

THE ABDUCTION OF WOMEN IN BARBARIC LAW

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Among the most disturbing aspects of very early law are the glimpses we sometimes receive of a remote and, by civilised standards, savage time, the period that Georges Simenon once referred to as "bygone epochs of life in the forests."¹ It is largely because of these spectres from the past that there is a reluctance to accept evidence of practices we understandably abhor. Rudolph Huebner, writing before much anthropology had softened our reactions, shuddered at the "cold-blooded and brutal character" of bride-purchase, which he thought appeared nowhere in "more repulsive form than in some of the Anglo-Saxon laws."² Evidence of the abduction of women has inspired similar revulsion, although in this case, the Anglo-Saxon codes are not alone in their explicitness. As is the case with all points of primitive law, the challenge lies in understanding its context, and in matters of such rudimentary concern as mating, we have also to allow for socio-biological factors which in more sophisticated legal systems are less shockingly obtrusive.

Marital union is one of the foundational institutions of society, and where so powerful an instinct as the sexual drive is concerned, the very earliest laws can be assumed to contain measures to regulate and control its more disturbing aspects, an assumption supported by the fact that in Old English and Old High German, one word stood for both law and marriage,

æw and ê, respectively. Furthermore, this need to control and regularise sexual cravings extends to all societies. Thus it is accurate to say that we are dealing with "barbaric" law, since that adjective qualifies the kind of law we are talking about and does not confine it to any particular group, barbarian or civilised. Indeed, it is crucial to the understanding of this law to be aware that it knows no frontier of time, place, or people, but exists always, latent or visible, as circumstances are propitious or hostile to the well-being of human communities. Where it is most visible, we should expect to find either a society in which the superstructures of the law have broken down, or one in which laws are very rudimentary. The examples in this paper, taken from the *Leges Barbarorum*, fall into the latter category. Their focus is on the free segments of society, since that is where we can expect to find fewest impediments to the operation of any general principles we may uncover. Abduction, like rape and adultery, could, of course, cut across class lines, and in these cases special penalties were applied, such as loss of status or even death for a free individual willingly involved or, in the case of initiative on the part of a slave or other servile person, emasculation or loss of life.³

As we might expect, evidence is not abundant on matters we would like to trace back to the very origin of law, although many distinguished scholars from a variety of disciplines have in the past subscribed to the belief that (to quote one), "among savage and primitive tribes and in the early stages of our own nations, capture led to the greatest number of marital unions."⁴ Perhaps the most enthusiastic of this group was the nineteenth-century German scholar, Dargun, who combined the new ethnographic material of the classical anthropologists (he was much influenced by McLennan) with early mediaeval legal and literary sources to support his thesis that in prehistoric times, *raubehe*, marriage-by-abduction, was the original form of marital union. Other writers coming out of Darwin's century saw an evolutionary development from savage promiscuity to civilised monogamy, bride-capture being popularly, but not necessarily logically, associated with the former. And many women still see their history in evolutionary terms of increasing freedom, abduction being judged as one of the earliest and crudest of their degradations. Twentieth-century anthropologists like Raymond Firth and Robert Lowie, however, have warned against those "sadistic and romantic impulses" which tempt us to exaggerate the incidence and nature of this form of union.⁵ The controversy need not

concern us unduly, since we are far removed from pre-historic practice by the time laws are written down, but the warning is a useful reminder of the colouring of evidence we can expect. The monks of Kiev, for example, to whom we owe some vivid pictures of primitive Russian life, speak with horror of those Slavic tribes who lived in the forest "like wild beasts" and had no marriages, "simply festivals among the villages" with "games, dancing and all other devilish amusements" at which the men "carried off wives for themselves." We should not assume the worst, however, since the chronicler adds that "each took any woman *with whom he had reached an understanding*" (my emphasis). And we know from other sources that there were formal, pagan marriage ceremonies "by the water's edge."⁶

Though less colourful and more challenging, the early law codes are now being mined for more-or-less coherent pictures of early mediaeval marriage practices, and their treatment of abduction sheds a great deal of light on regular procedures as well as illuminating everyday relations between the sexes. In the legal evidence we shall consider, abduction is always connected with sexual union or intent thereto, physical attraction, greed or ambition, severally or together, providing motivation. As in other, non-European primitive law, abduction is clearly distinguished from rape, contrary to Maitland's surmise that the two were confused "in the very early days." The penalties are nearly always very different, although aristocratic class interest may, as I shall suggest, account for some exceptionally heavy fines. Moreover, the terminology is usually quite distinct, although later mediaeval scribes, as Liebermann pointed out for England, "unfamiliar with an out-moded custom and translating into Latin long-forgotten terms," did confuse the two.⁷ A preliminary survey of the English codes, which are among the least contaminated by Roman law and provide us with a secure body of texts, will illustrate the basic position taken by barbaric law in general towards abduction, namely, that it is not lawful, but that lawful unions could result if certain conditions were met.

We have three passages to consider, ranging from the sixth century to the eleventh, the fullest treatment occurring in the earliest code, Aethelberht's of Kent, where we find marriage by abduction legally recognised once certain payments have been made. The relevant clauses are:⁸

If a man forcibly carries off a maiden, he shall pay 50 shillings to the person who possesses right of guardianship over her and afterwards buy his consent [to the union].

If she is already betrothed by bride-price to another man, 20 shillings shall be paid as compensation [in addition to the other fines].

If she becomes returned [Gif gængang geweorðeþ], 35 shillings shall be paid to the guardian and 15 shillings to the king.

There is no talk of requiring her return. The sums involved are more compensatory than punitive, the major fine, 50 shillings, being a quarter of the Kentish freeman's wergild or manprice (following Seebohm's calculation);⁹ and the literal translation of the phrase "Gif gængang geweorðeþ" leaves open the question of how or why she comes back (a posse of male relatives, for example, might well overtake the abductor). Finally, the terminology does not confuse abduction with rape. The verb to rape is "nydnæman," used in Aethelred's sixth code and Cnut's second, while the verb used here and later by Cnut, is "nydniman," to abduct. Cnut's penalty for rape, repeated in the so-called Laws of William I, was the man's wergild which, as we have seen, would have been four times Aethelberht's fine for abduction.¹⁰ The traditional penalty, however, as Bracton, approving, reminds us, was castration and blinding, a brutal punishment reserved for cases *de raptu virginum*, rape of virgins, in Bracton's time (thirteenth century), but conceivably the more popular alternative in earlier centuries.¹¹

Three centuries on, in the late ninth century, Alfred's law dealing with the abduction of a nun from her nunnery (a matter of widespread concern in early mediaeval laws), although it is primarily concerned with penalising the nun, nevertheless implies that a permanent relationship and legitimate union could result from abduction where legal impediments did not exist. The relevant clauses are:

If anyone takes a nun from a nunnery without the permission of the king or bishop, he shall pay 120 shillings, half to the king, and half to the bishop or lord of the church under whose charge she is.

If she lives longer than her abductor, she shall inherit nothing of his property.

If she bears a child it shall inherit no more than its mother.

If her child is slain, the share of the wergild due to the mother's kindred shall be paid to the king, but the father's kindred shall be paid their due share.

Although the nun is being condemned here for abandoning her profession without permission, we have no hard line about her having to be returned (as some of the European codes demand), and there is no suggestion of rape, the verb "alædan" being gentler than Aethelberht's "nydniman," collusion being possible in either case. Finally, despite the ruling that any children will not be allowed to inherit their father's property, they nevertheless receive legal recognition in their right to wergild.¹²

The third and final piece of evidence from England occurs in a section of Cnut's laws dealing with widows, another group frequently singled out for particular treatment in early codes of law. Among the clauses levying penalties for re-marrying within the statutory one-year period of mourning, we find the following:

And even if she was married by force [neadnuman = nydniman] she is to forfeit those possessions [she had received through her former husband] unless she wishes to leave the man and return home and never afterwards become his.

As in the previous two cases, the possibility of legitimate union arising from abduction is clearly recognised.¹³

Nowhere in the European codes is marriage by abduction denied validity, although the Visigoths, already in process of detribalising their law, denied any *automatic* right of marriage to the abductor. Dargun, noting both the frequency and the manner of use of such phrases as "whether by force or with her consent" (*aut violenter aut ea consentiente*) argued that the wording implied a deeply-rooted tribal custom, albeit one undergoing change as Roman law and the Christian church made their influence felt.¹⁴ In the ordinary run of cases, as in Aethelberht's code, the offence could be compounded for and the union regularised by bride-price payment. The sums involved, however, not only vary with tribal custom and the stage of its legal development, but often reflect special local circumstances, such as the power of a tribal ruler, or the pressures, in some areas, of a still-novel Christian church, or even -- to judge by some excessively heavy penalties -- the influence of wealthy families anxious to protect their

property from adventurers. In respect of this last circumstance, I have found no trace of so-called primitive communism in early law, nor in reputable anthropological studies, nor in personal experience of African tribal life. On the contrary, what distinguishes barbaric law in this respect is its frank acceptance of the inequalities of property and class, the Bavarian Code, for example, going so far as to name the leading families, the Hosi, Fagana, *et al.*, who were to have special protection after the Duke's.¹⁵

It is not surprising, therefore, to find in seventh- and eight-century Lombard law, that taking a woman by force cost the abductor a fine of 900 shillings, triple the wergild of the landholding class, 450 shillings going to the king and 450 shillings going to the girl's parents, after which marriage arrangements could be made if both parties wished it. If the girl, but not her parents, had given consent, the abductor had to pay 20 shillings for "illegal intercourse" ("anagrip") and 20 shillings "to avert the feud," a reminder that not all abductions led to happy endings. Negotiations for marriage would then have to be undertaken, the cooling-off period having cost the abductor 40 shillings, one-tenth the brideprice ("mundium") of the Lombard-influenced Alamannic code (we do not have that information directly from the Lombard code), and reminiscent of the one-tenth downpayment of a wergild ("healsfang") to fend off the feud in Anglo-Saxon law. The same amount was due to the father in early Alamannic law, should he demand his daughter back before allowing marriage negotiations. In the roughly contemporary Bavarian code, however, in addition to the 40 shillings for the parents, 40 shillings had to be paid into the "public treasury,"¹⁶ presumably reflecting the long-established power of the Bavarian dukes. "Mundium" is not discussed in the latter case, nor do we often get a precise figure for it, since it must have been a matter for negotiation, but whether mentioned or not, it appears to have been crucial to the full legality of any early mediaeval marriage.

A glance at some of the disabilities arising from lack of guardianship rights over the woman, which is the initial situation following on abduction, will dramatise the exposed position of couples not formally joined together. In Rothair's seventh-century Lombard law, in the event of his wife's death such a husband had no rights over his wife's property, and he could be liable to pay her wergild to her kin. In Alamannic law (early eighth century) he was also liable for the wergilds of any of their children who

might die, for they were not legally his, even though he had sired and succoured them. In similar vein, if a man abducted another's wife without paying the husband the same sum (400 shillings) that would have purchased her "mundium" from her father, then any children he might have by her legally belonged to the first husband.¹⁷ To explain such cold attitudes, we have to accept Vinogradoff's strenuously argued thesis that "marriage is a form of the law of property,"¹⁸ and that the many rules and rituals surrounding its inception and continuance relate fundamentally not to love and affection but to the security of the community's human resources and to the orderly devolution of property. The essential position of the law on abduction then, as later, was that this particular avenue to marital union, while it might produce a new household and family unit, even a marriage blessed by the church, could not guarantee the couple's property or other legal rights.

Within this general framework, there were special categories of women whose abduction entailed extra penalties. Two groups considered particularly vulnerable were widows and nuns. Widows are frequently bracketed with unmarried girls in the laws, but were obviously considered more exposed in this connection. In addition to the temporary void left by the loss of her "mundium" holder, a widow, especially one with noble or royal connections, would be very tempting to an abductor because of property given her by her husband, such as the morning gift and the marriage portion (*meta* in Lombard law). However, not all widows' abductions are to be explained by dower or other personal property such as triggered the famous abduction of Eleanor of Aquitaine. Bavarian law, for example, singles out widows who, burdened with children, fell victim to abduction because of poverty, the composition in such cases being double that for abducting a virgin (2 x 40 shillings) plus the 40 shillings fine to the public treasury.¹⁹ The abduction of nuns could also be triggered by greed for their property which might otherwise be lost to the church; but it could also be the way of escape from an ill-considered commitment to a profession no longer desired. Christian kings like Alfred, as we have seen, dealt harshly with these cases, but the Lombard king, Liutprand, a century and a half earlier in 723, arguing that simple donning of her garb committed a nun to her profession even before consecration, levied even harsher penalties against her and any who might have connived at her escape. Her guardian was liable to pay his wergild, the nun suffered personal constraint at the discretion of the king and loss of all her property, while her abductor faced an additional 100 shillings to the

already staggering 900 shillings fine for ordinary abduction in these laws. This may be an instance of royal zeal being enlisted against those rich nobles whom Professor Jack Goody has recently singled out as leading the opposition to a greedy church. Finally, the influence of the Bonifacian reform of the Bavarian church has been seen in the text dealing with this offence in the Bavarian code: "We know that the abduction of another's betrothed is a punishable crime: how much more punishable is a crime which usurps the betrothed of Christ." If the abductor failed to return the nun and pay her convent double the composition normally levied for abduction of a betrothed woman (2 x 80 shillings), he was to be expelled from the province.²⁰

The most obvious categories of women whose abduction carried increased penalties were those already betrothed or married. As in the case of some nuns, abduction of betrothed women might well be the easiest way out of an unwanted commitment. Modern lawsuits for breach of promise, though far less frequent than they used to be, are a reminder of the serious nature of formal betrothal in times past. But in the early laws the injured party is most frequently the man, since, as prospective groom, he would already have incurred considerable expense, pledge money and brideprice instalments, for example, which he would need to recover. Thus, in Rothair's (Lombard) laws, if the girl went willingly, her abductor, in addition to the usual payments for illegal intercourse and avoidance of feud, owed the injured man double the marriage portion agreed at her betrothal, before he could acquire her "mundium." If a girl's family connived at such an abduction, with or without her consent, then they had to pay the double portion. In Visigothic law, it was quadruple. In Aethelberht's laws 20 shillings compensation had to be paid to the jilted man.²¹ In the case of wife abductors, they were fortunate who lived to pay, since killing an adulterer was one of the well-known exceptions to the law of the feud, and it cannot always have been easy to distinguish between wife abduction and adultery. The one must often have led to the other. Since the laws generally condoned killing such offenders (the wife included, if the couple were caught *in flagrante*), the alternative fines, not surprisingly, were of the order of wergilds or greater. In the *Lex Salica*, the fine equalled the wergild of a Frank, 200 shillings, as compared with 62½ shillings in ordinary cases of abduction. In the later (eighth-century) Alamannic code, it was more than double the wergild of a non-landholding freeman, 400 shillings compared

with 160 shillings. Abductors of betrothed women, however, were often treated every bit as harshly as abductors of married women, betrothal being regarded as all but marriage. In Visigothic law, for example, the abductor of a betrothed woman was liable to the loss of all his property or, if that proved inadequate, to enslavement. In the Burgundian code, these abductors were liable to loss of both life and property. An unusual feature of the gentler laws of Kent, in what must surely be a survival of more primitive concerns, the wife-abductor had to procure a new wife with his own money and deliver her to the aggrieved man's house.²²

Perhaps the most interesting question arising from this investigation is not legal at all but a personal one. Had the woman any freedom of choice, whatever the means by which she entered into marriage? Judgments have been largely negative for this early period, and the admonitions of lawgivers against the iniquity of giving women to men whom they disliked have understandably been interpreted as proof of the practice. To Liutprand's "There can be no worse treatment than a ward's being forced to marry a man she does not want," and Aethelred's "A widow is to choose what she herself wills," Cnut added, "No widow or maiden is ever to be forced to marry a man she dislikes."²³ But was this a revolutionary innovation or simply part of the never-ending struggle to maintain harmony and fair dealing, a particular detail of which happened to get into the laws at this point? We have already noted cases where women consented to their own abduction, fines being diminished appropriately, and there is some evidence that in regular betrothals women did indeed have a say in the choice of mate.

In the document *Concerning the Betrothal of a Woman*, we read that if the idea of marrying a particular man "pleases her and her kinsmen," then arrangements could go forward. And in one of the two surviving marriage contracts from pre-Norman England, the bridegroom gives the bride-to-be a "pound of gold to induce her to accept his suit." Money can buy many things, grooms as well as brides (Robin Fox calls a dowry "groom-price"), and freedom of choice is none the less because of it. This marriage contract comes from the eleventh century, and the betrothal text has been judged to be late also. But in supporting Liebermann's date (975-1030) for the latter document, Dorothy Whitelock adds, "the stressing of the need that the woman herself is to accept the suitor suggests that it is not early."²⁴ But was this really so novel? I would suggest it was not, nor do I think we need to credit the church with behind-the-scenes innovation here. The

earliest penitentials in England reveal a church firmly on the side of the existing law and order, but obliged, like everyone else, to come to terms with stubborn maidens. Theodore's seventh-century *Penitential*, for example, states that if the girl did not wish to live with the man to whom she had been betrothed, *si non vult habitare*, he should get his money back, plus one third. Again, if a maiden persisted in her obstinacy, *illa omnino resistat*, her family could try another suitor or, *if she wished*, she could enter a convent.²⁵

Can we go further and find evidence of other than mere resistance -- of a woman initiating courtship? In the nature of things, this is harder to find, but we have one clause in the Burgundian code which states that "if a girl seeks the man of her own will and comes to his house, and he has intercourse with her," he must pay her marriage price three-fold. The other way round, it would have cost him nine-fold.²⁶ Finally, Aelfric's story of St. Julian is a reminder that men, too, might resist family pressure to marry, in his case a resistance which continued into the marriage bed itself, where, we are told, holy visions helped sustain him and his wife in their self-imposed chastity. Public witness of entry into the marriage bed continued well into modern times in cases where it was important, as, for example, in royal families, but that, of course, guaranteed nothing. Proximity did not help Effie with John Ruskin; and the church has been right to insist on consummation as an essential feature of marriage.²⁷

The law, as always, leaves much unsaid, and the outcome of each incident must have depended on things of which we have no record, for example, the capacity to pay and the power to collect fines and other payments, or the degree of affection between parent and child which, as Wilda and Grimm suggested, would determine in practice what property loss, if any, might be inflicted.²⁸ The bargaining powers of each family might not be so very different from today's, although we know that virginity was then much prized and specifically safeguarded, abduction fines, for example, being reduced if the girl was returned "uncorrupted." Statistics we have none, but it is a reasonable supposition that marriages by abduction were far less numerous than what were obviously considered proper marriages by negotiation between kindred.²⁹ The treatment of the abductor and the size and distribution of the payments needed to legalise the union all point to the predominant role of the kindred in this as in other aspects of barbaric law. The kindred set the norm, and what is normally accepted usually

determines what is right and what is wrong. And whatever the practice before recorded history, our evidence from the onset of legally-ordered societies clearly demonstrates that abduction of women was then considered unacceptable as a means to marriage.³⁰

The size of some of the fines in these early codes may give a misleading impression that only the wealthy worried about abductions. But the surge of human appetites is made up of many currents which can disturb the even tenor of any level of society in unforeseen ways. Legal systems are but one of man's many efforts to control the turbulence of nature, and the abduction of women is one of the several aspects of barbaric law which enable us to see some of the natural forces which continue to exert their unceasing pressure on all systems, however sophisticated or responsive.

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NOTES

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¹ Georges Simenon, trans. J. Stewart, *Maigret's Special Murder* (London 1964) 178.

² R. Huebner, trans. F.S. Phillbrick, *A History of Private German Law* (London 1918), quoted in L. Krader, *Anthropology and Early Law* (New York 1966) 140.

³ "The slave who dares to marry a free woman or girl shall lose his life": Rothair's Edict (A.D. 643) 221 in K.F. Drew, *The Lombard Laws* (Philadelphia 1973) 95 (hereafter, Drew). In Salic law the penalty for the free partner was loss of freedom: K.A. Eckhardt, ed., *Lex Salica in MGH, Legum Sectio 1* (Hanover 1969) XIV, 7, 10 on pp.128 and 130 (hereafter Eckhardt). In Visigothic law, however, "totally abhorrent was the idea of sexual liaison between a freewoman and her own slave . . . both . . .

were flogged and then burned": P.D. King, *Law and Society in the Visigothic Kingdom* (Cambridge 1972) 178 (hereafter, King).

⁴ P. Vinogradoff, *Outlines of Historical Jurisprudence* (Oxford 1920: rpt. New York 1971) I, 196. "Marriage was a fair contract between two kindreds" according to F. Seebohm, comparing Kentish, Cymric, and continental German customs in *Tribal Custom in Anglo-Saxon Law* (London 1911) 466.

⁵ L. Dargun, *Mutterrecht und Raubehe und ihre Reste in germanischen Recht und Leben. (Untersuchungen zur deutschen Staats- und Rechtsgeschichte* 16, Breslau 1883) (hereafter, Dargun). Robin Fox, discussing McLennan, "In the beginning there was promiscuity . . . finally monogamy . . ." (*Kinship and Marriage* [Harmondsworth 1967] 17). For a recent example of women's history viewed as evolving freedom from "primitive Germanic" through the middle ages to the dramatic "emancipation . . . in the last one hundred years" see Suzanne F. Wemple, *Women in Frankish Society* (Philadelphia 1981) 189; also R.W. Firth, *We The Tikopia* (London 1936) 436 and 437; R.H. Lowie, *Primitive Society* (New York 1947) 23.

⁶ B. Dmytryshyn, *Medieval Russia: A Source Book, 900-1700* (2nd ed., Hinsdale, Ill. 1973) 7; Daniel H. Kaiser, *The Growth of the Law in Medieval Russia* (Princeton 1980) 168 and 263 n.22.

⁷ F. Pollock and F.W. Maitland, *History of English Law* (2nd ed., Cambridge 1968) II, 490; but compare Liebermann: "Marriage by abduction, *raubehe*, must have been distinguished from rape or concubinage from the beginning" (*Die Gesetze der Angelsachsen* [Halle 1903-16] II, 368 and 369 n.2 i [hereafter Liebermann]).

⁸ Aethelberht's Laws, 82, 83, 84 in Liebermann I,8; II, 15-16. Text and English translation in F.L. Attenborough, *The Laws of the Earliest English Kings* (Cambridge 1922) 14-15 (hereafter, Attenborough); English only in D. Whitelock, *English Historical Documents* (2nd ed., London 1979) I, 393 (hereafter, *E.H.D.*)

⁹ Seebohm (at n.4) 487-492.

¹⁰ Rape (noun) is "niedhaemed." Cf. Alfred's Laws, 25, 29 in Liebermann I, 62-66; Attenborough 74-76; *E.H.D.* I, 413. Aethelred VI, 39; Cnut II, 52, 73(2); Laws of William I, 12 in Liebermann I, 256f., 346f., 360f., 500f. (text and English translation in A.J. Robertson, *The Laws of the Kings of England from Edmund to Henry I* [Cambridge 1925] 102f., 202f., 212f., 258f., (hereafter, Robertson) and *E.H.D.* I, 446 n.7 and 463.

¹¹ S.E. Thorne, *Bracton on the Laws and Customs of England* (Cambridge, Mass. 1968) II, 414f. The Anglo-Saxon Chronicle for 1087 records that "if any man had intercourse with a woman against her will, he was forthwith

castrated": D.C. Douglas and G.W. Greenway, eds., *English Historical Documents* II (London 1953) 164.

¹² Laws of Alfred 8, 8(1), 8(2), 8(3) in Liebermann I, 54f.; Attenborough 68f.; *E.H.D.* I, 410f.

¹³ On "Nydman," "to abduct," see p. 65 above; Cnut II, 73(2) in Liebermann I, 360f.; Robertson 212f.; *E.H.D.* I, 466.

¹⁴ King 232; Dargun 113.

¹⁵ Bavarian Laws III, 1 in T.J. Rivers, trans., *Laws of the Alamans and Bavarians* (Philadelphia 1977) 129 (hereafter, Rivers).

¹⁶ Rothair 186, 187, 188 in Drew 86 and 87; *Pactis Legis Alamannorum* XXXII, 2; Bavarian Laws VIII, 6 in Rivers 55 and 139.

¹⁷ Rothair 188, 187 in Drew 87; *Lex Alamannorum* LIII, 2; L, 1,2 in Rivers 84 and 83.

¹⁸ Vinogradoff (at n.4) 197.

¹⁹ Bavarian Laws VIII, 7 in Rivers 139.

²⁰ Liutprand 30, 1 in Drew 159; J. Goody, *The Development of the Family and Marriage in Europe* (Cambridge 1983) 211; Bavarian Laws I, 11 in Rivers 122.

²¹ Rothair 190, 192 in Drew 87 and 88; King 228. Aethelberht 83 in Liebermann I, 8; Attenborough 14, 15; *E.H.D.* I, 393.

²² *Lex Salica* XV, 1, in Eckhardt 130 and 131. *Lex Alamannorum* I in Rivers 83; King 227f. Burgundian Laws LII in K.F. Drew, *The Burgundian Code* (Philadelphia 1972) 59 and 60. Aethelberht 31 in Liebermann I, 5; Attenborough 8, 9; *E.H.D.* I, 393.

²³ Liutprand 120, IV in Drew 197. Aethelred V, 21 and Cnut II, 74 in Liebermann I, 242f. and 360f.; Robertson 84f. and 212f.; *E.H.D.* I, 445 and 446.

²⁴ "Betrothal of a Woman" ("Wifmannes Bewedding") in Liebermann I, 442f.; *E.H.D.* I, 467. Old English Marriage Agreement from Kent in *E.H.D.* I, 596 and A.J. Robertson, *Anglo-Saxon Charters* (Cambridge 1939) no. 77. Fox (at n.5) 238.

²⁵ Theodore's *Penitential* Bk. II, ch. XII, 33, 34 in A.W. Haddan and W. Stubbs, *Councils and Ecclesiastical Documents* (Oxford 1871) III, 201.

²⁶ Burgundian Laws XII, 4, 1 in Drew (at n.22) 31.

²⁷ "Passion of St. Julian and his Wife, Basilissa," in W.W. Skeat, ed., *Aelfric's Lives of the Saints* (London 1881-1900) I, 91 ff.

²⁸ Dargun 112. W.E. Wilda, *Das Strafrecht der Germanen* (Halle 1842) 848 n.l.

²⁹ In early Welsh law, the "gift of the girl by her kindred," costing three payments, was the "normal" way of marriage: D. Jenkins and M.E. Owen, eds., *The Welsh Law of Women* (Cardiff 1980) 117.

³⁰ R. Koestler thought that marriage by abduction, *raubehe*, was "probably never common except through war and feud" ("Raub-, Kauf-, und Friedelehe bei den Germanen," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* Germ. Abt. 63 [1943] 115), but the laws are too detailed and specific for us not to suspect that abduction was a familiar, if limited, occurrence in normal times, whatever the case in time of war or feud, for which we have little or no legal evidence. For some useful word studies and their inadequacy as guides to Anglo-Saxon marriage customs, see A. Fischer, "Engagement, Wedding and Marriage in Old English" (unpub. diss., Basel 1981).