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Origins of the Common Law
(A Three-Part Series)
Part I: The Disappearance of Roman Law from
Dark Age Britain*

David A. Thomas**

An abiding mystery of Anglo-American legal history is the apparently complete disappearance of Roman law from Britain following the Germanic invasions of the fifth and sixth centuries, A.D.¹ Earliest laws of the Anglo-Saxons show no trace of Roman

*This three-part series explores those earliest laws and customs that form the genealogy of Anglo-American common law. These laws and customs gradually grew from the needs of a barbaric society into a legal system that now governs the most complex activities in human history. Although much has been written, there persists a need to review traditional conclusions in light of more modern findings and interpretations. The first article in the series considers whether Roman law in ancient Britain continued into Anglo-Saxon times. The second article asserts that the original seeds of English common law were carried to Britain in the Germanic customs of the Anglian, Saxon, and Jutish conquerors of the Romano-Britains, and traces the influence of the Viking settlers. The third article details influences on the common law introduced by the early Normans. This series covers the time period preceding the era in which the common law was traditionally thought to have developed.

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1. Most legal historians believe that the Anglo-Saxon beginnings of English common law were not influenced in any discernible way by Roman law. *E.g.*, J. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 2 (2d ed. 1979); 2 W. HOLDSWORTH, A HISTORY OF ENGLISH LAW 12-14 (4th ed. 1936); 1 F. POLLOCK & F. MATTLAND, THE HISTORY OF ENGLISH LAW xxxi-xxxii (2d ed. 1909); J. SELDEN, AN FLETAM DISSERTATIO 103-105 (D. Ogg trans. 1647 reprint 1925); W. STUBBS, THE CONSTITUTIONAL HISTORY OF ENGLAND 58-64 (2d ed. 1875); P. VINOGRADOFF, THE GROWTH OF THE MANOR 119-120 (3d ed. 1920); W. WALSH, A HISTORY OF ANGLO-AMERICAN LAW 1-2 (2d ed. 1932); Lee, *The Interaction of Roman and Anglo-Saxon Law*, 61 S. AFRICAN L.J. 155, 158 (1944); Senior, *Roman Law in England Before Vacarius*, 46 LAW Q. REV. 191, 192 (1930). However, several prominent writers have argued the other point of view. *E.g.*, F. DE COULANGES, THE ORIGIN OF PROPERTY IN LAND xxiv-xxxi (W. Ashley trans. 2d ed. 1927); J. EARLE, A HAND-BOOK TO THE LAND-CHARTERS, AND OTHER SAXONIC DOCUMENTS lix-lxii (1888); 1 W. FINLASON, REEVES' HISTORY OF THE ENGLISH LAW xi-xcii (1880) (Reeves himself did not accept the continuity theory, J. REEVES, HISTORY OF THE ENGLISH LAW 2-3 (2d ed. 1787)); P. WINFIELD, THE CHIEF SOURCES OF ENGLISH LEGAL HISTORY 54-55 (1925) (doubting that Dark Age

influence. The problem lies in explaining how the ancient world's most powerful empire, whose most profound contribution to civilization was its law, could rule Britain for 350 years and still leave no legal heritage to survive the barbarian invasions. By contrast, Roman law generally survived the barbarian destruction of other Roman provincial governments on the west European continent. This article will seek explanations for this contrast in (1) the character of the Roman occupation of Britain, (2) particular circumstances surrounding the withdrawal of Roman government from Britain, and (3) the character of the Germanic barbarians who took over the island. It will thereby test the thesis that the Anglo-Saxon origins of English common law are entirely free of Roman law influence.

This article brings together the most recent and reliable research on Roman Britain to explain the disappearance of the province's Roman legal system.² Although information on Roman law, courts and legal officers in Britain is often sparse or conjectural, this article will provide a systematic appraisal of that law's impact on and disappearance from Britain.

Britain escaped the influence of Roman law, but admitting that there is no "satisfactory evidence of any very appreciable or lasting transmission . . ."); Re, *The Roman Contribution to the Common Law*, 29 *FORDHAM L. REV.* 447, 455-460 (1961). For Vinogradoff the "abiding mystery" was the persistence of Roman law on the continent:

Within the whole range of history there is no more momentous and puzzling problem than that connected with the fate of Roman Law after the downfall of the Roman State. How is it that a system shaped to meet certain historical conditions not only survived those conditions, but has retained its vitality even to the present day, when political and social surroundings are entirely altered? . . . How did it come about that the Germans, instead of working out their legal system in accordance with national precedents, and with the requirements of their own country, broke away from their historical jurisprudence to submit to the yoke of bygone doctrines of a foreign empire?

P. VINOGRADOFF, *ROMAN LAW IN MEDIEVAL EUROPE* 11 (3d ed. 1929).

The arguments for and against the continuity of Romano-British civilization through the Dark Age are summarized in D. KIRBY, *THE MAKING OF EARLY ENGLAND* 29-32 (1967).

2. The only other published article directly related to this subject is Birley, *Roman Law and Roman Britain*, 39 *DURHAM U.J.* 58 (1947). Birley summarizes the fragmentary references to Roman legal activity in Britain found in *Corpus Iuris Civilis*, and adds "a brief survey of the part played in formulating and administering Roman law by senators or equestrians whose names occur in the historical records of Roman Britain . . ." 39 *DURHAM U.J.* at 58. The present article has a much broader objective: summarizing all evidence of legal activity in Roman Britain, from all sources, and determining whether such activity might have transmitted any Roman law influence into Anglo-Saxon legal traditions, which are the root of Anglo-American common law.

I. HOW THE ROMANS RULED BRITAIN

One explanation for the disappearance of Roman law from Dark Age Britain may be the island's position as a province on the western frontier of the empire, requiring a Roman presence more military and less cultural than was found in other, more proximate provinces. The most inviting comparison is with Gaul, whose Celtic natives were very similar in culture and temperament to the pre-Roman Britons, who suffered the same imperial civil wars and barbarian invasions as Britain, and yet whose language and law remained predominantly Latin. Was Roman Britain simply a frontier military outpost, whose wary legions and sullen natives never really mixed?

A. *Military Activities Restrain Romanization*

To answer this question, this article first presents a condensed review of major military activities in Roman Britain. This summary reveals numerous military-related conditions that impeded romanization in the following ways: (1) an initial conquest too swift and superficial to gain either the attention or loyalty of most natives; (2) reliance on native client kings, delaying the installation of Roman civil government; (3) avaricious administrative practices producing the Boudiccan revolt and a legacy of hostility toward Rome; (4) constant combat on the borders, leaving pacified areas vulnerable to pirate raids; and (5) serious province-wide unrest often erupting from imperial usurpers' ambitions, religious conflict, and pirate attacks.

1. *A swift but superficial conquest*

Some circumstances connected with the Claudian conquest of Britain suggest that the Celts' submission was only superficial and that they remained resistant to Roman culture. The initial conquest, for instance, brought the most important parts of the island under legionary control in an incredibly short time, perhaps so swiftly that most of the natives were unaware of the change. At some time "late in the season" for military campaigns (probably late summer), A.D. 43, about 40,000 Roman legionaries and auxiliary troops commanded by Aulus Plautius crossed the English Channel and landed at Richborough, on the southeast coast.³ Because the Britons had anticipated the inva-

3. The only ancient account of the invasion is found in Cassius Dio's *Historia*

sion for several weeks, the tribal levies had grown weary of waiting and had actually dispersed, leaving the landing unopposed. The Romans advanced generally in the direction of London, not meeting substantial opposition until crossing the River Medway near Rochester. The ensuing two-day battle, unusual in ancient warfare,⁴ was indecisive after the first day, but ended in a complete triumph for Rome. Remarkd one scholar on the importance of this encounter: "Plautius must have realized that the Province was now virtually his, and all that remained were mopping-up operations and a great deal of talking and argument with the tribal leaders to bring them over to Rome."⁵

After advancing to the Thames, the legions halted to await the arrival of the emperor Claudius, who was making the six-week journey from Rome personally to participate in the now set-piece conquest of the native tribes. Undoubtedly, Plautius made as many advance arrangements for peaceful tribal submission as possible. Crossing the Thames as soon as Claudius arrived, the army proceeded to Colchester, to which the Britons had retreated, and there Claudius received the submission of eleven tribes.⁶

Romana. I have used Mary Beard and Neil Wright's translation of relevant portions, lx 19-22, 2, published in Appendix 1 of G. WEBSTER, *THE ROMAN INVASION OF BRITAIN 200-02* (1980). The story of the invasion is well known and it serves no useful purpose to provide documentation for each incident. In writing the invasion and occupation narrative I have drawn from Webster's work and the following sources: R. COLLINGWOOD & J. MYRES, *ROMAN BRITAIN AND THE ENGLISH SETTLEMENTS* (1936); S. FRERE, *BRITANNIA* (1967); J. LIVERSIDGE, *BRITAIN IN THE ROMAN EMPIRE* (1968); P. SALWAY, *ROMAN BRITAIN* (1981); H. SCULLARD, *ROMAN BRITAIN OUTPOST OF THE EMPIRE BRITAIN* (1979); M. TODD, *ROMAN BRITAIN* (1981); J. WACHER, *ROMAN BRITAIN* (1978). Together, these sources cite the relevant archaeological data and literary sources and describe the reasonable interpretations. The narrative included in this article includes those points on which there is more or less general agreement.

4. Typically, a battle between armed forces of this age would last only one day, and the side getting the worst of it would then withdraw. In the River Medway battle, the Romans might have withdrawn after the first day, according to this protocol, but with surprising tenacity they renewed the conflict the next day and gained an important victory. See M. TODD, *supra* note 3, at 69-70; P. SALWAY, *supra* note 3, at 83-84; G. WEBSTER, *supra* note 3, at 98-100.

5. G. WEBSTER, *supra* note 3, at 100.

6. This number of submissive tribes appears only by fragmentary inference on a triumphal arch inscription in Rome and has not been independently verified. G. WEBSTER, *supra* note 3, at 106, 185; *CORPUS INSCRIPTIONUM LATINARUM* 3.7061 (T. Mommsen, O. Hirschfeld & A. Domaszewski eds. 1902).

2. *Client kings slow romanization*

Pursuing his policy of pacifying Britain through submission rather than conquest, Claudius set up several "client kings" to secure border areas: Cogidubnus at Chichester,⁷ Prasutagus in East Anglia,⁸ and shortly thereafter Cartimandua, queen of the Brigantes, who dominated a huge area of middle and northern Britain. After a sojourn of only sixteen days, Claudius returned to Rome and savored the first ceremonial triumph granted a reigning emperor in seventy years. Meanwhile, Vespasian had proceeded with the conquest of the Southwest, including the Isle of Wight, overcoming much stiffer resistance and being forced to reduce more than twenty hillforts. This area was likewise placed within the jurisdictions of local rulers who promised allegiance to Rome.

Pacifying the populace in this manner may have slowed romanization, as suggested in one scholar's summary:

Ever since mid republican days, Rome had made use of native monarchs both within and outside the boundaries of provinces. Such rulers, in return for protection, were allowed to retain a subordinate "freedom", the level of which depended much on the strength of the individual kings. They were expected to be friendly allies, who would not treat with Rome's enemies. . . . In essence, their creation and retention was an economy on the part of the imperial government, saving manpower much needed elsewhere. *In this respect, it is important to remember that no great army of civil servants moved into Britain in the wake of the invasion.* During the first and second centuries the provincial administration was always small and, within closely prescribed limits, the native people were allowed, indeed expected, to run their own affairs.⁹

Thus a tribe which contested the invaders only briefly or not at all¹⁰ would be left to govern itself without a significant Roman presence, either military or civilian. The Romans in Britain, however, still expected that romanization would occur and were willing to be patient, as described by Webster:

But Plautius knew perfectly well that his rapid conquest

7. Possibly some or all of the area ruled by Cogidubnus was at first held by Verica.

8. Prasutagus may have been preceded by Antedius.

9. J. WACHER, *supra* note 3, at 35-36 (emphasis added).

10. Historically, among the Celts there were always some tribes eager to join the intruders, perceiving clientship as a way to gain dominance or revenge over rival tribes.

needed time for consolidation to enable the Britons to assimilate Roman ideas especially in economic development. There was still a great swell of bitter resentment against the loss of freedom and the tribal way of life. The kings and chiefs had to be won over by diplomacy and substantial gifts or loans to enable them to establish markets and the flow of trade.¹¹

In areas of only trading contact, continues Webster, the tribes had made no economic adjustments and their experiences with traders from the Continent were not favorable: "A great deal of resentment and open hostility must have existed and this Rome had to overcome before any serious advance could be made toward urbanization."¹²

3. *Roman administration incites Boudiccan revolt*

With minor additional conquests, Plautius created a frontier extending roughly from Exeter in the southwest to Lincoln and thence north to the River Humber.¹³ He was appointed the first governor, with the seat of government at Colchester, and then gracefully retired from his command and his office in A.D. 47. Apparently thinking to take advantage of the change in governors, and portending the pattern of the future, tribes outside the conquered territory attacked. The new governor, Ostorius Scapula, quickly put down the hostilities, but then decided to invoke a common Roman policy of requiring all tribes in the "pacified" south and east of Britain to disarm.¹⁴ The Iceni and other affected tribes of East Anglia, believing themselves still "free" because of early submission to Rome, revolted at what they perceived was a dangerous and degrading policy. Scapula stopped this revolt with one battle and then moved to a new campaign in northeastern Wales. The Welsh campaign was interrupted by unrest among the Brigantes, followed shortly by trouble among the Silures and Ordovices in southeastern and central Wales, respectively.

To secure Rome's earliest British conquests, the governor expelled the Trinovantes from their ancestral tribal capital of Colchester, and established there a Roman town for retired le-

11. G. WEBSTER, *supra* note 3, at 171.

12. *Id.* at 172.

13. H. SCULLARD, *supra* note 3, at 40-41.

14. Salway speculates that the decision to disarm the Iceni and other tribes may have been taken because the commander intended to move troops forward for further campaigning. P. SALWAY, *supra* note 3, at 101.

gionaries. Normally, such settlers would be given parcels of land from tracts originally yielded by the native leader deposed in the first conquest; in this instance the soldiers appropriated much additional land beyond those forfeited estates, arousing deep hatred for the Romans among the dispossessed. The frenetic military activity on the frontiers left such stupid and corrupt policies of civil administration unchecked, raising more barriers to romanization. These factors, however, were joined by other more extreme instances of oppression to create the most serious setback for Roman culture, the Boudiccan revolt of A.D. 60.

This revolt occurred during the administration of G. Suetonius Paulinus, who had been governor since about A.D. 58. While he was campaigning in Wales, civilian administrators at his provincial capital in Colchester (the former tribal center of the Trinovantes) were imposing unjust taxes and suddenly calling in loans which had been forced upon unwilling native leaders so they could contribute to public works and projects. Also, the nearby Icenian king Prasutagus, who had been friendly to Rome from the outset, had named the new Roman emperor Nero as co-heir of his estate, following Roman tradition. However, upon his death the Romans confiscated his entire estate and evicted other Icenian nobles from their ancestral properties. Prasutagus's household was looted, household staff were treated as slaves, and, when his widow Boudicca protested, she was flogged and her two daughters were raped.¹⁵

These specific incidents touched off an enormous explosion of pent up hostility. The famous Boudiccan revolt, involving several formerly friendly tribes, proceeded to destroy the towns of Colchester, London, and Verulamium (St. Albans) along with about 70,000 of their inhabitants.¹⁶ Roman military units were badly mauled until Suetonius could return from Wales with the

15. *Id.* at 113-14; G. WEBSTER, *BOUDICA* 87-88 (1978).

16. The strong hostility to the Romans exhibited by all the tribes involved in the revolt, no matter how closely tied they had been to areas of direct Roman administration, demonstrated how little progress toward romanization had been made in the first 17 years of occupation. By contrast, Salway reports an incident on the continent:

At one point Germans hostile to Rome appealed to their kinsmen living in . . . Cologne to make common cause with them, as Britons seem to have done in Boudicca's day at Colchester. The Germanic inhabitants of Cologne, however, replied that they were now so intermingled with the Romans that they were one population. Both sentiment and self-interest tied provincials closer and closer to Rome and to one another

P. SALWAY, *supra* note 3, at 127.

main force. Upon his return Suetonius ordered an awful slaughter among the Celts, reportedly leaving 80,000 dead. The legions and civil administrators were just launching a combined scorched earth and confiscation campaign against the survivors, when their activities were moderated by an official sent from Rome.¹⁷ The Romans had come perilously close to suffering a major defeat at the hands of Boudiccan forces; their vicious retaliation could only have intensified the severe hostility which sparked the trouble. In A.D. 61, the prospects for romanization, after nearly 20 years of Roman rule, were not very promising. In fact, it appears that much of southern Britain was under some form of military rule until the beginning of the period of Flavian emperors in A.D. 69.

4. *Constant combat on the long frontier*

This preoccupation with military affairs continued as campaigns were conducted to conquer the Brigantes (A.D. 71-74), the Welsh (A.D. 74-78), and the Caledonians in the north (A.D. 78-85). The Romans' inability to quell quickly the revolt of the Brigantes under Venutius, Queen Cartimandua's alienated former husband, meant ultimately that Rome was committed to keeping very large forces in Britain indefinitely.¹⁸ The Brigantes remained bitterly hostile for over a century after their revolt was put down. Under the well-known Agricola successful campaigns against the Caledonians, British tribes in Scotland, were begun about A.D. 80, but Agricola failed to couple his success in battle with destruction of the native fighting forces: following the famous victory at Mons Graupius, 20,000 enemy fighters slipped out of the Roman grasp in a night retreat. This, along with the seething Brigantes, may have ensured that Britain's northern frontiers would always be threatened by hostile forces and that

17. The official was Julius Classicianus, the independent and high-ranking procurator (financial officer) for the province, whose tombstone has been discovered and is now in the British Museum.

18. Frere believes that the "break with Brigantia was a turning-point of history matched only by the retreat from Scotland a generation later . . ." S. FRERE, *supra* note 3, at 98. The Brigantes dominated a huge area in middle and northern Britain; and, when they were a friendly client kingdom, they relieved the Roman forces of substantial burdens of military conquest and keeping the peace. Breakdown of that peace because of Venutius's hostility meant that the Brigantes could no longer be used as buffers and perhaps a conquest of the entire island would be necessary.

the Roman occupation of Britain would retain a predominantly military cast.¹⁹

The line of conquest Agricola established in the north could not be held long after his recall in A.D. 83 or 84, principally because the British garrison was reduced in 86 or 87 to put down a revolt in the Danube area. However, in response to sporadic hostile actions, which by A.D. 105 had overcome forts as far south as Corbridge, Roman military presence in the Scottish lowlands persisted. Thus Roman control of north Britain was removed before romanization could proceed far.²⁰

The governors—who were also the military commanders—may have had little time to attend to romanization, but some steps toward that end were taken. Agricola, one of the most active military governors, brought into the province the first *legati iuridici*—provincial law officers—assigned to Britain.²¹ By the end of the century there is evidence, at least in the south, of many construction projects for public buildings, especially in Verulamium and Exeter. Furthermore, two new towns for retired veterans had been established at Gloucester and Lincoln.²² Normally, such *coloniae* were perceived as important sources of Roman culture and influence among the natives and, no doubt, even Colchester began to fulfill that function a generation after the Boudiccan destruction. It has also been surmised that the continuing military activity may have actually hastened civic development.²³ During this same period, about A.D. 96-110, many forts were rebuilt in stone, indicating that the military units were now considered occupying garrisons rather than campaigning forces. Records show that these armed forces engaged in heavy fighting during the reigns of Domitian (A.D. 81-

19. See P. SALWAY, *supra* note 3, at 148-49.

20. Archaeological evidence so far shows five forts extending as far south as Corbridge that were destroyed by fire. Such destruction that far south undoubtedly resulted at least partly from enemy action rather than abandonment. See S. FRERE, *supra* note 3, at 121-22, suggesting that some installations were intentionally burned in a voluntary withdrawal taken in consequence of the transfer of troops to the continent.

21. *INSCRIPTIONES LATINAE SELECTAE*, Nos. 1011, 1015 (H. Dessau ed. 1962).

22. Construction of private townhouses also appears in these cities during this period; but they are modest structures, in contrast to the relatively sumptuous villas being simultaneously built, probably by many of the same owners. This, it is believed, shows that the Britons had not yet been fully persuaded of the advantages of urban living and were still fonder of their countryside villas. See Walthew, *The Town House and the Villa House in Roman Britain*, 6 *BRITANNIA* 189 (1975). The pattern in northern Gaul, Germany, and Switzerland was just the reverse. See P. SALWAY, *supra* note 3, at 158-59.

23. J. LIVERSIDGE, *supra* note 3, at 33-34.

96) and Trajan (A.D. 98-117), and a revolt of native tribes was in progress when Hadrian became emperor in 117.²⁴ Throughout the empire Hadrian's rule was characterized by halting expansion and consolidating territory already under Roman control. Britain was no exception. After Hadrian's visit to the province in 122, construction on the barrier known as Hadrian's Wall commenced and continued until about 133. In places it appears that the Romans faced unfriendly populations on both sides of the Wall.²⁵ Immediately upon Hadrian's death and the accession of Antoninus Pius in 138, Hadrian's Wall was abandoned, the Scottish lowlands were reconquered, and a turf wall farther north, the Antonine Wall, was constructed. All this was prompted by disturbances among the lowlanders and the need to secure the cooperation of a friendly tribe.²⁶ These campaigns were essentially complete by 143, but beginning in 155 serious disturbances flared up in the south (probably the Brigantes, again) costing heavy legionary casualties. Without a strategic reserve, the Roman commander had to call troops from the Scottish frontier, abandon the Antonine Wall, and reactivate Hadrian's Wall.²⁷ This shift, in 158, was followed before 161 by a return to the Antonine Wall.

Scholars estimate that of the 42,500 Roman soldiers and auxiliaries in all of Britain during this period, about 26,000 were engaged in holding the north.²⁸ This pattern of activity in the north continued as the Antonine Wall was abandoned once again in the 180s. However, all of Britain was affected when Britain's Roman governor, Clodius Albinus, took troops from Britain to Gaul in an attempt to seize the imperial throne. With garrisons stripped away, the British towns were put in a state of

24. E. BIRLEY, *ROMAN BRITAIN AND THE ROMAN ARMY* 22-24 (1953).

25. "Behind" or south of the Wall was the Vallum, a ditch generally 20 feet wide and 10 feet deep, flanked on both sides by 30-foot berms and turf-revetted mounds. "[T]he fact that the Vallum was necessary at all suggests that quite a considerable and unsettled population lived near the rear of the wall . . ." S. FRERE, *supra* note 3, at 133-35. However, the Wall probably did not mark the border, at first; and Salway believes that in places pacified peoples appeared to be living on both sides of the wall, as was true in Germany. P. SALWAY, *supra* note 3, at 175.

26. The Wall was placed too far south to offer security to friendly tribes of the Scottish lowlands. The shift to the north was probably to serve the interest of the Votadini, a traditionally friendly tribe.

27. P. SALWAY, *supra* note 3, at 202.

28. A review of legionary postings as of about A.D. 100, reveals that Britain as a frontier province had relatively heavy concentrations of legions, which were, of course, accompanied by large units of auxiliary troops:

defense; the north Britons (Maeatae and Caledonians), Welsh, and Brigantes all took advantage of the situation by erupting in revolt. In the north, Hadrian's Wall was overrun and many forts were destroyed. By 201 or 202 order had been restored and by 208 the forts and the Wall had been rebuilt,²⁹ but the situation was still serious.³⁰ The emperor himself, now Septimius Severus, came to lead the fighting against the border tribes in 208;³¹ and by 211 hostilities had come to an end,³² leaving the British frontier in relative peace.³³

About the middle of the third century, new military installations appeared in what during the second century had been the almost exclusively "civil" part of Britain. Apparently substantial military forces were now readily available in the south and, as noted, a growing number of urban centers provided themselves with wall defenses. Precise motives for these changes are unknown, but could have included such factors as external threats to the island, internal political instability, demands by

<u>Province</u>	<u>No. of Legions</u>	<u>Names of Legions</u>
Africa	1	III. Augusta.
Britain	3	II. Augusta, VI. Victrix, XX. Valeria Victrix.
Cappadocia	2	XII. Fulminata, XVI. Flavia.
Egypt	1	II. Trajana.
Lower Germany	2	I. Minerva, XXX. Ulpia Victrix.
Upper Germany	2	VIII. Augusta, XXII. Primigenia.
Judea	2	VI. Ferrata, X. Fretensis.
Lower Moesia and Dacia	4	I. Italica, V. Macedonica, XI. Claudia, XII. Gemina.
Upper Moesia	2	IV. Flavia, VII. Claudia.
Lower Panbnonia	1	II. Adjutrix.
Upper Pannonia	3	I. Adjutrix, X. Germina, XIV. Gemina.
Syria	2	IV. Scythica, XVI. Flavia.

See A. GRAHAM, *ROMAN AFRICA* 162 (1971).

29. I R. COLLINGWOOD & R. WRIGHT, *THE ROMAN INSCRIPTIONS OF BRITAIN* Items 627, 1337, at 210, 442 (1965).

30. I HERODIAN 3.14.1 (Loeb ed. 1969).

31. *INSCRIPTIONES LATINAE SELECTAE*, No. 9123 (H. Dessau ed. 1962).

32. The Welsh were brought under control by A.D. 209.

33. One scholar asserts that this intense military activity need not necessarily have had a depressing effect on the economy, citing the overall impression of the age as one of prosperity. "It can no longer be assumed that the process of urban improvement halted everywhere with the civil war between Severus and Albinus and failed to re-start due to economic recession and political upheaval in the third century." P. SALWAY, *supra* note 3, at 233. Even noting that caution, it might still be assumed that civil unrest is not the ideal condition for cultural growth and will at least retard if not completely halt such developments.

troops for better conditions, and a worsening relationship between the army and the civilian population.³⁴

It can never be known with certainty to what extent, if any, romanization was hindered by the incessant military activity. If the campaigns at first stimulated establishment and growth of towns, prolonged conflict, by contrast, must have delayed introduction of many amenities and refinements of Roman town life.

5. *Pretenders and pirates cause widespread unrest*

The breakdown of the third century's long peace³⁵ began in the 260s and 270s as Saxon pirate raids, which had afflicted Britain's east coast at the end of the second century, became more serious. These raids prompted the Romans to strengthen the surveillance and defensive network known as the forts of the Saxon Shore on Britain's southern and eastern coasts.³⁶ Also, civil disturbances in Gaul may have sparked a brief rebellion in Britain, led by a provincial governor, which was put down with the aid of Burgundian and Vandal forces sent to Britain after their surrender in Gaul in 277.³⁷

These disturbances were followed by the brief but fiery career of Carausius, a British fleet commander who "took over" Britain and Gaul in 286 or 287 after successfully containing pirate raids.³⁸ Carausius was murdered by his lieutenant, Allectus,³⁹ who was in turn defeated in battle by Constantius (father of Constantine the Great), but not before Allectus had withdrawn all the garrison troops from Britain in preparation for the

34. P. SALWAY, *supra* note 3, at 253, 261. Generally these urban defenses were stone circuits enclosing the entire municipal area, rather than encompassing the more limited areas necessary only for defending against a siege. Apparently whatever prompted the building of the walls was not so urgent that it needed to be completed immediately. Also, unlike many villas in Gaul, Romano-British villas were not fortified. *Id.* at 261.

35. The conspicuous absence of information about commanders and prominent governors in stabilized parts of Britain during this period is one sign of prolonged peace, since only serious disturbance would stimulate chronicles and appointments of distinguished military commanders. According to archaeological finds in the Fenland, while no military hostilities are in evidence, extremely serious flooding was widespread and left large areas devastated and uninhabited for many years thereafter.

36. Sharp increases in coin hoards during these years show the advancing crisis. See S. FRERE, *supra* note 3, at 188.

37. ZOSIMUS: *HISTORIA NOVA—THE DECLINE OF ROME 1.66-68* (J. Buchanan & H. Davis trans. 1967) [hereinafter cited as ZOSIMUS]; S. FRERE, *supra* note 3, at 189.

38. Carausius's at least temporary influence is attested by a milestone with his name found near Carlisle. 1 R. COLLINGWOOD & R. WRIGHT, *supra* note 29, Item 2291, at 718.

39. Allectus's relationship to Carausius is noted cryptically in EUTROPIUS, *HISTORIAE ROMANAE BREVIARIUM* 9.22 (J. Clarke trans. 9th ed. 1764).

decisive battle. Northern barbarians then broke in along Hadrian's Wall and, in A.D. 306, Constantius and Constantine invaded Scotland to restore order. York was greatly refortified and the Wall and its garrison were at least partially restored. Further refortification in Britain appears about A.D. 343, following a visit by Constans, the late Constantine's son who had just prevailed in a struggle for succession.

Constans was succeeded (violently) in A.D. 350 by the pagan Magnentius, generating heated opposition from aggressive Christians at a time when internal religious conflict over the Nicene creed was at its height.⁴⁰ When the Christian Constantius II overcame Magnentius, he sent to Britain one Paulus, an imperial "notary," whose task was to root out sympathizers of his freshly defeated opponent. Paulus's zeal—expressed in huge numbers of arrests and extreme punishments and confiscations—sent fresh social shock waves throughout Britain.⁴¹

Following these upheavals and throughout the 360s Scots and Picts constantly raided and plundered lands on the northern frontier, meeting minimal response from the Romans who were left leaderless by the end of the house of Constantine in 363. In 367 we know that a most unusual barbarian conspiracy consisting of Picts, Attacotti, and Scots assaulted Britain (while the Franks and Saxons were attacking Gaul),⁴² overcame Hadrian's Wall by treachery,⁴³ and then split up into looting bands. Large numbers of deserters from the army simultaneously preyed upon the populace. A Roman task force sent to restore order established itself at Richborough and had to eliminate bands of barbarians all along the way to London, showing that the problem had spread throughout Roman Britain.⁴⁴ Hadrian's Wall was then roughly rebuilt⁴⁵ and coastal signal stations were constructed.

40. The transfer of power from the Christian Constans to the pagan Magnentius sent shock waves throughout upper class British society. Many Romano-British Christians had enriched themselves with items taken from pagan temples. Christians had been—until then—preferred for public office at a time when the imperial hureaucracy was experiencing enormous growth, and for a short time even some court jurisdiction was transferred to local bishops, who could require the secular authorities to enforce their judgments.

41. I AMMIANUS MARCELLINUS, 14.5.6-9 (Loeb ed. 1950).

42. *Id.* 26.4.5, 27.8, 28.3.

43. M. TODD, *supra* note 3, at 231-32.

44. P. SALWAY, *supra* note 3, at 381.

45. However, from this time there is very little evidence suggesting that sites north of Hadrian's Wall were reoccupied.

With restoration of order underway by 369, the last quarter of the fourth century was a period of relative peace and prosperity. It was not entirely free of disturbance, however. Maximus, one of numerous short-lived imperial usurpers during this time, used Britain as a base of operations; and raids by Picts and Scots took place along the Welsh coast between 383 and 390.⁴⁶ Theodosius the Great defeated Maximus in 388 and put down the barbarian raids, but Hadrian's Wall had been overrun in 383. By 398 Roman forces had cleared the sea lanes and defeated both Saxons and Irish Scots. On land, Stilicho or one of his generals had made considerable progress in restoring order by A.D. 395. Ominously, however, the British garrisons were steadily depleted to meet needs closer to Rome. Thus, in this last flurry of activity, the imperial forces defeated the Picts in a second war, helped rebuild parts of Hadrian's wall, constructed watchtowers on the south coast, and provided patterns for weapons; then they withdrew from the north, about 400-402. Picts and Scots immediately occupied the territory north of the Wall.

In 408, shortly after another British commander, styling himself Constantine III, had set himself up as emperor in the West, Saxons launched a serious attack on Britain. Constantine III died and officers and administrators sympathetic to him were expelled by the romanized Britons, who thereafter directed their own defenses.⁴⁷ Although we lack direct evidence on what happened to the army in Britain after 409, it is reasonable to surmise that military affairs were subject to greatly varying local arrangements.⁴⁸

46. GILDAS, *THE RUIN OF BRITAIN* 13-14 (M. Winterbottom ed. & trans. 1978).

47. II PROCOPIUS 3.2.38 (Loeb ed. 1916); S. FRERE, *supra* note 3, at 365-67.

48. The ancient historian Zosimus wrote of this time:

The barbarians above the Rhine, assaulting everything at their pleasure, reduced both the inhabitants of Britain and some of the Celtic peoples to defecting from the Roman rule and living their own lives disassociated from the Roman law. Accordingly the Britons took up arms and, with no consideration of the danger to themselves, freed their cities from the barbarian threat; likewise all of Armorica [Brittany in Gaul] and other Gallic provinces followed the Britons' lead: they freed themselves, ejected the Roman magistrates, and set up home rule at their own discretion.

ZOSIMUS, *supra* note 37, 6.5.

Historians generally believe that the administrators expelled were those associated with the usurper Constantine III, now fallen, and the expulsion may have been intended to help obtain assistance from the legitimate emperor. See S. FRERE, *supra* note 3, at 364-68.

B. Summary of Military Impact on Romanization

A summary of this brief narrative of Romano-British military history may help in evaluating whether the Roman presence in Britain was so martial and tenuous that romanization was unduly hindered. Indeed, an outline of these events clearly shows several major restraints on Roman influence:

(1) The conquest occurred relatively late in Roman history, approximately a century after Gaul had come under Roman administration.

(2) The conquest of the more prosperous part of Britain was exceptionally swift and was stabilized by use of native client kings, which reduced the Britons' direct exposure to Romans and Roman ways. Only a few Roman civil administrators were present among the Celts and large military forces were likely to be somewhere else as hostilities demanded their response. The impact of the Roman conquest on these areas would have been minimal at first.

(3) The Boudiccan revolt shows that romanization got off to a very bad start precisely in those areas that should have made greatest progress. It also shows that the early occupation was characterized by corrupt and exploitive administrative practices (land confiscations, illegal taxation, and forced loans, for instance). Finally, the ferocity of Roman reaction to the revolt produced intense and long-lasting hostility toward the Romans.

(4) Military activity in the Midlands (Brigantes) and northern (Caledonian) and western (Welsh) frontier districts was general throughout the 70s and 80s; Roman victories were followed by more unrest until Hadrian's accession in 117. Even then the northern tribes were not stabilized until completion of Hadrian's Wall in A.D. 133, and the Brigantes (south of the Wall) remained bitterly hostile for over half a century thereafter. The Welsh, too, rose in revolt whenever conditions permitted. All three groups struck back at the Romans during the civil disturbance caused by Albinus at the end of the second century.

(5) Construction of the Hadrianic Wall (A.D. 122-133) and Antonine Wall (completed A.D. 138) and the several shifts of the frontier back and forth between those two barriers occupied the majority of the military forces in the province. Then, after the province was more or less stabilized, a general military disturbance occurred late in the

second century (usurpation of Albinus and early Saxon raids). The Antonine Wall was abandoned after three attempts at occupation proved untenable in the 180s.

(6) The third century is generally held to be a peaceful time for all of Britain under Roman rule. Curiously, however, in the middle decades new military installations and new town defenses appeared throughout the supposedly pacified areas. Undoubtedly this was due in part to Saxon pirate raids which commenced at the end of the second century and became serious in the 260s and 270s. This same period also saw a brief civil rebellion in Britain, followed by the usurpations of Carausius and Allectus and the overrunning of Hadrian's Wall at the close of the century.

(7) The first half of the fourth century was a time of wrenching civil conflict over religious issues, which affected the southern portion of the province. The entire province was threatened by religious-political strife in the 350s. Concerted barbarian attacks in the 360s left looters free to ravage Britain from coast to coast and the usurpation of Maximus with Britain as a base seriously disrupted Roman order in the 380s. After Roman forces restored order for the last time at the opening of the fifth century, they withdrew, even though serious Saxon raids began again in A.D. 408. Picts and Scots occupied the north immediately after the Roman withdrawal.

This summary reveals that the border tribes were never friendly to Rome or receptive to romanization and that the Brigantes in the Midlands refrained from active resistance only as the third century opened. Civil rebellions and usurpations affected the entire province at the end of the second century and, with only minor interruptions, from the 270s to the end of Roman rule. Saxon raids, which afflicted the peaceful southern areas, began as early as the end of the second century and had become serious by A.D. 275. While such incessant preoccupation with military affairs would not and clearly did not entirely stop romanization of Britain, it may help account for the failure of Roman influence to embed itself more deeply in the lives of the British Celts. However, we should remember that in our own century we applaud a peace that leaves even a generation free from combat. Large areas of Britain remained free of such interference for decades at a time and the ancient prohibition against

the carrying of arms by civilians was in effect until the opening of the fifth century. Therefore, while preoccupation with military matters may have slowed romanization in parts of Britain, it cannot be concluded that Roman influence was not important.

C. *The Progress of Romanization*

Even if Roman attention to military matters may be one explanation for failure of Roman law to be transferred to the barbarian invaders of Britain, it requires for its validation a conclusion that romanization in Britain—for whatever reason—did not succeed as well as it did in other provinces. Of course, it is easier to avoid assigning reasons by simply setting out the reverse argument, i.e., apparently little Roman culture survived the invasions; therefore, romanization must not have set in as deeply in Britain as in other provinces. However, one purpose of this article is to identify at least the possible explanations for less thorough romanization in Britain. Therefore, in this section we will review the specific evidence concerning British romanization.

It has already been noted that Rome's early approach to pacification was to leave loyal client rulers largely in charge, presumably prompting little initial change in social organization.⁴⁹ Nevertheless, Roman life drew its essence from towns and town life, and the impulse to create and embellish urban centers in Britain is unmistakable.⁵⁰ The economic base for urbanization consisted of developing trade and opening up markets for surplus goods. Although tribes beyond the Roman pale were not attuned to capitalism and production of surplus goods, it appears that some areas of southern and southeastern Britain rather quickly adapted to such urban Roman ways.⁵¹ Such economic developments during the first century A.D. clearly suffered setbacks from the Boudiccan holocaust so soon after the conquest and the revolt of the Brigantes a decade later.⁵² The beginnings of the main towns do not appear until near the end of the first

49. See *supra* note 9 and accompanying text.

50. C. TACITUS, *THE LIFE OF JULIUS AGRICOLA* 21 (Loeb ed. 1963); See S. FRERE, *supra* note 3, at 203, 241, 257-58, 305-06; I. T. MOMMSEN, *THE PROVINCES OF THE ROMAN EMPIRE* 209-10 (W. Dickson trans. 1899).

51. R. COLLINGWOOD & J. MYRES, *supra* note 3, at 226-46; H. SCULLARD, *supra* note 3, at 125-45; G. WEBSTER, *supra* note 3, at 172.

52. See *supra* notes 15-16 and accompanying text.

century,⁵³ and by this time military activity had shifted largely to the frontiers in the north and west.

The severity of this military activity may itself have been a cause of slower romanization. For instance, Agricola's campaign against the Ordovices in central Wales in 78 almost exterminated them, and settlements in their area did not recover until the third century.⁵⁴ Nevertheless, one writer suggests that military activity in the north may actually have accelerated civic development,⁵⁵ and Agricola's son-in-law, historian-biographer Tacitus, depicts the commander as a vigorous sponsor of romanization:

The winter which followed was spent in the prosecution of sound measures. In order that a population scattered and uncivilised, and proportionately ready for war, might be habituated by comfort to peace and quiet, he would exhort individuals, assist communities, to erect temples, market-places, houses: he praised the energetic, rebuked the indolent, and the rivalry for his compliments took the place of coercion. Moreover he began to train the sons of the chieftains in a liberal education, and to give a preference to the native talents of the Briton as against the plodding Gaul. As a result, the nation which used to reject the Latin language began to aspire to rhetoric: further, the wearing of [Roman] dress became a distinction, and the toga came into fashion, and little by little the Britons were seduced into alluring vices: to the lounge, the bath, the well-appointed dinner table. The simple natives gave the name of "culture" to this factor of their slavery.⁵⁶

It has already been noted that creation of *coloniae* for retired legionnaires was seen as an important force in spreading Roman ways among the native populace.⁵⁷ The earlier resentment over the practices of corrupt administrators at Colchester was not repeated at the founding of two new *coloniae* for dis-

53. Webster speculates that this may have been due not so much to British resistance, as to the army leaving occupying garrisons in their forts and fortresses long after the main units had moved out of them. G. WEBSTER, *supra* note 3, at 172.

54. C. TACITUS, *supra* note 50, 18.2.

55. S. FRERE, *supra* note 3, at 114-15.

56. C. TACITUS, *supra* note 50, 21. During the winter of A.D. 79, the basilica at Verulamium was being completed. Verulamium is the only British community known to have enjoyed the status of *municipium*, a chartered town without a military origin, and the basilica was equivalent to the headquarters building of a modern unit of local government, housing all administrative and judicial activity.

57. See *supra* notes 21-23 and accompanying text.

charged veterans at Gloucester and Lincoln during the reign of Domitian (A.D. 81-96).

Construction of public buildings, following Agricola's urgings, was underway in many locations by the turn of the century, especially in Londinium, Verulamium, and in the *coloniae*. Modest townhouses are also in evidence, but it is believed that their owners also maintained villas in the country, which they built and furnished more lavishly, just the reverse of the pattern in Gaul, Germany, and Switzerland.⁵⁸ If the British preferred their villas to their urban homes, this may have slowed the process of becoming fluent in Latin and imbued with Roman culture. It was not until several decades later, well after Hadrian's visit to Britain in 122, that archaeological evidence shows the townhouses catching up with the villas in scale and standard. The effects of the then more uniform spread of romanization are described by one scholar as follows:

Both in town and country the adoption of Roman ways and tastes and the increasing complexity of local and central administration meant a growth in service industries and occupations. This brought in more and more Romans in official posts at every level on varying lengths of tour of duty, and Romanized people from many corners of the empire in the way of trade and business. It also opened up opportunities for local men in larger numbers and further and further down the social scale.⁵⁹

The concentration of romanizing influence in town life suggests that the majority of the British, remaining rural, were not touched by it. With the end of the second century as a point of reference, Frere estimates the urbanized population at about 270,000; about 50,000 workers and dependents connected with mining and industries other than food production; and an agricultural population of at least a million. Add to that figure the peoples of Wales and the north, and the total population of Roman Britain could have approached two million.⁶⁰ These figures suggest that perhaps 15% of the population lived or worked in circumstances which would have exposed them directly to ro-

58. See Walthew, *supra* note 22, at 189.

59. P. SALWAY, *supra* note 3, at 188. Salway also notes that certain industries relying on natural resources, directly affected the countryside. Consequently, economic developments in general would have had important indirect effects on rural people. *Id.*

60. S. FRERE, *supra* note 3, at 309-11.

manizing influences. The impact of these influences for both urban and rural populations can now be summarized.

In Britain, Latin would have been the language of law, government, business, and cultured life. In the north, it would not have been spoken away from the vicinity of the forts.⁶¹ In connection with the spread of Latin, Salway observes that the importance of speaking in every aspect of Roman public life, and methods of teaching—based on the composition of practice pieces on set themes—“meant that the Britons were learning the rudiments of classical public life and culture at the same time as they were being instructed in the Latin language.” They thereby acquired a framework of ideas and ideals common to Roman and native.⁶² Educated Romano-Britons would have been bilingual, speaking British in their families and with the lower social classes.⁶³ While British probably could be and was written, not a single Celtic inscription of the Roman period has yet come to light. On the other hand, workers’ graffiti on tiles and elsewhere show that even lower classes used Latin in the towns and villas.⁶⁴ Education must have been widespread in the urban areas, although there is no direct information about any particular institutions of higher education in Britain.⁶⁵ Where education was not readily available, the romanizing agents were the soldiers and military service, the possibility of a military career, the merchants from the continent (who traded with natives in the areas of their contacts with military establishments), and the colonies of Roman citizens. Inhabitants of the highlands were even insulated from these types of contacts as they continued to live a more

61. *Id.* at 311.

62. P. SALWAY, *supra* note 3, at 143.

63. In this context we note the large number of Latin loan words in modern Celtic tongues describing concepts or objects for which there was no British equivalent.

64. Julius Caesar reported that the Gallic Druids, the most intensely educated Celts, refused to commit their lore to writing, C. IVLI CAESARIS COMMENTARIORVM LIBRI VII DE BELLO GALLICO 6.14 (Oxford ed. 1900) [hereinafter cited as CAESAR], but the Greek alphabet was used for other purposes in Gaul. Tile inscriptions are illustrated and described in J. LIVERSIDGE, *supra* note 3, at 315-17.

65. Mommsen states:

The higher scholastic training of youth penetrated gradually from Gaul into Britain. It is specified among Agricola’s administrative successes that the Roman tutor began to find his way into the leading houses of the island. In Hadrian’s time Britain is described as a region conquered by the Gallic schoolmasters . . . These schoolmasters were in the first instance Latin, but Greeks also came; Plutarch tells of a conversation which he held at Delphi with a Greek teacher of languages from Tarsus returning home from Britain.

T. MOMMSEN, *supra* note 50, at 211.

primitive life. Villas are hardly found there. By contrast, in the eastern lowlands, even some peasants changed their habitation pattern, building rectangular cottages with tile roofs, painted plaster decoration, glass windows and wooden floors. Some villas provided baths for the workers as well as for the owners.⁶⁶ Lower classes everywhere used coins and purchased manufactured pottery. Even unconquered British tribes who merely entered into peace treaties with the Romans agreed to cease intertribal hostilities, limit their gathering places, and provide troops, often receiving cash subsidies in return, all of which would have made Roman presence conspicuous to all classes.⁶⁷

Salway describes the extent of romanizing influence in the countryside as follows:

In the Romano-British countryside, though life certainly altered at least outwardly little from the pre-Roman Iron Age on thousands of individual small farms, there were changes . . . that add up to something quite substantial. The stability of life, the existence of excellent main roads and a network of minor roads, the development of market towns, and the use of money as a matter of course meant that by the second century many farmers could regularly sell their surplus output and buy slaves, hire servants and laborers, and obtain the services of the expert craftsmen needed to build to Roman patterns and in Roman materials. . . . [T]here were now many hundreds of substantial farm houses, often replacing Iron Age dwellings. They were certainly very much in the minority, but they represent a real change in the standard and style of living out of all proportion to their absolute numbers.⁶⁸

While the above description of a rising agrarian middle class sounds a hopeful note for romanization, it is clear that this group, even with disproportionate influence, did not represent the romanized state of the bulk of British population. In fact, we know little of the lower classes; documentary and inscriptional evidences for them are almost entirely lacking. It appears that for most of these Britons their pre-Roman lifestyles survived into and throughout the Roman occupation.⁶⁹ Still, as in other provinces, presumably all would have been affected by taxation, recruiting, and the new economic conditions. Expansion of na-

66. S. FRERE, *supra* note 3, at 267-70.

67. *Id.* at 180.

68. P. SALWAY, *supra* note 3, at 234-35.

69. CAESAR, *supra* note 64, 5.12; S. FRERE, *supra* note 3, at 265-66.

tive settlements and agriculture appeared during this period in some areas, and some Roman-type industries, such as pottery manufacture, would have extended employment and prosperity to the lower classes.⁷⁰

During the relatively peaceful third century romanization and Roman law in Britain achieved their greatest impact, and the province was buffered from the military, political, and economic crises afflicting the rest of the empire during the third century. From 270, there seems to have been a renewal of both public and private construction and a sharp increase in villa construction and renovation. The villas were not fortified, even though town defenses were being put in place.⁷¹

An enigmatic element in the romanization of Britain is religion. Evidence exists of the expected accommodation of Celtic deities within the Roman pantheon, but prior to Constantine's victory at the Milvian Bridge it does not appear that Christianity had penetrated very far into the province. However, three British bishops and a priest and deacon possibly representing a fourth appeared at the Council of Arles only two years after the battle, and Christian motifs began to appear in mosaics of upper class residences.⁷² Even though Christians apparently confiscated some treasures from pagan temples, pagan cults continued to flourish through the fourth century. After Constantine officially adopted Christianity, Christians may have been preferred for the swiftly increasing number of public offices and church officials even temporarily acquired some legal jurisdiction.⁷³ We do not know to what extent Christianity spread to lower classes during the fourth century.

A general decline in town life may have set in by the middle of the fourth century.⁷⁴ Burdens of a burgeoning bureaucracy and evidently deteriorating municipal services support this suggestion. The decline of empire commerce generally forced

70. S. FRERE, *supra* note 3, at 291-92.

71. With the probable exception of the villa at Gatcombe, contemporary villas in Gaul were fortified. P. SALWAY, *supra* note 3, at 329.

72. The bishops were Eborius of York, Restitutus of London, and Adelphius of Lincoln or Colchester. Mann, *The Administration of Roman Britain*, 35 *ANTIQUITY* 316, 317 (1961).

73. Constantine transferred to the church certain powers that had always been held by Roman magistrates, and required the secular authorities to enforce the verdicts of local bishops. This ecclesiastical jurisdiction was later withdrawn. P. SALWAY, *supra* note 3, at 342-43.

74. P. SALWAY, *supra* note 3, at 397, 411-12.

greater self-sufficiency on the provinces at a time when they were paying for their own fortifications. However, during this period, Britain was able to export vast quantities of corn to Gaul, which was trying to recover from civil strife.⁷⁵

In summary, present evidence for romanization in Britain shows life among the lower classes perhaps more peaceful and prosperous, but proceeding essentially unchanged. Lacking information, we do not know that Roman language, law, religion, or economic changes had any appreciable or lasting influence on the masses. Naturally, military recruitment and taxation would have fallen on all, but those activities, by themselves, would not have achieved romanization. For the influential persons of the province and the embryonic middle class of artisans and small, independent farmers, the Roman presence was apparently significant. These would also have been the classes to transmit Roman law to the next rulers.

D. Roman Law in Roman Britain

We now examine the rather sparse direct evidence for the presence of Roman law in Roman Britain. The evidence consists of documentary references both to persons known to have been active in legal affairs and to legal procedures. From such evidence we can make judgments about how deeply into the British populace Roman law had penetrated, the classes likely to have used or encountered Roman law, and Roman law's impact on Romano-British society as a whole.

It has been surmised that the original conquest of the province under Claudius was formalized by a practice from Republican times: the province was given a set of statutes, the *lex provinciae*.⁷⁶ The governor of the province was styled *legatus Augusti* and was directly responsible to the emperor, who was formally the governor or proconsul of all the frontier provinces.⁷⁷ As chief justice of his province, the governor headed the judicial service, heard petitions, and presided at trials in the capital and

75. A generation earlier British artisans had been sent to Gaul to rebuild cities devastated by barbarians.

76. P. SALWAY, *supra* note 3, at 87. There is no conclusive evidence that the practice of conferring the *lex provinciae* on stabilized provinces continued on into the imperial era.

77. This arrangement applied to "imperial" provinces, those that were part of the emperor's direct responsibility, but not to "senatorial" provinces, those left in the more direct supervision of the senate.

at assizes elsewhere in his jurisdiction. He exercised appellate jurisdiction in provincial law suits and primary jurisdiction in cases involving Roman citizens, capital punishment, condemnation to the mines or salt works, and amounts over a certain sum. For noncitizens, his judgment was final, but the governor's task was complicated by the variety of local Celtic law codes that might be invoked in reaching decisions. Noncitizens still lived under the local laws to the extent these conflicted with Roman law. Extension of Roman influence would have meant an increase of private litigation, and Roman legal terms on tablets excavated in London have been found beginning with the period of provincial expansion in the late first century.⁷⁸ Beginning with Vespasian's reign in A.D. 69, a special judicial officer, the *legatus iuridicus*, was sometimes appointed to relieve the governor of the burdens of legal work. Six of these important legal officers in Britain are known, five by name. C. Salvius Liberalis Nonius Bassus (probably appointed during Agricola's governorship in A.D. 79)⁷⁹ was succeeded by L. Iavolenus Priscus;⁸⁰ both were noted legal authorities. The others were C. Sabucius Maior Caecilianus (during the reign of Marcus Aurelius),⁸¹ M. Vettius Valens,⁸² M. Antius Crescens Calpurnianus (under Septimius Severus),⁸³ and an anonymous *legatus iuridicus* in Britain who set up an inscription celebrating one of Trajan's victories.⁸⁴

In addition to the *legatus iuridicus* and a chief administrative officer, a governor's headquarters included three *commentarienses*, each with his own assistants, and each heading a department concerned with some aspect of the governor's legal duties. The staff also included *speculatores*, ten men from each of the legions in the province, who had legal responsibilities related to holding prisoners and performing executions.⁸⁵ Provin-

78. S. FRERE, *supra* note 3, at 193-94.

79. INSCRIPTIONES LATINAE SELECTAE, No. 1011 (H. Dessau ed. 1962).

80. *Id.* No. 1015. Priscus later became a great teacher and head of one of the two great schools of Roman jurisprudence.

81. *Id.* No. 1123.

82. CORPUS INSCRIPTIONUM LATINARUM, No. 11.383 (E. Bormann ed. 1888). Valens was also appointed patron of the province, a post connected with the provincial council and an honor of high distinction.

83. INSCRIPTIONES LATINAE SELECTAE, No. 1151 (H. Dessau ed. 1962). He actually took charge of the province briefly during the governor's absence.

84. 1 R. COLLINGWOOD & R. WRIGHT, *supra* note 29, Item 8, at 4.

85. The tombstone of one of these *speculatores*, set up by two of his fellows, is discussed in 1 R. COLLINGWOOD & R. WRIGHT, *supra* note 29, Item 19, at 9.

cial municipal magistrates also existed, but with very limited jurisdiction.⁸⁶

Roman law was in full effect only in cities or towns with Roman constitutions or among persons holding Roman citizenship. This latter criterion was not so important after A.D. 212 or 214,⁸⁷ when the emperor Caracalla conferred citizenship on all free subjects in the empire.⁸⁸ As to cities or towns, Verulamium (St. Albans) is the only community known to have achieved the status of *municipium*, but surely Londinium and probably Leicester also enjoyed such status. Naturally, the veterans' *coloniae* also enjoyed the special municipal legal privileges. Agricola encouraged Britons to build courts of justice. In one such court at York, the great Roman jurist Aemilius Papinian, who accompanied Emperor Septimius Severus to Britain in 208, administered justice while his emperor fought British barbarians on the north border.⁸⁹

Only fragments of British litigation records have survived in the Roman legal materials from this era. One case in Justinian's *Digest* tells of a slave-woman condemned to labor at saltworks, who was kidnapped and later repurchased by her original owner, who sued the state for the repurchase money.⁹⁰ A case in the Theodosian Code concerns tax revenue from decurions on behalf of their tenants.⁹¹ A wooden tablet found in the well of a Roman British villa relates to the sale of real estate and uses Roman legal phrases.⁹² Other references, including a case from the *legatus iuridicus* Iavolenus Priscus, are concerned with wills. His case called for an alternative disposition of property set in

86. S. FRERE, *supra* note 3, at 314.

87. Millar, *The Date of the Constitutio Antoniniana*, 48 J. EGYPTIAN ARCHAEOLOGY 124-31 (1962).

88. However, some rights of citizenship were unequally applied, such as discriminatory penalties for criminal convictions.

89. IX DIO'S ROMAN HISTORY 76.14 (Loeb ed. 1927). Papinian was at the time praetorian prefect, the officer with general jurisdiction over all civil and criminal cases in the empire outside of Rome itself. One rescript (written statement of a Roman emperor on a question of law) of British origin survives from this time, dated 5 May 210, and discussed in E. BIRLEY, *supra* note 24, at 52.

90. DIGESTA IUSTINIANA 49.15.6, translated and reprinted in IX S.R. SCOTT, CORPVS IVRIS CIVILIS—THE CIVIL LAW (1973) [hereinafter cited as DIGESTA IUSTINIANA].

91. THE THEODOSIAN CODE 11.7.2 (C. Pharr trans. 1952). This rescript is dated 20 November 319 and is discussed in Stevens, *A Possible Conflict of Laws in Roman Britain*, 37 J. ROMAN STUDIES 132-34 (1947).

92. Discussed in Turner, *A Roman Writing Tablet from Somerset*, 46 J. ROMAN STUDIES 114-18 (1956).

trust for a beneficiary who did not survive minority.⁹³ Another will case, concerning the estate of a legionnaire who committed suicide, held that the decedent's will remained valid unless the suicide was to avoid punishment.⁹⁴ A will was usually written on tablets by someone with legal training and then witnessed with varying formalities.⁹⁵ It is not known to what extent British Celts practiced Roman law, but Juvenal refers to Britons being trained to plead by Gauls.⁹⁶

These fragments confirm that Roman law was an active factor in the lives of the British social and political elite. However, while such persons clearly wielded the greatest influence in the province, they constituted only a small minority of the population. Concentration of romanization among the upper classes occurred because the entire Roman pacification effort was directed first at creating secure conditions so towns could flourish, and then at development of those urban centers so Roman amenities could be provided. The extension of *pax Romana* to the countryside was only an incidental consequence of this principal goal: Roman ways were extended to the country not for its own sake, but as a means of enhancing town life. Yet provincials of all social classes elsewhere in the empire embraced Roman ways so fully that those traditions usually survived the assaults of the Dark Age barbarians, suggesting that romanization in Britain was somehow less thorough.⁹⁷

E. Romanization of Britain and Gaul Compared

Some explanations for the island's less permanent Roman influence are suggested by a comparison with Gaul. Gaul was conquered about a century earlier than Britain, although this longer exposure to Roman ways was partially offset by earlier barbarian incursions on the continent. Gaul was highly regarded for its educational system and attainments, but we know of no extensive educational opportunities available in Britain. Proximity to Rome may have left Gaul more accessible to merchants,

93. DIGESTA IUSTINIANA *supra* note 90, 36.1.48.

94. *Id.* 28.3.6.7, 28.6.2.4.

95. Examples from Roman Britain are discussed in J. LIVERSIDGE, *supra* note 3, at 304.

96. JUVENAL, SATIRES 15.111-112 (R. Humphries trans. 1958).

97. See, for example, the description of romanization in Gaul, *supra* notes 92-96 and accompanying text.

armies, civil servants, colonists, adventurers, and culture from Rome than Britain could ever be. In the opinion of Trevelyan,

Britain was too far from the Mediterranean. Southern France is itself a Mediterranean land. But the civilization of the Italian city, the life of the forum and piazza, shivers when transplanted too far north. The ancient world was a Mediterranean civilization. . . . In the ancient world, Britain was a distant and isolated outpost Not enough Italian or Mediterranean folk came to Celtic Britain to change the character of its civilization except superficially.⁹⁸

Once reconciled to Roman rule, Gauls of all classes seem to have developed a taste for things Roman, perhaps through more prolonged, intense exposure. By contrast, British Celts beyond the south and east of Britain were exposed only to the rudimentary romanization carried in by military units (who were often the enemy), and in many areas this was subject to frequent and lengthy interruption. Even in more pacified areas, romanization got off to a bad start because of corrupt and exploitive administrative practices. When the urban centers were finally established, a fondness for villas and the countryside persisted among the upper classes, compromising the romanizing power of the towns.⁹⁹

Several prominent historians have believed that Gaul was much more successfully romanized than Britain. Mommsen, while asserting that "Roman Britain sustained a relation to Romanising similar to that of northern and central Gaul," concedes that Latin language and manners were "more an exotic growth on the island than on the continent," and admitted that the "great urban centres, the seats proper of the new culture, were more weakly developed in Britain" ¹⁰⁰

The legal historian Stubbs was even more explicit:

Rome had laid a very strong hand on Gaul, and Gaul had re-

98. G. TREVELYAN, *HISTORY OF ENGLAND* 24 (1952). An additional insight into Gaul's readiness for Mediterranean culture is offered by Will Durant:

Near the beginning of the sixth century the Phocaeans of Ionia landed on the southern shore of France, founded Massalia (Marseilles), and carried Greek products up the Rhone and its branches as far as Arles and Nimes. They made friends and wives of the natives, introduced the olive and vine as gifts to France, and so familiarized southern Gaul with Greek civilization that Rome found it easy to spread its kindred culture there in Caesar's time.

W. DURANT, *THE LIFE OF GREECE* 169 (1939).

99. See *supra* note 58 and accompanying text.

100. T. MOMMSEN, *supra* note 50, at 209-10.

paid in a remarkable degree the cultivation of her masters. At the time of the downfall of the empire Gaul was far more Roman than Italy itself; she possessed more flourishing cities, a more active and enlightened church, and a language and literature completely Latin, although of course far beneath the standard of the classical ages. Britain had been occupied by the Romans, but had not become Roman; their formative and cultivating power had affected the land rather than the owners of it. Here, too, had been splendid cities, Christian churches, noble public works and private mansions; but whatever amount of real union may have existed between the two populations ended when the legions were withdrawn.¹⁰¹

Vinogradoff was convinced that "the very incomplete Romanisation of the Britons" resulted in a "much more thorough predominance of barbarian customs and institutions than that which obtained in neighbouring Gaul."¹⁰²

Others have also contended that romanization in Gaul was much more thorough.¹⁰³ Of course, merely showing that one province was more Roman than another does not offer a complete explanation for the failure of Roman ways to survive in the less Roman province. A complete explanation rests in part on particular conditions prevailing in Britain during the Roman withdrawal, and the protracted struggle the Britons conducted in response to German invasions during the fifth and sixth centuries.

II. HOW THE ROMANS WITHDREW FROM BRITAIN

The final demise of imperial government in Britain may be dated from the usurpation of Magnus Maximus, who seized Britain, Gaul, and Spain in A.D. 383. His efforts to defend the province against the barbarians were on the whole unsuccessful. Upon his defeat and death in 388, Britain came under the rule of the boy emperor Valentinian II, which left the raiders free to continue. Finally, in 396 the general Stilicho, or his representative, restored some order by means of a punitive expedition and

101. 1 W. STUBBS, *THE CONSTITUTIONAL HISTORY OF ENGLAND 59-60* (1875). See also H. CHADWICK, N. CHADWICK, K. JACKSON, R. BROWNICH, P. BLAIR & O. CHADWICK, *STUDIES IN EARLY BRITISH HISTORY 189-253* (1959) [hereinafter cited as *EARLY BRITISH HISTORY*].

102. P. VINOGRADOFF, *THE GROWTH OF THE MANOR 119-20* (1920).

103. See *infra* notes 120-23 and accompanying text.

naval activity against the Scots, Picts, and Saxons.¹⁰⁴ But no reinforcements could be left permanently in the British garrison. Peace was achieved in 399,¹⁰⁵ but in 401 more troops were withdrawn for the war against Alaric on the continent.¹⁰⁶ In the opinion of Frere, this was the occasion for establishment of a small British field army under a British commander, although still nominally under Roman direction.¹⁰⁷ The final withdrawal of troops took place in 407, prompted by Constantine III, the last of three British imperial usurpers raised by the British army, who took troops to the continent to establish his claim. In 411 this adventurer met his death, but none of the British units returned home.

About 410 massive Saxon attacks in Britain and Gaul produced an appeal to the emperor Honorius for troops to be sent to the island. Honorius is reported to have replied by letter that the cities in Britain should see to their own defenses. Consequently, according to Zosimus, the "Britons took up arms and, braving danger for their own independence, freed their cities from the barbarians threatening them."¹⁰⁸ Zosimus characterizes the British action as revolting against and expelling imperial authority, but it is clear that imperial military units had been withdrawn earlier, and the British simply acted to fill a vacuum. Frere assumes the event described here was actually an ejection of Constantine III's administrators "in an attempt to resume relations with the legitimate emperor."¹⁰⁹ Improved relations never materialized, and it is probable that the ruling classes of Romano-Britons took measures for the island's defense. There are hints during this period of party divisions among the Britons, one group holding out for return of Roman authority and following orthodox Christian doctrines, the other fearing further Roman intervention and subscribing to the Pelagian heresy.¹¹⁰ This latter view may have been held by Vortigern, who began his rule in A.D. 425, and whose determination to maintain the island's in-

104. II CLAUDIAN, ON STILICHO'S CONSULSHIP 2.250-255 (Loeb ed. 1922).

105. I CLAUDIAN, AGAINST EUTROPIUS 1.391-393 (Loeb ed. 1922).

106. II CLAUDIAN, THE GOTHIC WAR 416-418, 430-432 (Loeb ed. 1922).

107. S. FRERE, *supra* note 3, at 363.

108. ZOSIMUS, *supra* note 37, 6.5.

109. S. FRERE, *supra* note 3, at 367. See generally EARLY BRITISH HISTORY, *supra* note 101, at 9-20; Schultz, *The Roman Evacuation of Britain*, 23 J. ROMAN STUDIES 36-45 (1933).

110. R. COLLINGWOOD & J. MYRES, *supra* note 3, at 313-15; see also M. WOOD, IN SEARCH OF THE DARK AGES 44 (1981).

dependence from the Romans led him to settle numerous Saxon auxiliary troops in Kent.¹¹¹

The orthodox party appealed to Rome for help in dealing with the Pelagian heresy, and in 429 Germanus, bishop of Auxerre, arrived and restored unity. He then assumed supreme military leadership and after baptizing the British forces led a successful campaign to the north, possibly to Wales.¹¹² The incident illustrates the lack of experienced military leadership (Germanus had been a general in the Roman army) and the absence of Christianity among the peasants. Also, the whole affair shows that close contacts with Rome and Gaul still existed.

The raiders most feared during the period following the Saxon troubles of 410 were Picts, and Vortigern's settlement of Saxon auxiliaries was probably employed for defense against these northern barbarians.¹¹³ Early Saxon cemeteries near the estuaries of the Humber, the Wash, and Thames on the east coast are probably of Germans first settled as defenders of the Britons, perhaps resisting the Picts on land and on sea. In the 440s the Saxons, who had been kept friendly through subsidies, became discontented and rebelled against the Britons, visiting them with great slaughter and destruction.¹¹⁴

It is against this backdrop that, probably in 446, a poignant written appeal was addressed to the consul Aetius: "To [Aetius], thrice consul, the groans of the Britons . . . the barbarians drive us to the sea, the sea drives us to the barbarians; between these two means of death we are either killed or drowned."¹¹⁵ The appeal went unanswered.

Meanwhile, much evidence from the first half of the fifth century reveals that Roman power was irreversibly weakening:

- (1) New currency in circulation declined drastically and almost disappeared.
- (2) Pottery factories were destroyed or ceased operations.
- (3) The Yorkshire signal stations ceased to operate.
- (4) Effective occupation of Hadrian's Wall ceased.
- (5) Most villas were destroyed or abandoned.

111. S. FRERE, *supra* note 3, at 368-69; NENNIUS, *HISTORIA BRITONUM* 31 (English Historical Society, Kraus reprint 1964).

112. P. SALWAY, *supra* note 3, at 464-70, 476.

113. *Id.* at 471-72, 484.

114. *Id.* at 474, 482; S. JOHNSON, *LATER ROMAN BRITAIN* 119 (1980).

115. GILDAS, *supra* note 46, at 13-20.

(6) Town life decayed or was destroyed, often because the security necessary to continue farming surrounding lands was no longer present.¹¹⁶

Shadowy sources from the last half of the fifth century hint that Vortigern lost his throne and British control of the island, that leadership passed to Ambrosius Aurelianus and then perhaps to Arthur. A series of Celtic victories culminating in the as yet unidentified Mount Badon produced a half century of peace to open the sixth century.¹¹⁷ Between 571 and 590, Britons suffered devastating defeats that left the Saxons in control of the main portions of the island that had been held by the Romans. Frere observes that, though the struggle was drawn out, "[t]he official connection of Britain with the Roman empire ended in 410 and was not renewed; but the Roman framework and civilisation of the province was in some sense maintained until 442. Thereafter it was Celtic rather than Roman Britain which maintained the struggle"¹¹⁸

These events may have affected the permanency of British romanization in several important ways. First, from about 425, political rule was held by Vortigern, who was determined that there should be no further Roman intervention and that the Britons could maintain their independence. Second, after 442, the Britons lost to the Saxons effective control of much of the island, and stabilized their own holdings only after half a century of conflict.

The protraction of this process and the delay of the ultimate Saxon conquest until the sixth century would have had a debilitating effect on any remnants of Roman culture that survived the fourth century. When the Saxons finally overcame the last large areas of Celtic resistance between A.D. 571 and 590, nearly two hundred years had passed since those areas had experienced an active Roman presence. By contrast, Germanic peoples on the continent took over provinces whose Roman culture was still largely intact. In the meantime, the patriotic loyalties of the conquered Britons had been Celtic rather than Roman. Finally, the disappearance of the empire at Rome and destruction of all the economic and political bases of Roman civilization pressed the provincial natives deeper and deeper into

116. S. FRERE, *supra* note 3, at 370-74.

117. See generally GILDAS, *supra* note 46; NENNIVS, *supra* note 111; BEDÉ'S ECCLESIASTICAL HISTORY OF THE ENGLISH PEOPLE (B. Colgrave & R. Mynors eds. 1969).

118. S. FRERE, *supra* note 3, at 383.

older, less advanced lifestyles, with only fading memories of imperial splendor.

To the extent these natives were killed or driven to the north and west, not even their memories would have been transmitted to the conquerors. Whatever romanization was left to be assimilated by the Saxons had been dulled by decades of desperate struggle for survival. In full accord with this view, Collingwood and Myres observed:

Thus, from the middle of the [fifth] century onwards, the general tone of Romano-British society became more and more barbarized. As the Saxon settlements grew in strength, the Roman civilization of the lowland zone was declining into a Celto-Roman civilization where Celtic elements were more and more prevailing over Roman. Latin must have been less and less used. Rome was becoming a memory. . . .

. . . .
 . . . When the Saxons were settling in the lowland zone, the civilization of that zone was not so much Roman as sub-Roman. Its material and spiritual possessions were so deeply and increasingly tinged with Celticism, and what Romanity they had was so typical of the latest imperial age, that they would hardly be recognized as Roman at all by persons whose idea of Roman culture is derived from the early empire.¹¹⁹

Trevelyan commented that as "Roman influence disappeared and Celtic tribalism revived, the inter-tribal warfare characteristic of the Celts revived with it, and, according to Bede, greatly assisted the Saxon Conquest."¹²⁰ Trevelyan also believed that the Saxon conquest altered the society of the conquered far more than any other Nordic invasion of the period:

Goth and Lombard in Italy, and Frank in Gaul had not destroyed the city life, the Christian religion or the Latinized speech of the conquered. But in Saxon England city life, Christian religion and Romano-Celtic language all disappeared, together with the native tribal areas and the Roman administrative boundaries; the sites of towns and villages were generally, though not universally, changed, and their names are Saxon in perhaps nine cases out of ten.¹²¹

There is no linguistic evidence that Germanic invaders en-

119. R. COLLINGWOOD & J. MYRES, *supra* note 3, at 316; see also Stevens, *The Decline and Fall of Roman Britain*, 1 HIST. TODAY 51, 57-58 (Dec. 1951).

120. G. TREVELYAN, *supra* note 98, at 62-63.

121. *Id.* at 42.

countered a Latin culture as they conquered, and they destroyed the organization of the Roman Christian church in regions where they settled.¹²² In contrast to the Frankish kings in Gaul, they did not inherit a late Roman civil administration; and Anglo-Saxon law was untempered by late Roman influences. Whereas the Gauls peacefully accepted the Frankish hegemony, the Britons resisted the Saxons, provoking retaliation and destruction.¹²³

One other circumstance perhaps peculiar to Britain may help account for the snuffing out of Romanism. As Trevelyan noted, "[I]t happened that the districts destined to be overrun by the Saxon destroyer were the districts most given over to the Latin influences of city and villa life. . . . This accident," he believed, "goes far to explain why Roman influence was permanent in no part of the island."¹²⁴

Anglo-Saxon campaigns would naturally be fought along Roman roads as well as the rivers and directed at Roman towns, impacting most heavily on the most romanized districts. The disintegration of the church as the Germans advanced meant the loss of a principal preserver of Latin. Extensive loss of territory would have destroyed what administrative and economic bases remained of Romano-British society. In the less romanized areas of the north and west, "from the late fourth century onwards, there was a swift reversal to Celtic tribalism."¹²⁵ Archaeological evidence shows that many Celtic Iron Age hillforts were renovated during this period, suggesting that as cities declined, many warlords returned to the hills and to those hillforts which had been abandoned when the Romans conquered Britain.¹²⁶

III. THE CHARACTER OF THE ANGLO-SAXONS

It is now appropriate to describe available evidence on characteristics of the Anglo-Saxon invaders that may have affected their reluctance to adopt what Romanism they encountered

122. D. FISHER, *THE ANGLO-SAXON AGE* 57 (1973); D. KIRBY, *THE MAKING OF EARLY ENGLAND* 39-40 (1968).

123. D. KIRBY, *supra* note 122, at 30-32. Most arguments made for continuity, including continuity of land tenure systems, have been rejected. Continuity of village community may have existed in places, but it cannot be determined, because if the Romano-Britons were living in places where the Anglo-Saxons settled, the later settlements obscured the older patterns.

124. G. TREVELYAN, *supra* note 98, at 42.

125. D. KIRBY, *supra* note 122, at 26.

126. M. WOOD, *supra* note 110, at 48.

among the British they conquered. That evidence is extremely sparse, is documentary only, and only from writers who were not in a position to make firsthand observations. According to Stenton, Roman writers regarded the "Saxons"¹²⁷ as the typical German enemy. "It is a true barbaric culture," he observed, "untouched by the Roman influences which were already affecting the life of even the eastern Franks. To the Roman world of the fifth century the Saxons were outer barbarians."¹²⁸ The Saxons were without the common loyalties being developed by the central military rulers among the nearby Franks and were "far less affected as yet than the Franks by the softening contacts of Roman civilization"¹²⁹

There is little to be learned by citing the Saxons' reputation for savagery and rapine, as all victims of violent conquest will hold similar views of their oppressors. It would be impossible to discern whether the Anglo-Saxons were more or less inclined to barbarism than their continental cousins. However, there is substantial and very consistent archaeological evidence to show that the Anglo-Saxon culture as it came to Roman Britain represented a primitive Germanic society without traces of Roman influence. Based on that, it seems at least probable that these people would be less likely to adopt Roman ways (or more accurately, the "sub-Roman" ways of British returning to their Celtic customs and speech) than would be the Germans who invaded other provinces.

When examples of written Anglo-Saxon law first appear about A.D. 600,¹³⁰ they contain strong elements of purely Germanic legal customs, untouched, except for religious matters, by Roman influences from either the continent or their British subjects. The first written Anglo-Saxon laws are the dooms of the Kentish King Ethelbert, and, dating from A.D. 600, they are the first Germanic laws recorded in a Germanic language. Being entirely free of any trace of Roman influence they tell us that Roman culture, society, language, and law did not survive into the Dark Age in Britain, contrary to the pattern on the continent.

127. Here the term "Saxons" is used to refer to all of the Germanic invaders of Britain, who in their racial characteristics were probably indistinguishable.

128. F. STENTON, *ANGLO-SAXON ENGLAND* 11 (3d ed. 1971).

129. R. COLLINGWOOD & J. MYRES, *supra* note 3, at 350.

130. The dooms of Ethelbert, King of Kent, are, as far as we know, the earliest Germanic laws written in the vernacular.

IV. CONCLUSION

This article has explored several explanations for the failure of Roman law to survive in Britain, without attempting to prove that any or all of them were actually responsible. Indeed it may never be possible to establish causal relationships for events of this period. Judgment must be left to writer and reader.

In summary, it has been shown that Britain, the most remote of Roman imperial provinces, held relatively large military forces which were in active combat someplace in the province during almost the entire period of occupation. Sometimes the security breakdowns were so serious that the whole province was affected, although some areas were undoubtedly tranquil for extended periods. Further, although we cannot know if the preoccupation with military activity slowed the progress of romanization, there is substantial evidence that Roman culture was prevalent only in the upper classes. This left the large majority of the population to carry on in their old Iron Age lifestyle throughout the Roman period. While Roman influence may have been felt throughout the province, it does not appear to have had great influence outside the towns and military installations. Roman law was an integral part of Roman provincial administration, and legal processes and practitioners are in evidence in Roman Britain; but evidence suggests that Celtic law also was used. Moreover, no evidence shows Roman law affecting the lower classes, even after citizenship was broadly granted early in the third century.

By the time the imperial administration finally withdrew from Britain about A.D. 410, the breakdown of Roman culture was underway, its political and economic bases disintegrating. With the Roman foundation crumbling, the Britons turned back to Celtic ways. The protracted struggle with Saxon invasions accelerated the return to Celticism, there being no further point in reviving the discredited Roman traditions. Stiff British resistance over such an extended period of time forced the Saxons to conquer rather than to co-exist, and to assert the superiority of the Germanic culture. Even if and where co-existence developed, it was with a predominantly Celtic culture, far removed from Roman society at its imperial height; and these particular conquerors may have been, of all Germanic barbarian invaders, the least predisposed to adopt Roman ways, having successfully resisted those ways throughout the imperial period.

Thus as Britain became England, Roman law was perhaps

dead even before the Anglo-Saxons' ultimate triumph became inevitable. The Celtic legal traditions the Germans would encounter were not greatly different or clearly superior to their own, and, forced to exterminate, enslave, or eject their adversaries, the Germans would naturally install their own laws along with their own society. Anglo-American common law therefore has its oldest roots in the customs and laws of these Anglo-Saxon conquerors¹³¹ and in its birth and early growth reflects a people feeling its way out of barbarism, adopting higher ways only when genuinely ready for them.

131. According to the prevailing view, Roman or Celtic elements in early Anglo-Saxon law cannot be accounted for as other than coincidental. See *supra* note 1.