

William Somner
A treatise of gavelkind (reissued)
London
1660

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A Treatise
OF
GAVELKIND,
Both Name and Thing.

Shewing the true Etymologie and Derivation
of the one, the Nature, Antiquity,
and Original of the other.

With sundry emergent Observations, both
pleasant and profitable to be known of Kentish-men
and others, especially such as are studious,
either of the ancient Custome, or
the Common Law of this
Kingdome.

By
(A well-willer to both)
William Somner.

Virg. 2. Georg.
Fœlix qui potuit rerum cognoscere causas.

Cranz. lib. 2. Metrop. 9.
*Nemo sibi blandiatur de auctoritate veterum, quibus etsi fabulæ displicue=
runt, non tamen habebant unde falsitatem earum coarguere possent. Sed
nostra ætate crebrescentibus literarum monumentis, inexcusabilis torpor
est in fabulis scientes, prudentesque permanere.*

LONDON,
Printed by R. and W. Leybourn, for the Authour, and are to be sold by
John Crooke at the Ship, and Daniel White at the Seven
Stars in St. Pauls Church-yard. 1660.

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TO THE
Right Reverend Father in God,
JOHN WARNER,
D. D. Lord Bishop of Rochester.

My Lord;

Such is the largenesse of your
charitable heart, so great
and tender the compassion
lodged in your pious breast,
towards those (especially)
who for their good affection unto Monar=
chy in the State, and Prelacy in the Church;
for their fidelity and loyalty to the Prince,

their Father, and their conformity and duty to the Church, their Mother, (a pair of new-devised mortal sins) are forced to par-

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take with both in the miseries and martyrdoms of the eleventh persecution: that many and most thank-worthy and obliging have the favours and refreshments been, which my self (amongst a multitude of poor Clergy-men, with their widows and others in these unhappy times, suffering and almost sinking under the heave pressures and barbarous plunderings of a sort of 'cruel and unreasonable men,' mouthing and pretending nothing more than the reforming of abuses, but minding and practising nothing else but the abuse and overthrow of a well-absolved Reformation) have for many years together constantly received from your Lordship.

And albeit your Lordship hath drank of the same cup, and suffered with us, in the same fate, and on the same score, as to all your ecclesiastical estate and fortunes: yet great, very great, notwithstanding hath the shelter and succour been which we have found from your Lordship (thanks to God, fairly blest the whilest with secular acquiesces and temporal demeanours) against

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that hideous and impetuous storm (of rapine and ruine) which of late years, like a violent Hurricane, hath born down before it a woful number of poor Innocents, guilty (many of them) of no crime, but of (what sober times never accounted any, nay, ever had in honour and respect) that of their prelatical, either function or relation: and (to the shame of the Reformation) much worse used in these dayes of its maturity, than were the Monks and Friars in the morning and infancie thereof; who, for their security and preservation from that penury and beggery to which their expulsion would otherwise inevitably have exposed them, had (even by the dictates of humanity) according to their several, whether higher or lower condition in their Cloisters, a convenient and competent annual stipend allotted them by the State for life: whereas in these dayes (as if humanity were as indeed it is full out, as Antichristian as Episcopacie, and therefore cast off with it:) no such care, no such course is thought on for some thousands of

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persons depending on the Hierarchy, to keep them and theirs, cast (many of them) out of house and home, from starving in the streets.

Much, in short, am I bound to blesse both God and your Lordship for a good share and proportion of that both countenance and maintenance which in these calamitous and wretched times have holpen to keep and buoy up my fainting and sinking spirits, and fortifie my drooping and discomposed mind against despondencie and impatience.

In thankful acknowledgement, and just celebration, therefore of these your Lordships pious and charitable dispensations, which I can no other way requite, but (as your Beadsman) by my prayers for you to him, who (to the lasting honour of your sacred, though despised, Order, and the shame and grief of your & its adversaries) hath made your Lordship both able and willing to become so great an example of piety and goodnesse: I have laid hold on that opportunity for proclaiming this truth

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to the world, (without offence, I hope, to your Lordships singular modesty, at once both silencing your tongue to all Pharisaical ostentation, and stopping your ear to all Parasitical adulation) which the publishing of the present small Treatise hath put into my hands: for the commending whereof to your Lordships patronage, I have not wanted the concomitance of other good inducements. As (first) that thereby your Lordship might have some accompt of the employment of my talent, and my spending a good part of that time (my Saxon Dictionary taking up the rest) wherein you have been pleased to make me (an exauctorated Register) one among the many objects of your beneficence and charity. Secondly, that the subject and argument of this work lies much in your Lordships way: your pastoral charge (of right) intercommoning with it a good part of the same scene and circuit. A third may be that benigne aspect and favourable eye which your

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Lordship hath already cast, aswell on the work as the Authour; by giving it your approbation, and him your encouragement to publish it, I shall spare to add more reasons.

And now congratulating to my self the happiness of this opportunity, to discharge some part of that great debt (of thankfulness) which I do, and shall ever ow your Lordship for all your signal favours, I humbly crave both your Lordships good acceptance of so mean a return, and that by your Lordships licence and good liking, the present Treatise may have the honour

to passe into common view under your Lordships name: A name indeed (for the great learning, piety, prudence and charity of the Bearer) of so much honour and price, and so worthy of eternal memory, as it deserves to lead up, and stand in the front of a more large, elaborate, and honourable work. Where hoping I may one day find it, I beg, together with your Lordships pardon for the boldness of this

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address, that blessing which from such a Reverend Father of our Church, none of her true sons but highly values, and yet none more than

(Right Reverend)

Your Lordships in all humble duty and observance,

William Somner.

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THE PREFACE.

Courteous Reader,

It is now full eighteen years since, by solemne promise, I became engaged to my Countrey-men, upon their good acceptance of certain of my labours, in behalf of our City, where with I then presented them, to proceed to the same, or some other such like undertaking for the County; a thing, which as I then really intended, so have I not since wanted that encouragement for it from the better sort (expressed by their courteous acceptance of those my former labours) which I could expect. But being soon after (*proh dolor!*) overtaken by that impetuous storm (of civil war) not yet quite blown over, causing the distraction, and threatening the destruction of this once renowned Kingdome, I was necessitated to betake my self to other thoughts, chiefly how I might secure my self against the fury, in warding off the danger,

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of the present storm; being not able, I confesse, to reach to that high pitch of sedulity and magnanimity, both in this kind to which the Grecian Socrates is said to have attained, whose thoughts were ever running on his book; insomuch, as but the very next night before he was to suffer death, (regardlesse of his so neer approaching danger, able to indispose the mind, discourage the industry, and shake the constancie of any common spirit) he was desirous to learn Mu=

sick, because (saith the Story) he would die still learning somewhat. Being therefore thus diverted, and utterly for the time discomposed for the performance of my promise, I hope not onely to be excused of my Countrymen for (what had not else been hitherto delayed) my County-undertaking, but also to obtain of them yet further respite, in hope of a better opportunity, for the discharge of that debt. For my more easie purchasing whereof at their hands, and that they and others may perceive, that I have not been altogether idle all this while; pitching in my thoughts upon our Kentish Custome of

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Gavelkynd, and being not unfurnished of matter in the progresse of my studies gleaned and gathered from old Records, enabling me, with the help of that little skill I have attained in the Saxon tongue (to the study whereof I was encouraged by my precious friend and ever-honoured Mecœnas, Dr. Casaubon, as is elsewhere by himself truly averred) to some more than vulgar discourse thereof; as a specimen and earnest of my further intentions for the County, I betook my self at spare hours to the perusal, resolving on the publication, of those collected notes and notions, disposing them so, that as they have to satisfaction informed me in the points proposed, so they may be of like use to others, willing to bestow their pains, and lay aside all prejudice in the perusal of them.

Kent, I considered, had been far and neer long celebrated for her Gavelkynd, though not so known either at home or abroad, whether in point of etymologie, or properties, (that especially of Partition, rendring it so incomparably famous throughout the Kingdom) as truth would. To wipe off there=

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fore that dust of error, which time especially (that parent of corruption) hath contracted to it, I have in the present discourse laboured chiefly to assert what I conceive to be the true sence and derivation of the term, for the understanding of the (a) name; whence the properties, that especially here instanced, do proceed, for the better judging of the nature of it, according to that end propounded to my self in all my researches, which is to know things, not so much in their present as primitive state, more in their causes than effects: *Tunc enim* (saith the (b) Philosopher) *unumquodque scire arbitramur, cum ejus causas & principia cognoscimus.*

By the processe and prosecution of the argument, having a fair and pertinent inducement, if not to treat, yet at least to touch upon, and take notice, as of the Saxons 'Boc=

(a) Nomina si nescis perit & cognitio rerum. Isid. Orig. l. 1. cap. 7.

Arist. 1. Phys. & 2. Meta= phys.

land' and 'Folcland,' so of the Feudists 'Feu=
dum' and 'Allodium,' (a pair of vocables, the
latter, that have long and much perplexed
many prime mens fancies to disquire and
found out their true and proper derivations,

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to the occasion of great varieties in the
point, each man abounding in his own,
and that, for the most part, a different and
singular sence) I thought it not amisse to
make one in the number of such Etymolo=
gists, and although with singularity, I con=
fesse, and dissent from all the rest, yet per=
haps so much to the purpose (*absit jactan=
tia dictis!*) as, if not to hit the mark, yet
at least to come so neer it as few before have
done. Alike singular, as both here, and be=
fore in the derivation of Gavelkynd, so af=
terwards I may be found in that of Socage,
yet I trust with so much truth, and that so
fully evidenced, as will serve, I hope, to
render me with the sober and ingenuous,
worthy, if not of thanks, yet of excuse and
pardon, if they differ in opinion from me.

Here also (good Reader) be advertised,
that whereas, by occasion of our discourse in
the third Proposition, concerning the Parti=
tion-property in Gavelkynd, I had *obiter*,
or incidently, made some mention of the
Writ, *De rationabili parte bonorum*, some=

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time (by means of that partition mentioned
in the old Kentish Custumal) obtaining, and
now again (if the endeavours of some may
take effect) reviving in this County; it came
afterwards into my mind to think it would
not be impertinent to the present Discourse,
somewhat further to enlarge in that parti=
cular: that by enquiry made into the An=
tiquity, and tracing the progresse of the
Partition intended by this Writ from its
first birth until its full growth, we might be
the better able to give judgment, & make the
more probable conjecture of the present va=
lidity or invalidity thereof. My discoveries
therefore being made and communicated to
some judicious friends, not without their
acceptation and my encouragement for pub=
lication, I have adventured to add them at
the end of that third Proposition, pag. 91.

As for my thwarting the common opinion,
concerning our composition with the Norman
Conquerour, and the consequents of it, I of=
fer no Apologie here, as having already
made it in the proper place, and that, I also

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trust, so fully, as I may well expect to be excu=
sed of it here. In sum, loving truth (the end
of all Science) for it self, and altogether
unbyassed with any by-respects, whether of

Idem 2. Me=
taphys.

vain glory, singularity, or the like, I have made it my constant endeavour in what is here proposed and published, that Truth alone (than which saith the Philosopher, nothing is sweeter, nothing more precious) might triumph over Falshood, Antiquity over Novelty. If hereby I have done either of them any right, or any friends any pleasure, as the chiefest reward I expect for all, I shall desire that such a measure of respect may be vouchsafed, as to those old Records from whence the chief materials in this structure have been taken, so to that ancient learning which hath contributed fitting tools wherewith to work the same materials, and fit them for that use, as may secure and rescue both (uncapable of other recompence) from that scorn, neglect and contempt in the dayes of so much novelty so freely cast upon them, since by falling into

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some hands, so good an improvement may be made of them for the publike.

I may perchance (at first sight, at least) be thought too bold with the common Lawyers, too busie in their Common-wealth, too much meddling in matters of their peculiar Science; yet no otherwise, I hope, than that they and their friends may be willing to excuse me. I am one that honour their profession, and have here done or said nothing out of opposition; my intent being onely in my way to do them service, and their profession right, by holding forth to publike view some Antiquities tending at once to the satisfaction of the one, and illustration of the other. For which purpose I have by me some other things in a readinesse for the publike, and which shall not (God willing) much longer be retarded, in case these my present endeavours (as my past have done) meet with any proportionable encouragement, and the times permit, by the continuance of our Countie peace, (Peace, I say, that mother of Arts:) which with an enlarge-

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ment and establishment of that blessing throughout the three Kingdoms, is the subject of his daily devotions, who (not for any present, or private ends or interest of his own, like a base self-seeker; but for the good and welfare of the Publike and Posterity, like a true Patriot:) doth cordially wish and long for (what he is not out of hope to see) the re-establishment of Church and State, and the prosperity of both, under (their wonted and wanted nursing Fathers) the Prince and the Prelate: untill when, and the stream of governments return into its old chanel, he cannot but look upon those men with wonder and pity, who abuse both them-

selves and others, with the fond and sense= lesse hopes and expectation (so often disap= pointed) of any lasting peace or settled times: whereas indeed nothing but feuds and facti= ons, schisms and fractions, animosities and enmities, minings and counterminings, ci= vil dissensions and foreign invasions; in a word, turnings and overturnings, can in reason be expected, untill (as the Prophet

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Ezek. 21. 27. hath it) he comes, whose (undoubted) right it is.

Now that righteous Judge of all the world, who helpeth those to right which suf= fer wrong; he by whom alone Kings reign; he who by his holy Apostle hath both instru= cted and enjoyned us to pray, as for all men in general, so especially for Kings; he who hath hitherto so miraculously preserved him, in his person from violence, in his morals from deboshment, and in his Religion from apostacie; in mercie both to King and King= dome, continue his gracious hand of preser= vation over him, and in order to his happy coming, so dispose the indisposed hearts of his seduced people, to a cheerful and a speedy reception of him, and loyal affection to him, that after all these turnings and overturn= ings, both Prince and People, without fur= ther hostility and effusion of blood, may re= turn to what is eithers right: he recovering their subjection and duty, they his protection and clemencie, and both rejoycing in each others felicity: that so (all injuries on both

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parts forgiven and forgotten, all fears and jealousies, all mis-understandings and preju= dices, for ever laid aside) with righteous= nesse and peace they may again meet, and sweetly greet, kisse, caresse, indear and e= spouse each other, and become as those whom God himself hath joyn'd together, by man or Devil never to be separated. So (in hope of every good Patriots Amen:) prayes (cour= teous Reader)

Thine humble Servant,

William Somner.

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To expedite such (in their perusal of this work) as are ignorant, but studious, of the Saxon Language, the Authour (al= though he have but lately set forth a Saxon Dictionary) hath thought it very fit here to prefix the Saxon Alphabet and Abbreviations.

a b c . . .

a b c . . .

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Errata.

Pag. 4. lin. 21. and customary. lin. 22. yeelded it. p. 18.
l. 8. Bians. p. 21. l. 1. after Consuetudo. l. 18. Snave. l. 27.
Shorham. p. 24. l. 18. Oale-gavel. p. 25. l. 2. Clyve. l. 16.
Chartham. p. 26. l. 20. of it in that composition. p. 27. l. 5.
rents and services. p. 29. l. 7. find it in. l. 28. to the Tenant,
better. l. 31. Fremfeld. p. 30. l. 27. not alienable. p. 31. l. 21.
Gamelletum. l. 25. Hervicus. p. 34. l. 10. rather say. l. 14.
malam. l. 18. firmam. l. 20. construe. p. 36. l. 2. Counties. p. 37.
l. 9. the which word. p. 38. l. 18. woruldcunde. *ibid.* eorpcunde.
l. 27. of former times. p. 39. l. 13. Herlewinum. p. 55. l. 21. of
times. p. 58. l. 14. æquivalentem. p. 72. l. 4. reteined. p. 83. l.
ult. construe it thus. p. 96. l. 2. Salvo. p. 117. l. 4. Drofmannus.
p. 119. l. 8. Demesne. p. 123. l. 6. those and succeeding. p. 142.
in marg. L. 1. ff. si ag. p. 162. l. 24. And as it is. p. 175. l. 1.
priori. *ibid.* in marg. Burgor. apud Scotos.

Some literal and such like other smaller faults there are, be=
sides mis-pointings: which being as easily amended as obser=
ved, are therefore here pretermitted.

<Some copies of this book have six extra leaves inserted among
the preliminaries. Four leaves are inserted into quire a, between
a2 and a3. Two are inserted into quire A, between A2 and A4,
taking the place of A3. (The removal of leaf A3 resulted in the
disappearance of the 'Postscript'. Probably Somner wanted it to
be copied onto page <12>, the verso of the last new leaf, but
that did not happen.) These interpolations are not connected;
conceivably there may be some copies of the book which have
only one of them, not both. The first contains the 'epistle dedi=
catory' addressed to John Warner (from whom, as we discover
here, Somner had been receiving an allowance since he became
unemployed); the second contains an addition to the preface, re=
joicing over the king's now-imminent return. – C.F. April 2011.>