardius ad se reversus et de perpetrato scelere condolens, acturus paenitentiam, diocesis suae monasterium appetit, ibique cum gemitu ac lacrimis quae commiserat diluens’. *Ibid*, p. 29.

⁶⁹ *Poenitentiale Theodori*, I. 14.9.

⁷⁰ *Poenitentiale Theodori*, I. 14.10.

⁷¹ *Poenitentiale Theodori*, I. 14.11.

⁷² *Poenitentiale Theodori*, I. 14.12.

penance.⁷³ While male sexual misconduct was judged on a case-by-case basis, female sexual transgressions were penalised uniformly and more harshly. There was no allowance for leniency, thus shame for female adultery was treated as absolute and indiscriminate.

Further evidence of ecclesiastical bias emerges in the handling of divorce. Only the husband had sole authority over whether to reconcile with an adulterous wife.⁷⁴ The *Poenitentiale Theodori* places the fate of the woman entirely in the hands of her husband, excluding the clergy from any role in her punishment. The explicit statement that ‘his revenge [as punishment] does not concern the clergy’ suggests that the Church recognised and legitimised the husband’s right to impose his own form of retribution. Should a man who dismisses his wife and remarry, he was required to perform penance, though he still retained agency over his marital choices.⁷⁵ In contrast, a woman is explicitly denied the right to leave her husband, even in cases of his sexual misconduct, unless he enters a monastery.⁷⁶ Further reinforcing this gendered discrepancy is the fact that a woman could not take a vow of chastity or religious devotion without her husband’s consent.⁷⁷ A woman’s ability to live a religious life and seek moral redemption depended on her husband’s approval. This constraint suggests that a wife’s primary obligation was to her marital role rather than to her own spiritual agency, whereas a husband retained greater freedom to shape his own religious pursuits.

A woman found guilty of adultery also faced significant material losses in regards to her inheritance. If she chose to enter a monastery, a path framed as an act of repentance, she was permitted to retain only a quarter of her inheritance. However, if she remained in secular life, she forfeited everything.⁷⁸ This punishment deprived her of economic security and also effectively severed her from her kinship network. In contrast, men did not face comparable financial penalties for their sexual transgressions. Adultery was thus far more economically consequential for women than for men. Unlike male infidelity, which was often tolerated or considered a lesser offence, a wife’s adultery was seen as a direct violation of marital stability and a potential disruption to inheritance structures.⁷⁹ It seems that

⁷³ *Poenitentiale Theodori*, I. 14.14.

⁷⁴ *Poenitentiale Theodori*, II. 12.14.

⁷⁵ *Poenitentiale Theodori*, I. 14.8.

⁷⁶ *Poenitentiale Theodori*, II. 12.6.

⁷⁷ *Poenitentiale Theodori*, I. 14.7.

⁷⁸ *Poenitentiale Theodori*, II. 12.11.

⁷⁹ Brundage, ‘Sex and Canon Law’, in *Handbook of Medieval Sexuality*, (eds.) Vern L. Bullough and James A. Brundage (New York: Garland Publishing, 1996), p. 42; Tyszka, ‘The Conceptualisation of Men and Women by

a woman's infidelity might cause uncertainty around the legitimacy of offspring which would have endangered the clear transmission of property and family identity. This meant that female adultery could turn into a legal crisis.

Penitential logic reflects this anxiety, as it imposed harsher penalties on adulterous wives. This ultimately reinforced the patriarchal structure which defined women primarily through their roles as wives and mothers. Although these legal frameworks subordinated women, they also paradoxically elevated their status within the household by emphasising their importance in maintaining family integrity.⁸⁰ Penitential regulations certainly controlled women's sexuality to make sure they stayed in the roles society expected of them. Yet, at the same time, these laws functioned as a means of protection, promoting marital fidelity as a way to prevent social discord and financial disputes.⁸¹ However, this protection came at the cost of autonomy, as women were more closely monitored and restricted in their sexual behaviour than men. The association of women's worth with their chastity and reproductive capacity meant that any sexual transgression carried severe consequences. This made adultery an offence with lasting repercussions for both the individual woman and her kin-group.

So far, we have examined how the penitentials imposed harsher penalties on women than on men. Now, I will shift focus to show where men faced harsher punishment in comparison to women, specifically in relation to homosexual relations. It is important to note, first, that ecclesiastics did not recognise homosexuality as a distinct category; instead, they framed such acts as sodomy, which was considered a particularly severe sin due to its biblical condemnation.⁸² Nevertheless, male same-sex relations, in particular, were framed as a more grievous sin that warranted severe and prolonged penance, with additional factors such as age and the nature of the act further influencing the prescribed punishments. The penitentials consistently treat male-male sexual acts as more destructive than their female counterparts, with punishments that could extend to fifteen years of penance. This is evident in

The Authors of Penitentials', in *Imagined Communities: Constructing Collective Identities in Medieval Europe*, (eds.) Andrzej Pleszczyński, et al. (Leiden: Brill, 2018), p. 241; Marc A. Meyer, 'Early Anglo-Saxon Penitentials and the Position of Women', *Haskins Society Journal*, 3 (1991), 47–61, at p. 56; Karras, *Sexuality in Medieval Europe*, p. 122.

⁸⁰ Meyer, 'Early Anglo-Saxon Penitentials and the Position of Women', p. 56.

⁸¹ Ibid.

⁸² Karras, *Sexuality in Medieval Europe*, pp. 8–12.

the case of men who engaged in habitual homosexual relations, whereby such individuals could be sentenced to ten years of penance.⁸³

In contrast, female homosexual acts were regarded as significantly less severe, meriting far lighter penalties. The relative brevity of penance for women who engaged in sexual acts with each other (three years) further illustrates that female same-sex relations were seen as less disruptive to the social order.⁸⁴ Payer argues that the penitentials lacked explicit biblical justification for these prohibitions and did not provide a clear rationale for the sinfulness of homosexual acts.⁸⁵ If a woman commits adultery with another woman, the penitential punishment is three years: ‘mulier **quæ se more fornicationis** adulterio conjunxerit III. annos peniteat sicut fornicator’ (a woman who has committed adultery **in the manner of fornication** shall repent for three years as an adulterer).⁸⁶ At first glance, this appears to contradict the earlier statement that female adultery carries a seven-year penance. However, closer examination of the phrase ‘quæ se more fornicationis’ (in the manner of fornication) reveals that the ecclesiastical understanding of female same-sex relations was different from heterosexual adultery. ‘In the manner of fornication’ implies that the act in question was not considered ‘regular’ fornication but a deviation from it.⁸⁷ This distinction suggests that the *Poenitentiale Theodori* does not categorise female same-sex relations as equivalent to male-female adultery in terms of severity. The reduced penance could indicate a perception that such acts, while still sinful, did not pose the same threat to social and familial structures as heterosexual adultery.

It is also the case that deviation from normative heterosexuality was treated as a disposition to their gender identity, which is something that we also see in relation to men. A man who allowed himself to be penetrated risked losing his masculine status, a concern that was absent in the discussion of female homosexuality. The distinction between an ‘effeminate man’ (*molles*) and other categories of male offenders exemplifies this, as such a man was penalised as an adulteress: an equation that suggests that passivity in sexual acts carried with it the same kind of dishonour attributed to women who engaged in

⁸³ *Poenitentiale Theodori*, I. 2.5.

⁸⁴ *Poenitentiale Theodori*, I. 2.12.

⁸⁵ Pierre J. Payer, *Sex and the Penitentials: The Development of a Sexual Code 550-1150* (University of Toronto Press), p. 43.

⁸⁶ *Poenitentiale Theodori*, I. 14.15

⁸⁷ On the terminology, see Gamer and McNeill, *Medieval Handbooks of Penance*, p. 185.

illicit liaisons.⁸⁸ The term ‘mollis’ (soft) was used to describe a man who exhibited effeminate traits, seen as sexually passive or submissive, which was associated with women's natural roles. This effeminacy was not physical in its basis of physical weakness but it was an assured violation of gendered sexual norms, as it implied that a man had adopted a position traditionally assigned to women.⁸⁹ Though considered less culpable because of his passivity in sexual acts, such a person was still held accountable for his deviant behaviour, as his sexual submission and the violation of gender norms were seen as a corruption of both his body and his social role. This phrasing implies a differentiation between active and passive roles, with the passive role – associated with submission and feminisation – being viewed as particularly shameful.

The age of men also played a significant role in determining the degree of punishment for male homosexual acts. The notion of culpability and the perceived gravity of the offence were closely linked to maturity. Boys engaging in homosexual acts with one another were sentenced to whipping, a physically punitive measure we rarely see in the penitentials to discipline deviant behaviour.⁹⁰ One reason why whipping might have been the favoured punishment outlined by Frantzen is that the penitentials aimed to shape boys into disciplined men, particularly in monastic settings, where their sexual development was carefully managed to align with ascetic ideals.⁹¹ The corporeal discipline of boys, then, can be understood as a means to align their behaviour with the monastic and ecclesiastical values of chastity and self-restraint.

The final area in which men were punished more so women relates to incest. Unlike other forms of sexual impropriety, such as adultery or fornication outside of wedlock, incestuous relations were met with much higher lengthy penances. The prescribed penalties, particularly for men, highlight a prevailing assumption that they bore the primary responsibility for controlling and preventing sexual sin. A man who committed incest with his mother, for instance, was required to do penance for fifteen years as decreed in both the *Poenitentiale Theodori* and the *Poenitentiale Egberti*, though the former also adds severe restrictions on his daily life, such as only changing his clothes on Sundays.⁹² The

⁸⁸ *Poenitentiale Theodori*, I. 2.6.

⁸⁹ Abraham, *Anticipating Sin*, pp. 140–1. See also Payer, *Sex and the Penitentials*, pp. 40–44.

⁹⁰ *Poenitentiale Theodori*, I. 2.11.

⁹¹ Frantzen, ‘Where The Boys Are: Children and Sex in The Anglo-Saxon Penitentials’, in *Becoming Male in The Middle Ages*, (eds.) Jeffrey J. Cohen and Bonnie Wheeler (London: Routledge, 1997), pp. 56–59.

⁹² *Poenitentiale Theodori*, I. 2.16; *Poenitentiale Egberti*, 4.3.

Poenitentie Theodori also adds that he could undergo seven years of penance combined with perpetual pilgrimage, which was a particularly gruelling form of atonement. Similarly, incest with a sister warranted a comparable punishment, with some canons prescribing a slightly reduced period of twelve years.⁹³ In cases of same-sex incest between brothers, which medieval authorities viewed as a particularly unnatural offense, the penance remained extreme – fifteen years of complete abstinence from all meat.⁹⁴ The term ‘frater naturali’ refers to a biological brother, and the concern here is the violation of familial bonds through incestuous behaviour, specifically ‘mixing of the flesh’, which likely involves sexual penetration.⁹⁵ The consistency in these severe sentences, all falling within the seven to fifteen-year range, reveals how incest was regarded as one of the gravest possible sexual sins, not only because of its violation of Christian doctrine, but also due to its disruption of kinship structures.

Marriages between close relatives were invalid, and children from such unions were considered illegitimate, unable to inherit property.⁹⁶ Karras argues that incest in the medieval era was rarely reported, making its prevalence difficult to determine. Court records mainly address kinship-based prohibitions rather than household abuse. Despite the prevalence of stepfamilies, there is little evidence of stepfather–stepdaughter abuse. Instead, medieval narratives often depict father–daughter incest, suggesting a focus on legal and religious prohibitions rather than coercion or domestic abuse.⁹⁷ The fact that these penitential rulings explicitly designate the male participant as the one required to atone further shows that men were seen as the active agents in sexual transgressions. They were expected to bear the primary burden of guilt and the responsibility to resist and prevent such acts. Women, by contrast, are largely absent from the prescriptions of penance, which suggests that they were either seen as passive victims of male sin or that their role in the transgression was less theologically significant.

3. Unlawful Unions in the Seventh Century

Religious views on proper sexual conduct began influencing legal codes as early as the late seventh century. While these legal codes do not provide the same depth of information on sexual impropriety as the penitentials, they do reflect an increasing concern with enforcing Christian moral standards which

⁹³ *Poenitentie Theodori*, I. 2.17; *Poenitentie Egberti*, 4.4.

⁹⁴ *Poenitentie Theodori*, I. 2.19; *Poenitentie Egberti*, 4.5.

⁹⁵ Abraham, *Anticipating Sin*, pp. 128–131.

⁹⁶ Brundage, ‘Sex and Canon Law’, p. 43.

⁹⁷ Karras, *Sexuality in Medieval Europe*, p. 157.

aim to get those already living in sin to repent and confess their shame. This is evident in the efforts of kings to prescribe penance for individuals who entered unions deemed ‘unlawful’ by the Church. Augustine’s fifth question posited to Gregory in his exchange of letters concerns the degree to which the faithful may marry certain members of their kindred, particularly whether or not a man may marry his stepmother or sister-in-law. Gregory’s response is as follows:

.. sacred law forbids a man to uncover the nakedness of his kindred; hence it is necessary that the faithful should only marry relations three or four times removed, while those twice removed must not marry in any case, as we have said. It is a grave sin to marry one’s stepmother, because it is written in the law: ‘Thou shalt not uncover thy father’s nakedness’ [Leviticus 18:7]. Now the son cannot uncover his father’s nakedness, but because it is written, ‘They twain shall be one flesh’ [Matthew 19:5], he who presumes to uncover his stepmother’s nakedness who was one flesh with his father at the same time uncovers his father’s nakedness. So also it is forbidden to marry a brother’s wife, because by a former union she had become one flesh with his brother.⁹⁸

Gregory’s declaration on unlawful unions was one of many attempts by the Church to reform traditional Germanic marriage practices that were considered sinful. In early Germanic kinship structures, marrying a stepmother or stepsister was not an illegal practice, as kinship was often defined more through lineage and inheritance than through strict marital prohibitions.⁹⁹ However, as Christian influence over marriage increased, the Church sought to impose stricter regulations based on biblical and theological principles. Despite these efforts, such practices persisted in seventh-century Kent as this was a transitional phase of Christianity. Bede writes that King Eadbald of Kent (*r.* 616–40) rejected Christianity and entered into an unlawful union with his stepmother after his father died.¹⁰⁰ In the late seventh century, Hlophere and Eadric’s law code (*c.* 685–686) largely sidesteps matters of sexual

⁹⁸ ‘...sacra lex prohibet cognationis turpitudinem reuelare. Vnde necesse est, ut iam tertia uel quarta generatio fidelium licenter sibi iungi debeat; nam secunda, quam praediximus, a se omnimodo debet abstinere. Cum nouerca autem miscere graue est facinus, quia et in lege scriptum est: ‘Turpitudinem patris tui non reuelabis.’ Neque enim patris turpitudinem filius reuelare potest; sed quia scriptum est: ‘Erunt duo in carne una’, qui turpitudinem nouercae, quae una caro cum patre fuit, reuelare praesumerit, profecto patris turpitudinem reuelauit. Cum cognata quoque miscere prohibitum est, quia per coniunctionem priorem caro fratris fuerit facta’. Bede, *HE*, 1.27, p. 84.

⁹⁹ James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (The University of Chicago Press, 1987), p. 130–1.

¹⁰⁰ ‘Not only had he refused to receive the faith of Christ but he was polluted with such fornication as the apostle declares to have been not so much as named among the Gentiles, in that he took his father’s wife’ (Siquidem non solum fidem Christi recipere noluerat, sed et fornicatione pollutus est tali, qualem nec inter gentes auditam apostolus testatur, ita ut uxorem patris haberet). Bede, *HE*, 2.5, p. 150.

impropriety. However, this changes significantly with Wihtred's law (c. 695), which introduces new moral dimensions to the regulation of sexual behaviour regarding men engaged in unlawful unions.

Clause 3 of Wihtred's law code articulates a sizable effort to codify punishments for engaging in unlawful unions: '**Unrihtthæmde** mæn to rihtum life mid synna hreowe tofon oppe of ciricean gemanan ascadene sien' (Men in any **unlawful union** were to either to repent or be excommunicated from the Church).¹⁰¹ Unlike earlier codes, which framed legal consequences primarily in terms of economic reparations, Wihtred's law treats an illicit union between a man and a woman as an offence against God, thereby punishing any act of sexual impropriety through spiritual means such as penance or excommunication. Wihtred's law essentially reframes illicit sexual relations as a spiritual crime. While Æthelberht's laws prescribe financial penalties for men who violate the honour of other men through sexual offences involving women, Wihtred's code turns the focus onto men themselves as moral agents who must answer for their own transgressions. Men are to be punished not because they have dishonoured other men but because they have committed a sin against God. Wihtred's laws thus reveal broader transformations brought about by Christianity during the late seventh century.

Christianity and Roman inspired traditions altered ideals of marriage. The key shift, van Houts points out, was the Christian emphasis on the indissolubility of marriage and monogamy, in contrast to Germanic practices that allowed for divorce and polygyny.¹⁰² Christianity rejected polygyny, which was common among the elite in Germanic cultures to secure political alliances and increase heirs, and although the Church sought to restrict polygyny, the practice continued informally among powerful leaders.¹⁰³ Ross argues that as the Church's teachings took hold, new terms were coined to distinguish between lawful and unlawful sexual acts that were not present in Æthelberht's law. Concubinage was not initially seen as problematic, but as a socially accepted form of sexual relationship. However, with the Church's influence, terms like '**unriht-hæmde**', meaning unlawful union or 'unlawful intercourse' emerged to categorise relationships such as concubinage, adultery, and homosexual intercourse as

¹⁰¹ Wi 3.

¹⁰² Elisabeth van Houts, *Married Life in the Middle Ages, 900-1300* (Oxford: Oxford University Press, 2019), p. 14.

¹⁰³ Ibid; Margaret C. Ross, 'Concubinage in Anglo-Saxon England', *Past and Present*, 108, 3–33, at p. 3; Brundage, *Law, Sex, and Christian Society*, p. 145; Abraham, *Anticipating Sin*, pp. 106–9.

morally wrong and sinful.¹⁰⁴ Thus, driven by Christian doctrine, the increasing diversification of these terms in Wihtréd's laws reflect the growing need to differentiate between legal and illegal sexual relationships.

Wihtréd's law also draws a sharp distinction between the punishment of foreign men (*Æltheodige mæn*) and native Kentish men. Foreigners who failed to abide by their marriage obligations faced expulsion from Kent: 'if they will not regularise their unions, they shall depart from the land with their possessions and with their sins'.¹⁰⁵ In contrast, men native to Kent were not subjected to exile, but they could still face significant consequences if they refused to repent, including penance or excommunication, both of which carried severe social and religious repercussions. While exile physically removed an individual from the community, excommunication rendered them isolated and spiritually condemned to a life of shame.

Moreover, though they too did not have to forfeit their possessions, they were still required to pay fines to their lords, and these were based on social rank. A 'gesipcundne mannan' (nobleman) had to pay 100 shillings to his lord, whereas a *ceorl* had to pay 50 shillings to his lord.¹⁰⁶ Returning to the concept of honour here, that these fines were structured according to social rank reflects the expectation that individuals of higher status should uphold moral and legal norms more strictly. Because noblemen and those of higher rank had more social reputation to protect, their transgressions were met with steeper penalties. This is particularly interesting because it suggests that moral accountability was based on status, meaning those in elevated positions were held to higher moral standards. This approach contrasts with Æthelberht's law, where honour was primarily defined by status, in that kings and nobles were entitled to greater compensation when wronged because their honour was considered more valuable. In Wihtréd's law, however, the principle is reversed: rather than receiving greater compensation, noblemen were expected to pay heavier fines for their transgressions, which ultimately promotes the idea that greater status came with greater moral responsibility.

In the West-Saxon tradition, Ine's law also aimed to punish individuals who engaged in sexual impropriety outside of marriage. Clause 27 states that: 'He who conceives an illegitimate child and

¹⁰⁴ On the term 'Unrihtthæmde' see Ross, 'Concubinage in Anglo-Saxon England', pp. 13–14; Samuel Cardwell, 'Be wifmannes beweddunge: Betrothals and Weddings in Anglo-Saxon England', *Anglo-Saxon England*, 49 (2020), 81–106, at pp. 88–96.

¹⁰⁵ Wi 4: 'gif hio hiora hæmed rihtan nyllað, of lande mid hiora æhtum 7 mid synnum gewiten'.

¹⁰⁶ Wi 5.

hides it, shall be unable to claim the wergild of that child, rather payment [shall go to] his lord and the king'.¹⁰⁷ This provision penalises the offender by stripping him of any legal or financial claims over the illegitimate child. By removing the father's right to claim the wergild for the child, the law effectively denies the father any compensatory honour or restitution that might normally be due for his offspring's harm or death. On the one hand, Ine's provision is indicative of marriage in the Germanic world, which, according to Elisabeth van Houts, was a legal institution that tied individuals to structures of kinship and inheritance, which were crucial for the maintenance of property rights.¹⁰⁸ In this context, any behaviour that undermined this contract was seen as a direct threat to established lines of inheritance. On the other hand, however, it also reflects the growing Christian influence on sexual relations during the late seventh century. Codifying punishments for sexual transgressions meant that Ine could align West-Saxon law with the Christian imperative to regulate sexuality and enforce the moral sanctity of marriage.

By the end of the seventh century, then, there appears to have been noticeable shift in the approach to sexual unions in comparison to Æthelberht's laws, which primarily addresses sexual impropriety as a matter of honour. The religious and ecclesiastical influence is clear here. In contrast, Wihtred's and Ine's laws actively focused on male consent in matters of sexual impropriety, with women's consent appearing to be a matter of primary concern in the penitentials only.

4. Women's Adultery and the Gendered Logic of Honour and Shame from the Late Ninth Century to the Eleventh Century

Alfred's laws demonstrate a movement away from the earlier views of women as passive dependents within society. In the early royal laws, we saw that women's roles were often framed in terms of their dependence on male kin or guardians, and their sexual agency was largely unrecognised. However, In these laws, a nuanced approach to different forms of sexual harm emerges, with financial restitution varying according to the severity of the offence. This differentiation is significant as it reveals an awareness of varying degrees of harm and the corresponding legal responses. The categories established for restitution show an understanding that not all forms of sexual violence should be treated identically. For example, unwanted physical contact, which was likely seen as a lesser form of violation, resulted

¹⁰⁷ Ine 27: 'Se ðe dearnenga bearn gestrieneð 7 gehileð, nah se his deaðes wer, ac his hlaforð 7 se cyning'. This passage might also read as 'or the king', rather than 'and the king', signalling that payment should go to the king if the child had no lord. See Jurasinski and Oliver, *The Laws of Alfred*, p. 393.

¹⁰⁸ Houts, *Married Life in the Middle Ages*, p. 14.

in a penalty of 5 shillings; assault without intercourse, 10 shillings, and rape, 60 shillings.¹⁰⁹ We also see that in comparison to Æthelberht's laws too, Alfred's laws clearly distinguish between sexual assault and rape, as demonstrated by the explicit use of 'nied-hæmde' (forceful intercourse) in clause 26: 'if someone **rapes** an underage girl, let the compensation be the same as for a mature person' (Gif mon ungewintrædne wifmon to **niedhæmde** geðreatige, sie ðæt swa ðæs gewintredan monnes bot).¹¹⁰ This is the first time in the chronology of the royal laws that we see a clear reference to rape itself, rather than the term applied euphemistically. In this context, the idea of honour becomes crucially recognised. All this suggests that Alfred attempted to assess and respond to sexual harm with greater precision, providing more significant consequences for more harmful acts. One of the most striking aspects here in comparison to early laws, then, is the direct recognition of women's rights to receive compensation for sexual offences committed against them. The awarding of compensation to women for sexual harm exemplifies a recognition of their honour as something legally protected.

Yet, the same sense of honour and autonomy, however, was not applied to slaves. If someone rapes a ceorl's slave, then the offender had to recompense the ceorl with 5 shillings, and 60 shillings as fine. Here it is not the slave who is to be compensated, suggesting that the honour of the slave is irrelevant and that it is the master whose honour who has been affronted as the slave is under the protection of their master. However, the law takes a starkly different approach when it comes to slaves committing sexual violence to one another. If a slave rapes another slave, the punishment is castration.¹¹¹ This provision, which reads as let him 'bete mid his eowende' (compensate with his testicles), lies in the fact that slaves had no financial autonomy or means of compensating their victim. As scholars like Coleman have pointed out, slaves were incapable of affording compensation, and in the context of their legal and economic subjugation, they could not even repay debts by reselling themselves into slavery.¹¹² Slaves could not receive compensation for injuries or crimes committed against them. Without the possibility of restorative justice, which relied on financial compensation to restore balance and honour, the law instead resorted to punitive justice. Alfred's law thus aimed to further humiliate and degrade the slave, reducing them to a state of shame.

¹⁰⁹ Af 11–11.5.

¹¹⁰ Af 26. On the term 'niedhæmde', see Hough, 'Alfred's domboc and the Language of Rape', pp. 7–10; Coleman, 'Rape in Anglo-Saxon England', pp. 197–8; Horner, 'The Language of Rape', p. 160.

¹¹¹ Af 25.1.

¹¹² Coleman, 'Rape in Anglo-Saxon England', p. 198.

Jurasinski and Oliver highlight an important variant found in some manuscripts, such as the *Textus Roffensis*, where the phrase ‘mid his eowende’ (compensate with his testicles) is changed to ‘mid his hyde’ (with his hide), suggesting that whipping might have been an alternative punishment. While both punishments were severe, the change in punishment is significant. Castration was far more debilitating and potentially fatal, while the other, flogging, although still humiliating and painful, did not carry the same risk of death or permanent injury. Thus, the change from castration to whipping might reflect pragmatic concerns. The harsher punishment of castration could have unintended consequences for the owner of the slave. Even a criminal slave was a valuable commodity in the system, and castrating a slave could possibly kill them if they died of their wound. This would make the compensation required for the crime seem trivial in comparison to the potential loss of the slave’s labour.

Despite all this, that women’s consent was recognised also meant that women too could held accountable for committing adultery on their behalf and were therefore required to compensate the offended party. For example, if a contractually betrothed woman engaged in sexual relations with someone other than her intended husband, she was required to compensate the individual who had acted as her ‘guarantor’ (byrgean) in the marriage agreement.¹¹³ The amount of compensation varied according to social rank: if she was of ceorl status, she had to pay the guarantor 60 shillings, which had to be in livestock rather than in human servitude. If she belonged to the 600-shilling class, she owed 100 shillings, and if she was of the 1200-shilling class, she had to pay 120 shillings.¹¹⁴ This distinction in Alfred’s legal code suggests a connection between honour and social responsibility, whereby the role of the guarantor in a marriage contract was not only financial, but also reputational. It seems to me that by vouching for the woman’s virtue and suitability for marriage, the guarantor placed their own honour on the line. If the woman engaged in sexual misconduct, it was not just her reputation that suffered but also that of the guarantor, who had vouched for her character. The requirement for women to compensate the guarantor rather than the betrayed husband indicates a concern with maintaining the credibility of contractual bonds, ensuring that those who vouched for an individual’s honour did not suffer undue dishonour. Thus, while the significance of women’s consent and place in the economy of honour is made apparent in Alfred’s law, it is still shaped by life considerations – her social status,

¹¹³ Jurasinski and Oliver point out that the ‘guarantor’ in this context refers to the person who gave their surety to the marriage. See the *Laws of Alfred*, p. 313.

¹¹⁴ Af 18.1–18.3.

virtue, or perceived chastity – all influenced how the law responded. This suggests that while women's personal honour was beginning to hold more legal weight, it remained conditional on prevailing expectations of social rank.

The inclusion of women in the economy of honour within Alfred's laws raises significant questions about the underlying motivations for this shift in legal focus. Why, specifically, did Alfred not only elevate women's roles in matters of sexual violence but also explicitly centre their consent as a critical aspect of legal proceedings? I would argue that Christian teachings, with their emphasis on personal accountability and sexual purity, played an important role in shaping this transformation. These religious principles likely contributed to the understanding that women, in their own right, possessed intrinsic worth that positioned them as rightful recipients of compensation for sexual offences. It also aligned with the broader Christian ideals of individual dignity and responsibility before God, meaning that they too were responsible for their own sins, should they be committed. The Church's influence on this transformation cannot be understated. Previously, women's sexual autonomy had been largely framed in terms of male guardianship, where male relatives or husbands held control over women's bodies and, by extension, their honour. However, with the rise of Christian teachings that stressed personal accountability and individual moral agency, the legal system began to view women as autonomous beings capable of both sin and redemption. Alfred's legal innovations, particularly his inclusion of the commandment 'do not commit adultery' (*Ne lige ðu dearnenga*), demonstrate this integration of Christian morality into cultural understandings of sexual impropriety.¹¹⁵ We might also consider some of the Old English penitential literature in the late period.

This logic was exacerbated further in the tenth and eleventh centuries. Much like what we have seen in relation to violence, perjury, and theft, there too was a prevailing belief that sexual transgressions had the potential to corrupt society and invite divine retribution. Thus, unrepented sin need to be confessed in order for God to favour the community.¹¹⁶ The desire to separate adulterers in order to keep the masses clean from the taint of sin is evident in Edmund's law code, which imposed severe posthumous penalties on adulterers by denying them burial in consecrated ground.¹¹⁷ The only way for an adulterer to mitigate such consequences was through confession and penance and to make amends. While this punitive approach appears that the law codes were skewing towards even greater measures

¹¹⁵ Af El 6.

¹¹⁶ Lambert, *Law and Order*, pp. 220–23.

¹¹⁷ I Em 4.

of shame, it is important to contextualise the relative legislative priorities of the period. Although Edmund's law code imposed posthumous shaming on adulterers, adultery as a legal concern seems to have been of lesser importance in tenth-century English law compared to other offences. The law codes of Æthelstan, Edmund, and Edgar predominantly focused on crimes such as violence and theft, which were considered more immediate threats to the peace. Unlike penitential legal traditions that placed greater emphasis on regulating sexual behaviour, these the legislation of the tenth century kings suggests that sexual impropriety, while certainly still condemned during this time, was less emphasised in comparison to Wihtréd's law for example, which show a strong concern with matters of unlawful unions. Instead, the regulation of sexual morality increasingly fell under ecclesiastical jurisdiction.

What we find though, is that by the eleventh century, with Archbishop Wulfstan becoming the main legislator of the laws of Æthelred's later laws and those of Cnut, there was a marked resurgence in the legal punishment of adultery. Wulfstan had strong concerns over sexual morality. These had not disappeared, but had become more the domain of the Church rather than the state. Wulfstan cements the idea that society must be purified through the removal of those who engage in sexual impropriety, such as prostitutes, adulterers, and individuals in illicit unions.¹¹⁸ In Wulfstan's view, sexual impropriety was just one of the many other sins that was enhancing the moral decay of the English people that was directly linked to their suffering. This perspective is central to his famous sermon, *Sermo Lupi ad Anglos*, in which he explicitly condemns widespread sexual sin, listing harlots, infanticides, and adulterous fornicators as among the principal offenders.¹¹⁹

However, standing out amongst all this, is the legal treatment of adultery in *II Cnut* which especially targets women. While the notion of adultery as a singular offence for both men and women appears to be taking shape, there was a stark divergence in how the law treated these two sexes, particularly when it came to the consequences of committing adultery.¹²⁰ In the case of *II Cnut*, while men were expected to make amends for adultery according to the nature of the offence, through compensation and penance, women were subjected to a much harsher punishment. The law explicitly mandated that a woman found guilty of adultery should have her face mutilated:

¹¹⁸ Prostitutes shall be exiled: VI Atr 7; II Cn 4.a; E. & G. 11. Adulterers shall make amends or be exiled: II Cn 6. Foreigners who do not regularise their unions shall depart: II Cn 55.

¹¹⁹ '...7 her syndan myltestran 7 bearnmyrðran 7 fule forlegene horingas manege...' (...and here are harlots and infanticides and many foul adulterous fornicators...) *Sermo Lupi Ad Anglos*, p. 50.

¹²⁰ II Cn 50, 54.

Ʒæt nan wif heo ne forlicgge. Gyf be cwicum ceorle wif hig be oðrum were forlicge, 7 hit open wyrðe, gewyrðe heo to **woruldsceame** syððan hyre sylfre, 7 hæbbe se rihtwere eall Ʒæt heo age, 7 heo ðonne ðolie ægðer ge nosu ge ða earan.¹²¹

No woman shall commit adultery. If, while her husband is still alive, a woman commits adultery with another man and is discovered, she shall bring **worldly-shame** upon herself, and her lawful husband shall have all that she possesses, and she shall then lose both her nose and her ears.

To disfigure a woman's face was to intentionally destroy her beauty. In a society where women's honour was tied to their chastity and reputation, this punishment sought to make her dishonour irredeemable, due to the fact that her scars would always serve as a reminder of her crime and that people would recognise why she had them. Her dishonour was now etched in her face. Unlike the punishment for theft, where a thief's hand might be severed to serve as a permanent reminder and deterrent of their crime, the mutilation of a woman's face served a similar function, but with far more devastating implications for her social status, as it would affect her likelihood of remarriage.

That men were not expected to receive this punishment should they commit adultery is telling and speaks volumes about the gendered nature of justice in early English law. While a man could atone for his sexual transgression and restore his standing through financial compensation and spiritual atonement, a woman's adultery was considered a far greater crime. Her punishment was not just about making amends whether that be financial or through penance; rather it was about permanently marking her as a fallen woman, whose sin was so great that it required a physical manifestation of her shame. This ultimately aligns with much of what was said above concerning women and impurity. Women's sexual purity was closely tied to honour, and thus their bodies were seen as vessels of that honour. A woman's sexual transgression was therefore viewed as a profound dishonour not just to her, but to her husband and kin. Therefore, the legal system imposed a punishment that could also serve as a public act of cleansing and redemption for the sinner. This idea is reinforced through the use of Wulfstan's term 'woruldsceamu' (worldly shame). In this context, the act of mutilation was to combat adultery and its ability to taint the wider community. The ritual of religious purification was enabled through the woman's body which became the symbol of redemption in order to win God's favour that extreme measures were being undertaken to save the community from their downfall. Ultimately, the enforcement of this punishment was largely shaped by broader cultural and ecclesiastical biases against

¹²¹ II Cn 53.

women, yet, as I see it, it was more in part to combat the moral panic of worldly shame that Wulfstan believed was plaguing his society.

5. Conclusions

The evolution of royal legal approaches to sexual impropriety in early medieval England evidently shows a shift in both how sexual impropriety was understood and how punishments were carried out. The primary concern in the earliest royal laws was that of male and familial honour, and not the act of sexual misconduct itself, though at least in a legal sense. It must be remembered that we do not entirely know how women were treated in cases of adultery because Æthelberht's law was principally organised to promote where an affront to honour might occur. It can only be assumed then it was the discretion of the husband to deal with these matters before the Church was involved and treated it as a sinful act. Gregory of Tours' story of the woman committing suicide gives us some idea as to the internalised shame a woman would have felt even if she was only accused of committing adultery. We see, however, as early as Wihtred's laws, that the Church, guided by their doctrine, began to view sexual transgressions as sins against God with unlawful unions being heavily targeted early on. For those who held on to their traditional Germanic customs, they were to be exiled if they did not desist and undergo penance.

The penitentials reveal much about attitudes towards sexual impropriety that we simply do not get much of in the royal laws. These texts provide detailed lists of forbidden acts and the appropriate penances assigned to each transgression. While men and women were expected to confess their shame and undergo spiritual correction through penance, the burden of moral responsibility often fell more heavily on women. The penitentials disproportionately punished women. This framing was not solely the result of cultural clerical misogyny, however, it was also embedded in cultural associations between women, temptation, and sin inherited from classical and biblical traditions. Yet, interestingly, the penitentials do not always follow a straightforward patriarchal logic. In certain cases, male sexual transgressions attracted harsher punishments. Homosexual activity between men, for instance, was often treated with extreme severity, seen as a profound violation of the natural order. Young boys could even be whipped for engaging in such acts. Corporal punishment is otherwise rarely prescribed in these texts. Likewise, incestuous relationships brought greater shame upon men, who were regarded as the guardians and protectors of their kin. Thus, punishment was severe for men in this regard, with the most being 15 years for mother-son relations.

Chapter Five – Sexual Impropriety

By the late period, both honour and shame had become more central in different ways than before. The first change involved the growing importance of honour for women. By the time of Alfred's laws, compensation was still a key element of resolving sexual offences, but the nature of this compensation shifted. Women, in cases of sexual assault or rape, were now entitled to financial redress. However, this also meant that women's adulterous actions were now seen as violations of their own honour, punishable through compensation owed. In this context, women were initially understood to be separate from the economy of honour altogether, as their personal honour was tied to their male relatives. The idea that a woman's consent could determine the severity of her punishment became important to Alfred's *Domboc*, though we do not see much of a continuation of this elsewhere. This is probably because of the second significant change was the increasing relevance of shame, particularly by the eleventh century, where we see punitive mutilation come into practice for as punishment for women only. That this punishment was only reserved for thieves and female adulterers is telling and feeds into Wulfstan moral panic over worldly-shame supposedly put onto the entire nation by God. Thus, what began as a legal system focused on compensation and restoring familial honour gradually became a more punitive system that was ensconced in Christian morality.

Conclusion

The overarching conclusion of this thesis is that shame emerged as a central feature within the early medieval English legal system. At the forefront of this argument has been the notion that religious ideas and ecclesiastical legal frameworks fundamentally redefined the nature of justice itself, making shame an important corrective force. Justice was no longer simply about restitution or vengeance, instead, there was the notion of internalised shame as an added spiritual dimension. This was an evolving legal system that included aims to punish wrongdoers through moral correction. Building on the arguments of scholars like Lambert and Fruscione, who discuss the ideological evolution of these laws, my position ultimately falls somewhere in between their viewpoints while also recognising the complexity of this transformation. While I agree with Lambert's argument that the development of punitive justice did not supplant honour and restorative forms of justice, I also emphasise, in agreement with Fruscione, that religious justifications played a far greater role in shaping legal ideology than has often been presumed.¹

1. Summary of Key Findings and Implications

The shift from honour to shame can be seen across a range of offences – violence, perjury, theft, and sexual impropriety – where early legal responses were initially rooted in honour, but over time, came to centre around shame and penitence. The first key area where this shift is evident is the merging of royal and ecclesiastical approaches to violence and conflict resolution. The aim of Chapter Two was to explore how kings and ecclesiastical ultimately reconciled honour and shame as parallel modes of justice, and whether this was possible, given scholarly emphasis on honour as the overwhelming traditional form of justice in conflict disputes. Certainly honour shaped the way violent disputes were handled in the early. As we saw with the case of King Ecgfrith and King Æthelred, revenge in defence of kin were expected. Expressions of loyalty protected communal bonds. These ideas evidently lasted well into the later period, especially in the legal ideology of Alfred's laws. For lay elites, violence and honour were intertwined. Nevertheless, this traditional understanding of violence was gradually unsettled by the spread of Christian moral teachings. As the Church's influence grew, it brought with it the notion that violence, however justified by custom, carried a spiritual cost. Even if lay society saw an act as honourable, the soul of the offender still required cleansing. The internalisation of shame

¹ Lambert, *Law and Order*, pp. 63–110; Fruscione, 'Beginnings and Legitimation of Punishment', pp. 38–40.

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through public became a significant way to address the inner stain of sin. For ecclesiastics, violence, especially violence in anger, became a matter of conscience. It weighed against efforts of peacemaking.

Of course, while Church leaders preached against violence, royal authority often continued to legitimise it, though this became somewhat diluted. Mainly, we see that this ultimately served the interests of loyalty and lordship. One of the ways in which kings reconciled violence as religiously justified was by framing such duties in religious terms. Defending a lord became a sacred act that could be biblically justified, and failing to do so could thus be viewed as dishonourable, worthy of death even as demonstrated in Alfred's law. In this way, royal ideology helped to bridge the gap between honour-based conduct and Christian morality. Even ecclesiastical authorities, for their part, showed a certain pragmatism in this. The penitentials reveal that ecclesiastics aimed to impose only light penance on acts of violence done in loyalty. Whether they did this because they acknowledged the deep-rooted values of aristocratic honour, or whether they did it because defending one's lord could be biblically warranted is uncertain. Yet, nevertheless, by the tenth and eleventh centuries, this balance had certainly started to shift. Both the Church and kings began to dilute the legitimacy of violence further. Edmund's laws decreed that feud was between the offender and their victim's kin. It was no longer acceptable for feuds to harm Christian society. Retaliatory violence, even when culturally justified through honour-based notions of justice was increasingly treated as a pollutant – a sin that was increasingly viewed as having the power to corrupt the wider Christian community. Royal policies began to reflect this change. Unrepentant killers were excluded from court and could face exile. In this context, shame took on a new power. It was no longer just a loss of face, should one affront another's kin through violence, it became a spiritual means of pressing offenders towards repentance.

The second key area in which the shift towards a shame-based system of justice is evident lies in the changing attitudes towards oath-swearing and the treatment of perjury. The task here was to look at one of the key problems with the legal system lay in how easily someone could be exonerated based on their reputation or status. As I and other scholars understand it, this would have created opportunities for the system to be manipulated if one already simply had the perceived honour to do so. So, the central question raised here was: how might shame offer a way to reconcile this traditionally honour-based system with a more accountable form of justice? As explored in Chapter Three, honour and reputation formed the bedrock of oath-swearing procedures in early medieval England. A person's ability to participate in legal proceedings, especially in the capacity of oath-swearers themselves, was intrinsically tied to their perceived honour. The credibility of one's oath was thus not just based solely on the truth

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of its content, but on the trustworthiness of the oath-taker. Thus, this chapter picked up on the notion that those with higher status or an unblemished reputation could more easily refute accusations, while those of lower standing or tarnished character had to resort to other, often more degrading, means of proving their innocence, which, in the early royal laws could mean that a reeve had to do it for a slave, or by the late period, this meant that a slave had to prove their innocence through trial by ordeal.

As for perjury, we see that while ecclesiastical penitentials and royal law codes treat perjury with seriousness, the nature of the penalties evolved significantly over time in the royal laws. In earlier periods, punishment for perjury could be financial or was determined through penance. One of the issues is that we simply do not know how perjury was punished in the seventh century. Assumptions can be made, but ultimately it can be suggested that perhaps punishment for perjury was within ecclesiastical jurisdiction. Ecclesiastics employed frequent stories of perjurers being exposed, only to confess their shame or be punished through divine revelation. The hope here was to instil fear into people who might have unrepented sins. Shame thus functioned as an important social mode of control to push that agenda. However, as ecclesiastical influence expanded, particularly from the ninth century onwards, the consequences of perjury became increasingly about shame in the royal laws. Such developments are particularly evident in the laws of Alfred and Æthelstan, where we see that the king assumed a greater role in punishing perjury. Alfred's law integrated religious and secular authority by imposing imprisonment and penance to compel confession for breaking an oath or pledge. Shame is added to those who escaped by becoming excommunicated. By the tenth and eleventh centuries, royal legislation began to mirror ecclesiastical concerns even more closely. Perjury, like homicide, came to be understood as a moral pollutant. As such, the penalties for unrepentant perjurers included exile from the community and denial of a Christian burial – both of which emphasised their exclusion from earthly society and the heavenly afterlife alike.

Another important development during this period was the use of ordeal as a form of proof when individuals were deemed unworthy of oath-swearing. While it was ultimately up to God to reveal the truth through divine intervention, I have also thought it necessary to explore the humiliating qualities of what this meant publicly. Whether it was carrying a hot iron, or plunging one's hand into boiling water, it is safe to say these punishments were not just meant to be physically painful but also deeply humiliating. Honour could be restored if God favoured their innocence, though we must also consider that many people who underwent these would have been profoundly shamed even though they were indeed innocent. It is this aspect of untrustworthiness that seeped into much of the rhetoric found in the

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eleventh century law codes, whereby one could be slain just for being suspicious. Honour, then, was imperative to avoiding such punishments.

Chapter Four examined the offence of theft. The aim here was to explore different attitudes towards theft in royal and ecclesiastical spheres, and see where they merge and diverge. The general trajectory of the laws over time suggests that the pathway to reconcile honour became increasingly more difficult, with shame becoming the primary form of justice. Scholars differ here on when punitive justice was initially brought into the fold. While Lambert argues that theft had always been punished with shame, scholars like Fruscione state that punishment emerges due to Christianisation. Æthelberht's code, however, focused primarily on compensation and restitution. The aim was to repair the harm done and restore the disrupted social balance through payment to the victim or their kin. Yet, the late seventh-century law codes show that thieves were to be slain on the spot if caught, and, in the case of Ine's law, their arms amputated. At first glance, this shows a shift. Yet, Lambert's argument that thieves had always been shamed as such is compelling. The notion that it was a dishonourable crime suggests that theft was an outlier here. Whether severe treatment of thieves was always this way has been shown to remain uncertain, and so I have tried to add some nuance to this discussion by looking at how ecclesiastics in particular managed theft.

As I see it, ecclesiastics advocated a different approach, one that incorporated both honour and shame. While theft was clearly condemned as a sin, ecclesiastical authorities often preferred penitential discipline over corporal punishment. Rather than focusing on external bodily penalties, these texts aimed to instil shame and guide the offender towards repentance. Thieves could be treated with mercy, so long as they confessed their shame. Nevertheless, this ecclesiastical perspective did not reject corporal punishment outright. Churchmen were often willing to accept such penalties when they were necessary for maintaining order or if they were perceived as contributing to the spiritual correction of the offender. This is made evident by the fact that ecclesiastics approved of punitive mutilation as it gave the offender time to repent, despite it nearly destroying them. As for whether it was still viable to reconcile honour still in the late period is clarified by the fact that Old English penitentials and royal laws still advocated for reconciliation, mostly however, in circumstances whereby the offender was impoverished. This leniency and mercy was persistent throughout, though the overall jurisprudence certainly points in the direction of a legal system that was overwhelming shame-based in relation to theft.

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The final chapter explored legal responses to sexual impropriety, with particular attention to the gendered implications of honour and shame. Here I made the argument that while shame for sexual impropriety affected both men and women, it was women who received the bulk of this. Initially, it seems that sexual offences were primarily understood as violations of male or familial honour. A wife's infidelity, for example, was less about her own personal offence than about the dishonour and potential illegitimacy it brought to her husband and his kin. Honour was thus gendered, with men's reputations resting on their control over female sexuality and female honour largely ignored, except in specific circumstances such as widowhood, where a woman's conduct could reflect on her own status, and if affronted, she could be the one who received compensation. This dynamic appears to shift due to Christianisation. The growing influence of ecclesiastical authority shaped sexual impropriety as a sin in addition to a social offence, thus it required confession, penance, and redemption. Shame became a central component in this process. Penitential literature reveals however that penance for women was frequently harsher than for men in cases of adultery. At the same time, the Church displayed a somewhat selective moral outrage at male homosexual acts, which were severely condemned. Female homosexuality, by contrast, received comparatively little attention in the sources.

By the late ninth century, Alfred's *Domboc* showed clear signs of ecclesiastical influence in its framing of sexual impropriety. Adultery had become scrutinised through legitimate religious concerns and biblical mandates. In addition to this, however, Alfred's law recognised that women too could claim compensation in cases of sexual assault or rape. I argue that the partial recognition of female agency and honour was in large part due to Christianity which placed strong emphasis on individual 'consent', particularly because consent was essential for addressing personal accountability and sin. Nonetheless, the later tenth and eleventh centuries witnessed growing disparities in punishment. Although men could often resolve accusations of adultery through financial settlements and penance, women were subject to punitive mutilation, intended to disfigure the face, and ultimately save the soul.

Taken together, these findings reveal a system in which the growing influence of ecclesiastical attitudes increasingly dictated the inclusion of shame as a corrective measure of punishment. Ecclesiastical ideas about sin and penance came to shape the treatment of these four offences, altering the jurisprudence in ways that emphasised spiritual redemption in addition to restorative methods of justice. While the extent to which ecclesiastical attitudes shaped specific legal responses depended on the nature of the offence, the overarching trend points to a more complex, morally driven approach to justice, whereby the offender was increasingly given the option to repent their sin and confess their

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shame as a pathway towards reconciliation with themselves and God. What we essentially have here is a system whereby offenders were shamed so that, ideally, they could become morally rehabilitated. One running issue with these findings is that the scarcity and fragmentary nature of the surviving sources make it difficult to determine precisely how early this shift occurred in royal laws. It is possible that many corrective punishments were imposed long before they were formally codified. While the argument that ecclesiastics played a key role in facilitating this process rests on the available material, if more evidence came to light, it could suggest that the integration of royal and ecclesiastical law began much earlier than the tenth century, which is where we see most of the major punitive developments. The punishment for unlawful unions in Wiltred's law, which is tied to penance, for example, provides some early evidence of ecclesiastical involvement, but the absence of similar provisions for violence until much later indicates that the process of integration was at the very least gradual. This disparity between the theoretical prescriptions of ecclesiastical thought and the timing of legal codification makes it challenging to determine the true extent of ecclesiastical influence. Nevertheless, that influence is undeniable, particularly as it gains prominence in the tenth century, which shows a more clear merge of royal and ecclesiastical ideas about punishment. Thus, despite the limitations of scarce and fragmented sources, which hinder efforts to establish a precise chronology, the Church's role in shaping legal frameworks is indeed evident. Ecclesiastical leaders were certainly not passive advisors or, at times, even moral critics, they were active agents in legal reform, disseminating their ideal notions of justice and embedding them in the evolving legal order. Through their emphasis on shame, penance, and redemption, they helped to craft a system in which moral correction in many instances became inseparable from legal punishment.

2. Avenues for Further Research

The findings discussed here raise critical questions about the long-term implications of the shift from a legal culture primarily centred on honour to one increasingly defined by shame, particularly if we consider the continuation of this in light of the enduring legacy of early medieval English laws within the post-Conquest Anglo-Norman legal framework. The Norman Conquest of England in 1066 marked a significant turning point in governance and the administration of justice. Here we have a fundamental reshaping of early medieval English legal traditions. Yet, despite the Conquest's transformative nature, it would be misleading to characterise it as a total rupture with the past. Many early English legal customs, particularly those centring around honour and shame, persisted long into the Anglo-Norman period. These continuities raise important questions about how the legal traditions of honour and shame

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were adapted and repurposed under the pressures of new administrative and ideological frameworks. This raises broader questions about the legacy and durability of early medieval English legal culture. In what ways did the pre-Conquest ideals of honour continue to inform the imagination of English law, even under Norman and later Plantagenet rule? To what extent did shame-based mechanisms of control represent an evolution of earlier forms of legal thought, rather than a clean break?

One of the most significant and transformative areas in which the Normans introduced lasting change was in the evolving relationship between the Church and the legal system itself.² While the Church had already played a notable role in shaping the administration of justice during the pre-Conquest period, particularly through the proliferation of penitentials, the emphasis on confession, and the promotion of penance as a mechanism of spiritual correction, the Norman period marked a more formalised and far-reaching entwinement of ecclesiastical and secular legal authority. As this thesis has demonstrated, ecclesiastical ideals had begun to influence legal culture before 1066, especially in the use of shame as a disciplinary tool. This is evident in the way spiritual offences were addressed through penance. However, the post-Conquest period witnessed a dramatic escalation in the institutional power of the Church, which led to more influence in the jurisprudence. During the reign of William the Conqueror (r. 1066–87), the relationship between Church and state were better connected. William needed to form strategic alliances with the Church in his new kingdom if his rule was to appear legitimate, thus he needed to ensure the clergy's support in maintaining law and order. William set about bringing the English Church closer to governance through sweeping ecclesiastical reforms in alignment with continental ideals and papal authority. One of the most immediate changes was the replacement of Anglo-Saxon bishops and abbots with Norman clergy, most notably the removal of Archbishop Stigand (d. 1072) and his replacement with Lanfranc (d. 1089), a Churchman who was regarded as a highly respected reformist from Normandy. The Normans also strengthened canon law, making ecclesiastical courts more prominent in handling religious offences, thereby separating secular and spiritual legal matters more distinctly than before.³ One of the clearest signs of this shift was the increased formalisation of Church authority within the legal system. William's *Episcopal laws* both

² Christopher Harper-Bill, 'The Anglo-Norman Church', in *A Companion to the Anglo-Norman World*, pp. 167–171; Frank Barlow, *The English Church 1066–1154: A History of the Anglo-Norman Church* (New York: Longman, 1979); Chibnall, *Anglo-Norman England 1066–1166* (Oxford: Blackwell, 1986), 192–207; Michael T. Clanchy, *England and Its Rulers 1066–1307* (Oxford: Blackwell, 2014), revised edition, pp. 65–68.

³ See Wl ep 2, 4.1

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acknowledged the Church's role in spiritual matters and actively carved out a distinct judicial space for ecclesiastical courts.⁴

Moreover, one of the most notable residual elements of early medieval English law relating to shame carried on into the post-Conquest laws was the reinforcement of punitive mutilation.⁵ The elevation of ecclesiastical courts raises important questions regarding the extent to which the Church, emboldened by its newfound legal authority, actively cultivated a culture of judicial shame. Given that clerical authorities often favoured penance as a means of atonement, we might ask whether the greater integration of ecclesiastical legal principles into the broader legal framework led to an explicit reinforcement of an even greater shame-based culture in Anglo-Norman England. With this in mind, an important avenue for further research would be to examine how the post-Conquest clergy, benefiting from the increased status and authority granted to them under Norman rule, developed and implemented punitive measures that relied on shame as a central mechanism of justice. Did this enhanced clerical influence contribute to a more explicit shame culture – one that emphasised visible humiliation and bodily punishment as necessary steps towards repentance and redemption? This question becomes particularly relevant when considering the legacy of Archbishop Wulfstan of York, who had already emphasised the role of worldly-shame in his legal writings. Many of Wulfstan's treatises exemplify the significance of shame as a corrective force. Given this precedent, we might ask whether Anglo-Norman clerics carried this tradition forward, adapting and expanding it within the new legal framework. The effects of this transition would repay further study, as the full exploration of how early medieval English concepts of honour and shame evolved under Norman influence is a complex question that deserves more focused attention. Through comparative analysis of pre- and post-Conquest legal texts, alongside ecclesiastical texts, it may be possible to map the cultural shift more clearly, so that light can be shed on how shame became institutionalised further.

Nevertheless, the primary aim of this thesis has been to analyse the shift from honour to shame within a pre-Conquest framework. The main contention of this study is that shame, just as much as honour, played a crucial role in shaping justice. Honour may have been the more visible currency in public and legal disputes, governing vengeance, kinship responsibility, and social hierarchy, but shame was no less integral in managing social behaviour. Indeed, shame was often the internal mechanism that

⁴ See Wl ep 2, 4.1.

⁵ Wl ep 4.

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drove the external performance of honour, and its role in pre-Conquest justice has been underestimated. One of the key points I have sought to convey in this thesis is that the early medieval English legal system cannot be fully understood by considering honour in isolation. To do so would be to overlook the equal significance of shame in the process of how both kings and ecclesiastics regulated society.

Furthermore, I have argued that ecclesiastical influence, particularly through penitentials, played a significant role in shaping justice. The penitentials connected religious and royal justice, which reveal that many offences could also be viewed as a sin against God. As demonstrated throughout the analysis, penitentials influenced the wider legal system and helped form a key component of what we consider early medieval English 'law'. While often treated by scholars in the past as peripheral, the idea of penance in fact informed royal legislation. My hope therefore is that this research offers a valuable contribution to our understanding of early medieval legal systems, shedding light on the ways in which royal and ecclesiastical ideas about justice, honour, and shame coalesced. Those legal systems, in their full complexity, must be viewed as amalgamations of royal customs, royal judgements, and ecclesiastical laws, all of which contributed to the shaping of the jurisprudence. It is only through recognising the overlapping nature of these areas that we can fully appreciate the workings of law and order in early medieval England. At the crux of the legal ideology was honour and shame, which functioned together to ensure an ideal regulation of early medieval English societies.

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