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Gender, social and marital status in the seventh century the legal framework.

ABSTRACT: La legislazione del Kent ci permette di osservare la condizione delle donne nella società del tempo. Ai sensi delle disposizioni di Æthelberht, i diritti legali di una donna dipendono principalmente dal suo stato civile (si possono individuare quattro categorie: fanciulle, mogli, madri e vedove). Questo non si applica agli uomini, per i quali è rilevante non lo stato civile ma quello sociale; per cui un uomo, per la legge, è re, nobile, uomo libero o liberto. Di fatti, la posizione giuridica del maschio è definita piuttosto da disposizioni apparentemente dettate dal rango che si concentrano sul potere e l'autorità. Ci sono forti indizi che, nella legislazione del VII secolo, i legami coniugali fossero meno vincolanti rispetto agli obblighi sociali. In questo articolo l'autore si propone di indagare le ideologie che sottendono questi differenti quadri normativi e le strutture sociali che li determinano.

ABSTRACT: The Kentish legislation allows us to observe the status of women (as maidens, wives, mothers and widows) in the seventh century. Under Æthelberht's provisions the legal rights of a woman depended mainly on her marital status. This does not apply to men. Not marital but social status is thus relevant in provisions regarding men: a man is either a king, a noble, a freeman or a freedman. In fact, in Kentish laws the legal position of the male is described rather by rank-oriented stipulations that focus on power and authority. There are strong indications that in seventh century legislation marital bonds were still less constraining than social bonds. In this article the author intends to investigate the ideologies behind these different legal frameworks and the social structures looming behind.

PAROLE-CHIAVE: Inghilterra, Alto medioevo, Kent, Leggi di Ethelberto, Legge e genere.

KEYWORDS: England, Early Middle Ages, Kent, Æthelberht's laws, Law and Gender.

1. Introduction

Investigating the status of women in Anglo-Saxon legislation presents us with several methodological questions. Some are connected to the particular subject matter and others attain to the laws themselves.¹ As the historian Charles Plummer in his book on King Alfred wrote: «I must confess that the study of the Anglo-Saxon laws often reduces me to a state of mental chaos. I may know, as a rule, the meaning of individual words; I can construe, though not invariably, the separate sentence. But what it all comes to is often a total mystery».² To a certain extent, the life of Anglo-Saxon women is, also, still a mystery. The English historian Eileen Power (1926) speaks of the difficulty in determining what it is that constitutes the position of women in Anglo-Saxon society. Literature on women in Anglo-Saxon legislation is abundant.³ Comparisons within the Anglo-Saxon laws have been used to trace transformations in the position of women over time and to consider the emancipation of women compared to men (Klinck 1982). On this point, opinions are totally discordant. One of the goals of my paper is to analyse and reconcile this discordant opinions on the basis of the clauses about women in the first set of Anglo-Saxon laws, i.e. those of Kent, especially in Æthelberht's laws, a very remarkable set of decrees, which was issued in the first years of the seventh century.⁴ Together with those of Alfred, Ine and Cnut, the laws of Æthelberht contain the greatest number of references to women, and do not feature any influence of Christianization on matters regarding women, marriage and family.⁵

2. Gender peculiarities in the Anglo-Saxon Laws. Social status vs. marital status

The first gender peculiarity of the laws of Æthelberht is the limited number of clauses concerning woman, if compared to clauses about men. However, it is often difficult to identify the addressee of a provision, because the pronoun references are often ambiguous. Another peculiarity of the Anglo-Saxon laws is the limited range of social roles allotted to women. The only hint to a social status concerns slaves and widows. Interesting is also the hierarchy of the legal clauses and the place the decrees concerning women occupies in this law. Excluding the first provisions which concern the church and

¹ As Richards–Stanfield (1989) well explain, laws regarding women are not necessary a body of information on the subject of women's lives, they are important sources if examined in connection with the whole legislation for the underlying ideas they convey about the status of women, the position held in regards to the rest of the community. Moreover, in the early middle ages, any expression of law was incomplete and not comprehensive. The written laws represent only a portion of the laws affecting women which may have applied in a restricted geographical area at a specific point in time. The material we have is written text conforming to a specific tradition established and maintained by the ecclesiastical foundation where they were copied and composed.

² Quoted by Wormald (1999: 3).

³ Using laws to understand the status of women in the Anglo-Saxon period is not uncommon and is found, for instance, in Fell–Clark–Williams (1984) and Mayer (1980). Moreover, see now Hough (2014).

⁴ Here I follow the edition of Oliver (2002), but I do not always agree with her translations. On the Kentish legislation see also Lendinara (1997).

⁵ As both Oliver (1995 and 2002) and Wormald (1995) showed, in terms of language and structure, but also content, Æthelberht's code seems more like traditional Kentish custom presented in a written rather than oral medium.

public assembly, the laws of Æthelberht deal first with the king, then move to his household, to his nobles, and finally turn to the freeman of the land (Korte 1974). These are followed by personal injury laws, and finally laws regarding those, whose status differs from that of freeman: women, servants and slaves.

Clauses 72 to 78 of the laws of Æthelberht concern women. According to the Kentish legislation women belong to four categories: maidens (*mægþ*), wives (*wif*), mothers (*medder*) and widows (*widow*). In the code of Æthelberth, the rights of women depended mainly on their marital status.

This peculiarity of the earliest English body of laws does not apparently apply to men. Rather, in Kentish laws, the male's legal position is based on power and authority as defined by rank-oriented stipulations (*cf.* Brooks 1978: 86; Charles-Edwards 1989: 30-1). Social status, not marital, is thus relevant in the provisions concerning men: a man may be either a king (*cyning*), a noble (*eorl*), a freeman (*frigman*, *ceorl*), or freedman (*læt*). The classification of males according to social status is also functional to one of the main features of Æthelberht's laws, whose structure follows a top to bottom social order.⁶ Both fines for different kinds of offences and the system of compensatory payments due for killing or injuring a person are determined primarily by the social status of the offended (Fruscione 2014: 35-47).

Laws that talk about women reflect different concerns. They address mainly family matters, marriage, sexual crimes and in general they consider women from the point of view of their marital status (Oliver 1995: 105-114). Beginning with the provisions about a virgin to those concerning widows, Æthelberht's laws gives us an idea of how law may have affected a woman over the whole course of her lifetime.

Laws regarding women are seldom classified according to the woman's social status or that of her partner or male protector. There are two exceptions: female servants belonging to someone's household and widows. Clauses relating to female servants are dealt within the provisions listed according to male social status, not in the regulations regarding women. The women belonging to households – like the cupbearer (*birele*) – are classified according to their task and to the status of their lord. See, for instance, the following clauses from Æthelberht's laws (Oliver 1995: 66-67):

19 Gif wið eorles birele man geligeþ, XII scill gebete

If a person lies with a nobleman's cupbearer, let him pay 12 shillings

21 Gif wið ceorles birelan man geligeþ, VI scillingum gebete

If a person lies with a freeman's cupbearer, let him pay with 6 shillings

21.1 Æt þære oþere ðeowan, L scætta

For the second rank of female slave, 50 sceattas⁷

⁶ See the enlightening remarks by Wormald: «Two perhaps especially helpful indicators in the early English case are style and system. A set of clauses on the church make way for similar blocks on the king, earls, ceorls, enclosure injury women serfs and slaves. System might seem to presuppose a body of material to be organized. In newly Christian Kent that pre-existing body of material would have been oral custom.» (Wormald 1999: 183). On this point, see also Oliver (1995: 37-38) and Carruthers (1990).

⁷ 1 shilling corresponds to 20 sceattas.

21.2 Æt þære þriddan ðeowan, XXX scætta

For the third rank of female slave, 30 sceattas

The words that refer to a female servant are rarely the addressees of a provision as well as the grammatical subject of the legal clause. The subject of these sentences are the male offenders, whereas the different women are connected to the offender by means of the preposition *wið* ‘with, against’: *wið cyninges mægdenman/wif, wið eorles/ceorles birele*. As Lisi Oliver has showed in her unpublished PhD dissertation about the language of the earliest Anglo-Saxon laws, there is a tight correspondence between the grammar of the laws and their scope and aim (Oliver 1995: 178-80).

When it comes to social rank, a woman’s worth and legal status were dependent upon those of a male. The compensation for crimes committed against or with a female servant was usually determined by another man’s interest in the matter.

3. Widows

In Æthelberht’s laws (74-74,3) the provisions related to widows are different depending on four social ranks (Oliver 2002: 76-77):

Mund þare betstan widuwan eorkunde L scillinga gebete. Ðare oðre XX scell’, ðare þriddan XII scell’, ðare feorðan VI scell’.

For the protection of the foremost widow of noble rank, let him pay 50 shillings. For a widow of the second rank, 20 shillings. For a widow of the third rank, 12 shillings. For a widow of the fourth rank, 6 shillings.

The amount of protection for the lowest rank of widow is the same as that of a freeman (6 shillings), for the second lowest, the same as that accorded to a nobleman (12 shillings). There are two higher ranks, whose protection is 20 shillings and 50 shillings respectively: the latter amount equals the king protection (Oliver 2002: 112).

Widows have inheritance rights (see Æthelberht’s laws 76,2 in Oliver 2002: 78) as well as rights of maintenance for minor children until they reach maturity (see the laws of Hlothere and Eadric 4 in Oliver 2002: 128). The special status of widows is expressed by the large compensation to be paid for violating their *mund* or right of protection. The common opinion is that the status of a widow was determined by whose protection the widow was under (that is, who could bestow her hand) (*cf.* Rivers 1975: 208-215; Fell 1984: 61). A man who removes a widow from the protection of her kin without an appropriate contract is required to pay an appropriate compensation, according to her status. An alternative reading has been proposed by Carole Hough; in her opinion it was the widow herself who was able to extend protection to her household and dependants, and who was entitled to compensation for any violation of her rights (Hough 1999).

At the same time, widowed women received part of their husband’s wealth. This fact had several consequences. In an article entitled *Gender and the Patronage of Culture in Merovingian Gaul* Yitzhak Hen has showed that women appear in our sources as clearly independent patrons only after becoming widows, or as nuns (Hen 2004: 217-233). In addition, throughout the Middle Ages, widows were a valuable commodity when they inherited property from their husband. After king Æthelberht’s death, for instance, his second wife was claimed by his son, and later in the Anglo-Saxon period, king Cnut

married the widow of Æthelred II. Both were manoeuvres to secure the kingship (Richards–Stanfield 1989).

Connected to the peculiar status of widows is also the provision 75 of Æthelberht's laws:

Gif man widuwan unagne genimeþ, II gelde seo mund sy.

If a person takes a widow unlawfully, the payment for violation of protection shall be two-fold as compensation.⁸

This decree regards a special case, the case of a man who carries off a widow unlawfully (*unagen*)⁹, i.e. a widow who has not consented or whom he is not allowed to marry. This is a provision against rape: we can suppose along with the historian Sylvie Joye that the abductor takes her only for her inherited property, probably without bringing something to the marriage himself (Joye 2012).

4. Maidens

Æthelberht's laws (76-76,1) consider maidens primarily in the context of the marriage contract:

Gif mon mægþ gebigeð, ceapi geceapod sy, gif hit unfacne is. Gif hit þonne facne is, ef þær æt ham gebrenge, 7 him man his scæt agefe.

If a person buys a maiden with a bride-price, let the bargain be valid, if there is no deception. If there is deception, let him bring her afterwards to her home, and let him be given his money.

According to this clause a man who legitimately seals a marriage contract by paying a bride price obtains a money-back guarantee that the transaction contains no deceit. Deceit refers probably to the virginity of the bride (Fell 1993: 59). It was normally a stipulation in the contract made at the betrothal that the girl was a virgin. The Kentish *morgengyfe* (Æthelberht's laws 76.5 in Oliver 2002: 78) given to the bride by the bridegroom on the morning after their union was consummated, could thus be understood as a gift in exchange for the gift of her virginity. We thus are informed that a maiden's virginity had its value.

All this makes clear that for a female the sexual role had a significance parallel to a man's taking up of arms or inheritance of land. As a woman's sexuality was of greater concern than the sexual behaviour of a man, so it was more tightly controlled. In particular, a woman's virginity was important for establishing the legitimacy of the line of succession and to ensure that the children a man raises are, in fact, his own. If the intended wife is not a virgin she can be brought back to her family (æt *ham gebrenge*) and the bride-price is refunded.

From an anthropological point of view, this rule was meant to preserve a form of patrilocality that brings about the importance of the dowry, that is the price for a bride that compensates the loss of her worth in the feminine labour force, which played a major

⁸ «[T]his two-fold payment was probably required in order to compensate the widow's guardian, especially if the abductor wished to keep the woman as a wife» (Rivers 1975: 210).

⁹ On the meaning of *unagen*, see Hough (2014: 124-125).

role in handicraft and agriculture (*cf.* Middleton 1995).¹⁰ Moreover this amount of money is also meant to secure the woman's survival, in case of separation or death of her husband (Wesel 1997: 38). The legal sources thus document the internal "migration" of free women, who, as a consequence of marriage, are regarded as individuals "imported" from a kin to another.

As regards Kentish betrothal and marriage, discussion has started on whether the laws would refer to marriage by purchase or not (Richards – Stanfield 1989: 94; Lucas 1983: 64; Brundage 1987: 147, fn. 94). Even if the vocabulary has a strong commercial/economic bias (*facn, ceapi*), I consider this discussion quite a sterile one and the evolutionistic nuance of this discussion inappropriate. If we consider that marriage contracts, *Eheverträge* and *contratti di nozze* are a very modern institution, it is undue to state that in the early middle ages «die Frau im grunde nur eine Sache ist (women are barely objects)» and to look at the Anglo-Saxon marriage in an evolutionary way.¹¹

With regard to betrothal another central expression is *in sceatt bewyddod*, where *bewyddian* means both 'get engaged' and 'conclude a contract' (Fisher 1986). The marriage is a contract and both parties benefit from it.¹² The exchange of money (*ceapi, sceatt*) is a way to seal the marriage contract, what in later years would come to be known as a dowery.

5. Rape

Provisions against rape generally play a major role in early medieval regulations and Æthelberht's laws (77-77,2) are no exception:¹³

Gif man mægþmon nede genimeþ,¹⁴ ðam agende L scillinga ond eft æt þa agende sinne willan æt gebicge.

If a person takes a maiden by force, he pays to the owner of her protection 50 shillings, and afterwards let him buy from the owner his consent.

Gif hio oþrum mæn in sceat bewyddod sy, XX scillinga gebete.

If she should be betrothed to another man by goods, let him pay 20 shillings to that man as well.

Gif gængang geweorðeþ, XXXV scill(inga) ond cyninge XV scillingas.

If return occurs, 35 shillings and 15 shillings to the king.

One who abducts or rapes a maiden must pay the owner of her protection 50 shillings; he must then negotiate a bride-price with the owner of the maiden's protection.

¹⁰ Archeological data confirms that: «The exclusive association of textile tools with female burials is strongly suggestive of textile production having been (or been presented as being) in the hands of women» (Härke 1997: 136). Another clause that confirms patrilocality occurs in the legislation of Hlophere and Eadric (4): *Gif ceorl acwyle be libbendum wife J bearne, riht is þæt hit, þæt bearn, medder folgige* (If a freeman should die with a living wife and child, it is right that the child should follow its mother). Here we read that the child of a deceased father should follow its mother, probably allowing her the option of returning to her own kin group.

¹¹ The words of Lévi-Strauss (1967) against an evolutionary interpretation of marriage are still fundamental.

¹² I agree on this point with the opinion of Hough (2014: 125-126 fn. 70).

¹³ On this point, see Oliver (2002), Hough (1993) and Fell (1993).

¹⁴ See Bethurum (1932).

If a marriage contract with another man has already been made, the abductor must pay another 20 shillings (Oliver 2002: 108-109).¹⁵

In a recent important work, the French historian Sylvie Joye has showed that rape is not a form of a marriage in early Germanic culture as maintained by earlier research (*cf.* Joye 2012). The concept of rape was neither (in an evolutionistic interpretation) considered a first step toward marriage nor even a part of the brutal or emotional nature of “barbaric” kidnappers (*cf.* Jamison 1999; Boes 1956; von Dargun 2004). In the early medieval society, rape was rather a strategy of marital union which would take place without the consent of the father/protector (Joye 2012: 306). It is result of a migration that breaks prior social arrangements and thus creates a tension among the recognized social classes and the new social-climbing groups. Rape (which we can consider a change of the marital status of the woman) produces a change in the social status of a man as well. Raping a suitable woman may be seen as a means for a man to upgrade, if not his social position, but at least his material condition.

6. Married women

Seventh century legislation shows us an important thing about status. In England, marital bonds were still less constraining than social bonds. Separation was allowed and both men and women could take the initiative (Schulze 1986).¹⁶ The decrees of Æthelberht deal with married women mostly in connection with their separation. Moreover a gender specific difference is that we are told why a man wants to separate, but, in the case of women, the reasons for separation are not listed. Æthelberht, clause 31, for instance, states that the husband has the right to divorce if the wife sleeps with another man:

Gif friman wið fries mannes wif geligeþ, his wergilde abicge, 7 oðer wif his agenum scætte begete 7 ðæm oðrum æt þam gebrenge.

If a freeman lies with another freeman’s wife, let him buy her wergild and obtain another wife for the husband with his own money and bring her to the other man at home.

The line of succession and its legitimacy is the relevant matter here and is more important than the marital bond. The adulterous man must provide the injured husband with a new wife and pay one wergild. It is not clear whether the woman is accomplice. There is no indication of what happens to the former wife, who seems to have a passive role here, whereby almost contemporary continental laws very severely condemn the adulterous wife (Schulze 1986: 479-80 and 499).

Another issue, overriding the legitimacy of the line of succession, is obviously reproduction. The laws of Æthelberht envisages childless marriage as another possible reason for separation. In Æthelberht 76,5 we read:

Gif hio bearn ne gebyreþ, fæderingmagas fioh¹⁷ agan 7 morgengife

If she does not bear a child, her paternal kin should obtain property and the morning-gift

¹⁵ For a discussion about the difficult interpretation of 77,2 in Hough (2014: 150-157).

¹⁶ For a deconstructive view of the Kentish divorce laws, see Hough (2014: 130-149).

¹⁷ See Goody (1986: 31).

At the conclusion of a childless marriage, both the property that a woman has brought into the marriage and the morning gift return to the woman's family (Pollock–Maitland 1952: 392). It is hence not only the death of a husband to determine the return of the woman to the paternal kin.

Other clauses of these laws support the assumption that women also had a voice in the marriage transactions. They could leave their husband if they wished so (76,3):

Gif mid bearnum bugan wille, healfne scæt age.

If she should wish to leave with the children, let her obtain half the goods.

The wife's share of the property under such circumstances depended upon whether she took the children with her or left them with the husband (76,4):

Gif ceorl agan wile, swa an bearn.

If the husband want to have them, provision as for one child.

7. Æthelberht on women: change, life cycles and migration

The possibility given a woman to leave her husband represents an isolated circumstance in the early Germanic medieval laws and also in later Anglo-Saxon legislation, but it is not altogether unique in the British landscape of the same period. Irish and Welsh women also had this possibility. In the Old Irish *Cain Lanamna* (lit. 'the Law of Couples', that is the Brehon Laws of Marriage, eighth century), divorce, *imscarad*, is permitted for many reasons. The woman may even retain her *coibche*, the bride price, for a number of reasons: if the man leaves her for another woman, if the man is impotent or homosexual, if he is so fat as to be incapable of intercourse, and finally if he relates secrets relating to what went on in the marriage bed in the alehouse (McAll 1980; Saar 2002; Stacey 2002; Walker 1988).

The current British custom about separation might have influenced that of the Germanic female inhabitants of Kent. A merging of cultures as a result of a prolonged contact is natural and intermarriages should have taken place rather often. These marriages were a powerful means of cultural blend. A legendary example is the aforementioned marriage between the daughter of the Saxon Hengist and the British Vortigern.¹⁸

Cultural modification of the Germanic groups in Britain, through adapting to or borrowing traits from the local British culture – a totally neglected field of research – could be at the basis of legislation concerning women. Æthelberht's separation provisions might thus be regarded as an innovation and the result of a growing degree of cross-breed between the migrant female population in Kent and the native customs they found there. Women can thus be considered a vehicle for innovation. This was functional to the peculiar situation (both historical and social) of the small ethnic groups in the south of England during the time before Æthelberht wrote down the customs of his people: also the right to

¹⁸ The *Historia Brittonum* (a ninth century work attributed to Nennius) tells that the legendary Saxon King Hengist allowed the British King Vortigern to marry his daughter (who is given the name Rowena in other sources), obtaining the province of Kent in return. At the very beginning of Kentish history there is thus a legend about a merger of British and Germanic peoples.

separate which was allowed to women has to do with the importance of procreation; the woman might leave her husband if there was no longer hope that the marriage could bear children. This change of marital status determined the internal migration of women. Thus migrations is a corollary to every change of marital status.

Marriage and separation are not the only aspects entailing change and movement in Æthelberht's code concerning women. Life cycles and sexuality dominate rights and wrongs in the laws regarding Kent females in the seventh century. Even in the roots of some of the words referring to women there is an echo of life-cycles and sexuality – *wif* has an etymology connected with “womb” (Heller – Panagl – Tischler 1989; Kluge 1989: 781-2; Stibbe 1935; Roeder 1899) and the root of *mægþ* includes the meaning of “breast” (Kluge 1989: 588).

This reference to life-cycles, development and transformation is unknown in the laws regarding men. The laws consider women in a far more diachronic way than they do with men. Sometime the relocation of women was the result of sexual transgression. In fact, an aspect of the representation of women in Æthelberht's laws is raping. As the vocabulary of rape shows (*neþe genimeþ* ‘take by force’, *gængang* ‘go against, return’), this transgression of marital or familial rules can be considered as a displacement to an unknown, dangerous territory.

8. Conclusions

It is now time to offer some conclusive observations: in 1957, in *The English Women in History*, Doris Mary Stenton wrote that during the middle ages «women were more nearly the equal companions of their husbands and brothers than at any other period before the modern age» (Stenton 1957: 51). This opinion has been shared by a few scholars (e.g. Fell 1979: 41).¹⁹

The point of view according to which “emancipation” is legitimate, but it cannot enlighten our understanding of the gender specific features of the Kentish laws. When we consider the Kentish regulations about women in their context, we realize that the principle of emancipation or equality gives little insight into the legal status of Kentish women. Other factors play a “key role” in a gender interpretation of the position of women: protection, reproductive compulsion, and inheritance strategy. If we keep in mind these issues, we then perceive how the contradiction between the idea of an emancipated Anglo-Saxon woman versus that an Anglo-Saxon woman considered only as a mere object vanishes.

I would like to illustrate this last point through a provision of Æthelberht's laws (73), which has a central relevance regarding the legal status of man and woman in his code:

Mægðbot sy swa friges mannes.

Compensation for a maiden shall be as for a free man.²⁰

¹⁹ For a different opinion see Klinck (1982: 107).

²⁰ Translation from Oliver (2002: 76). For a different interpretation see Hough (2014: 87-110). For a critical discussion, see also Fruscione (2016).

According to this decree, the compensation for injury to a maiden (*mægbbot*) is especially high when she is in her child bearing years and is the same as that for an injured freeman (*friges mannes*). The marital status of an unmarried woman and the social status of a freeman (at the core of Æthelberht's laws, there are binding rules for freemen) are equated and placed on the same level.

In this important provision, the status of female and male comes together. This is due to the peculiar historical and social condition of the small-group society in the south of England at the time before Æthelberht wrote down the customs of his people. The equal value of a woman of child-bearing age and of a free man can be traced back to their common role in the safeguard of their people (von Olberg 1990: 226). In such provisions, the concern for safeguarding the largest number of adults was uppermost. Both women and men were valued not just for their rank or wealth but for their current role in society. During the invasion and settlement in Britain, the survival of the various Germanic communities was quite precarious, owing to the constant state of warfare with the British tribes and also with other Germanic groups. Consequently, the number of settlers in the new foreign environment, both as warriors and farmers/landowners, was of great importance. Like the childbearing potential of the woman, the weapon-bearing capability of the male played a crucial role for the preservation of their own community (Grahn-Hoek 1976: 30).

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