

“An Ald Reht”

“An Ald Reht”:
Essays on Anglo-Saxon Law

By

Carole Hough

**CAMBRIDGE
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P U B L I S H I N G

“An Ald Reht”: Essays on Anglo-Saxon Law,
by Carole Hough

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To my mother,
and to the memory of my father

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PREFACE

These thirteen essays explore aspects of the legal system of Anglo-Saxon England, with a particular focus on the interpretation of individual laws and their implications for the position of women in society. They represent a programme of research carried out over the last two decades, building on each other to offer insights into the operation of English law from its beginnings in the sixth century through to its preservation in manuscripts dating from the tenth to early twelfth. As in many areas of Anglo-Saxon studies, the approach is inter-disciplinary, bringing together historical, linguistic and palaeographical evidence in order to advance our knowledge of this formative stage in the development of the English legislative tradition.

Part I is designed to outline major issues with regard to the promulgation, purpose and significance of the law-codes, and to provide a context for what follows. The first essay offers an introduction to the legal corpus, presenting an overview of the extant legislation from the Anglo-Saxon period alongside other types of legal documents such as charters and wills. The second essay discusses the relationship between secular and ecclesiastical law, and the third examines seventh-century legislation as evidence for the status of women in early Anglo-Saxon England. This essay draws substantially on revisionist interpretations of individual laws, presented in full in the eight essays comprising Part II. Finally, Part III focuses on manuscripts, arguing that the deployment of individual letter-forms, and of numerals as opposed to words, reflects the influence of different exemplars, and hence throws light on the relationships between different copies of the laws.

I have tried to avoid tampering too much with the original texts of the essays, since as Patrick Wormald has pointed out, 'Reprinted work that differs significantly from its original form sows bibliographical confusion'.¹ Nevertheless, it has been good to have an opportunity to make minor revisions and updates, particularly to the references. Two important books that have been published since the majority of essays in Part II first appeared are Wormald's *The Making of English Law: King*

¹ P. Wormald, *Legal Culture in the Early Medieval West: Law as Text, Image and Experience* (London and Rio Grande, 1999), p. xvi.

Alfred to the Twelfth Century. volume I: Legislation and its Limits (Oxford: Blackwell, 1999), and Lisi Oliver's *The Beginnings of English Law* (Toronto: University of Toronto Press, 2002). Both will already be familiar to many readers of this book, and are recommended to others. An immensely useful resource is the Early English Laws website at <http://www.earlyenglishlaws.ac.uk/>, which includes much relevant information as well as images of manuscript folios written before 1225 containing law-codes.

Several of the essays, including the fourth, which is published here for the first time, were originally presented as conference papers, and I am grateful to the audiences for lively discussions and insightful comments. My debts to individual academic colleagues are too many to list, so I shall mention here only three: Christine Fell, who first inspired and supported my interest in Anglo-Saxon law; Patrick Wormald, who provided advice and encouragement over many years; and Daria Izdebska, who took on the task of preparing these essays for publication and whose meticulous standards are evidenced on every page of the resulting book. Any remaining errors are my sole responsibility.

Glasgow, November 2013

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1. *A Companion to Anglo-Saxon Literature*, edited by Phillip Pulsiano and Elaine Treharne (Oxford: Blackwell, 2001), pp. 170–187.

2. *Anglo-Saxon Studies in Archaeology and History* 11 (2000), 133–141. Copyright (2000) School of Archaeology, Oxford University, and author.

3. *Nottingham Medieval Studies* 51 (2007), 207–230. University of Nottingham.

5. *Anglia: Zeitschrift für englische Philologie* 119.4 (2001), 554–578. Berlin and Boston: De Gruyter, <http://www.degruyter.com/view/j/angl>.

6. *Journal of English and Germanic Philology* 98.1 (1999), 1–16. Copyright 1999 by the Board of Trustees of the University of Illinois. Used with permission of the University of Illinois Press.

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8. *Nottingham Medieval Studies* 37 (1993), 1–6. University of Nottingham.

9. *Neuphilologische Mitteilungen* 98.1 (1997), 43–51. Modern Language Society of Helsinki.

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11. *Nottingham Medieval Studies* 41 (1997), 1–12. University of Nottingham.

12. *Scriptorium* 55.1 (2001), 57–79. Bruxelles: Centre d’Etude des Manuscrits.

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PART I:
LAW AND SOCIETY

1.

LEGAL AND DOCUMENTARY WRITINGS

First published 2001: *A Companion to Anglo-Saxon Literature*, ed.
P. Pulsiano and E. Treharne (Oxford: Blackwell), 170–187.

1. Introduction

A substantial corpus of legal and documentary writings survives from Anglo-Saxon England in the form of law-codes, royal diplomas and writs, and non-royal charters such as leases, records of dispute settlements, memoranda and wills. Produced for different purposes and at different times and places, this heterogeneous body of material comprises a range of different types of evidence. The law-codes, issued by English kings from the seventh to the eleventh centuries, are essentially prescriptive, tabulating legal norms or aspirations which may or may not reflect actual contemporary practice. Diplomas, writs and other charters are more descriptive, illustrating various aspects of the working of the legal system as it applied in particular situations. Most evidence relating to criminal law is preserved in law-codes and records of dispute settlements, while civil matters such as land ownership and grants of privileges appear in diplomas, writs and leases. As regards social class, the law-codes make provision for all ranks of society from kings to slaves, whereas diplomas and writs deal primarily with the upper classes, as to a lesser extent do wills. Diplomas are characteristically written in Latin, laws, writs and wills in the vernacular; but not all are extant in their original form, and some survive only in much later copies or translations. Each of these major categories of source material presents its own difficulties, but each preserves important and unique insights into the structure of law and society during the Anglo-Saxon period.

2. Law-Codes

The earliest Anglo-Saxon legislation is represented by three law-codes produced in Kent during the seventh century and uniquely preserved in the

twelfth-century *Textus Roffensis* manuscript (Medway Archive and Local Studies Centre, MS DRc/R1).¹ The first was issued by King Æthelberht (r. c. 580–616) following his conversion to Christianity, a legislative act inspired by the Roman mission under Augustine according to Bede's account in *Historia ecclesiastica* II.5:

Qui inter cetera bona quae genti
suae consulendo conferebat,
etiam decreta illi iudiciorum
iuxta exempla Romanorum cum
consilio sapientium constituit;
quae conscripta Anglorum
sermone hactenus habentur et
obseruantur ab ea. In quibus
primitus posuit, qualiter id
emendare deberet, qui aliquid
rerum uel ecclesiae uel episcopi
uel reliquorum ordinum furto
auferret, uolens scilicet
tutionem eis, quos et quorum
doctrinam susceperat, praestare.

Among other benefits which he
conferred upon the race under
his care, he established with the
advice of his counsellors a code
of laws after the Roman
manner. These are written in
English and are still kept and
observed by the people. Among
these he set down first of all
what restitution must be made
by anyone who steals anything
belonging to the church or the
bishop or any other clergy;
these laws were designed to
give protection to those whose
coming and whose teaching he
had welcomed.²

The phrase *iuxta exempla Romanorum* 'after the Roman manner' has caused some problems since the extant code shows no signs of Roman influence; but it has been suggested that Bede was referring either to the Roman practice of written law, a cultural innovation introduced through the medium of the Church,³ or to the Romano-Christian ideology responsible for establishing the king's role in maintaining law and order and enforcing religious standards.⁴ Most recently, D. R. Howlett presents an analysis of the code as a ten-part structure 'presumably in imitation of the Decalogue', and argues that the arrangement of Æthelberht's laws

¹ *Textus Roffensis: Rochester Cathedral Library Manuscript A.3.5. Part I*, ed. P. H. Sawyer, Early English Manuscripts in Facsimile 7 (Copenhagen, 1957).

² *Bede's Ecclesiastical History of the English People*, ed. B. Colgrave and R. A. B. Mynors (Oxford, 1969), pp. 150–1.

³ W. A. Chaney, 'Aethelberht's Code and the King's Number', *American Journal of Legal History* 6 (1962), 161–77, at 151.

⁴ P. Wormald, 'Lex Scripta and Verbum Regis: Legislation and Germanic Kingship, from Euric to Cnut', *Early Medieval Kingship*, ed. P. H. Sawyer and I. N. Wood (Leeds, 1977), pp. 105–38.

exhibits Biblical style attributable to the influence of the missionaries.⁵ Apart from the first section, which deals with offences against the new religion, the code may have been based largely on earlier, oral legislation, issued for the first time in written form. The hierarchical structure, progressing in sequence through laws relating to the church, the king, *eorl* and *ceorl*, followed by a personal injury tariff and sections dealing with women, servants and slaves, suggests a codification of existing law rather than legislation in the initial stages of enactment, while close parallels with continental Germanic law testify to a common origin in an established legal tradition. An oral origin may also help to explain the lack of chapter numbers in the extant manuscript. Whereas later Anglo-Saxon law-codes are divided into numbered clauses in the *Textus Roffensis* as in other manuscript witnesses, the Kentish laws are written consecutively, with clause divisions indicated by the use of initials. This may reflect an original conception not as a written text but as a spoken utterance, where the visual clues provided by chapter numbers would be irrelevant.

A temporal link between the promulgation of the laws in written form and the arrival of the missionaries is supported not only by Bede's statement, but by references to the church in the opening sequence of clauses and by a rubric assigning the laws to the time of Augustine. Although the rubric is not original, having been added to the twelfth-century manuscript in a later hand, it may, as J. M. Wallace-Hadrill suggests, derive from a lost prologue similar to the preambles preceding other English and continental legislation, and would therefore suggest a *terminus ad quem* of 604 or 609, depending on alternative traditions of the date of Augustine's death.⁶ The issue of the appropriate penalty for robbing a church, the topic of the opening section of Æthelberht's code, is raised in question 3 of the *Libellus responsionum*, a letter purportedly written by Gregory the Great in 601 in response to questions raised by Augustine,⁷ and this is usually taken to indicate that the laws were then in the process of being drawn up. F. Liebermann therefore dated the code to c. 602/3.⁸

This dating was challenged by H. G. Richardson and G. O. Sayleson on the grounds that with the exception of the first article, the code shows no signs of Christian influence and could well pre-date the arrival of

⁵ D. R. Howlett, *British Books in Biblical Style* (Dublin, 1997), pp. 257–62.

⁶ J. M. Wallace-Hadrill, *Early Germanic Kingship in England and on the Continent* (Oxford, 1971), p. 39.

⁷ *Historia ecclesiastica* I, 27.

⁸ *Die Gesetze der Angelsachsen*, ed. F. Liebermann, 3 vols. (Halle. 1903–16) III, 2.

Augustine.⁹ Dismissing the opening section as an interpolation and claiming that Æthelberht was never actually converted to Christianity, they proposed that the laws may have been issued earlier in his reign, belonging to the late sixth century rather than the early seventh. Their hypothesis is not widely accepted by present-day scholars, but the suggestion that the opening section may be spurious is regularly revived, most recently by Patrizia Lendinara.¹⁰ Supporting evidence is generally adduced from stylistic differences between Æthelberht 1 and the rest of the code, and from the fact that theft from the Church is penalized more heavily than theft from the king, requiring higher amounts of compensation than are compatible with Gregory's instructions to Augustine in *Libellus responsionum* 3, where simple restitution alone is required. Neither point, however, stands up to scrutiny. First, provisions relating to compensation for the church and its officials cannot have been drawn up until after the arrival of the missionaries, so they would inevitably be written in a different style from laws that were already in existence orally. Second, excessive amounts of restitution to the church are a recurrent feature of early legislation. Ch. 6 of the second series of Alamannic laws, issued during the early eighth century, demands restitution of twenty-seven times the amount stolen from a church,¹¹ while ch. 1.3 of the mid-eighth-century Bavarian laws demands restitution of between nine and twenty-seven times.¹² In England, the early-eighth-century *Theodore Penitential* book 1, sect. 3.2, directs that money stolen from a church is to be repaid fourfold, from a layman twofold, again contravening Gregory's instructions.¹³ Æthelberht's code is therefore far from exceptional in this respect. It should also be noted that although numbered as a single clause in modern editions, regulations regarding restitution to the church are set out in the manuscript as seven separate provisions, whose cumulative weight is less easy to set aside than an isolated edict. The fact that this section was already present in the copy of Æthelberht's laws available to Bede in the early eighth century further reduces the likelihood that it is not original.

⁹ H. G. Richardson and G. O. Sayles, *Law and Legislation from Æthelberht to Magna Carta* (Edinburgh, 1966), pp. 1–9.

¹⁰ P. Lendinara, 'The Kentish Laws', *The Anglo-Saxons from the Migration Period to the Eighth Century: An Ethnographic Perspective*, ed. J. Hines (Woodbridge, 1997), pp. 211–43, at p. 236.

¹¹ *Leges Alamannorum*, ed. K. A. Eckhardt, *Monumenta Germaniae Historica*, Legum sectio I: Leges nationum Germanicarum 5.1 (Hanover, 1966), 74.

¹² *Lex Baiwariorum*, ed. E. von Schwind, *Monumenta Germaniae Historica*, Legum sectio I: Leges nationum Germanicarum 5.2. (Hanover, 1926), 270–2.

¹³ *Councils and Ecclesiastical Documents Relating to Great Britain and Ireland*, ed. A. W. Haddan and W. Stubbs, 3 vols. (Oxford, 1869–73) III, 179.

It may be helpful to approach the discrepancy between Æthelberht 1 and *Libellus responsionum* 3 from another angle. Rather than playing a part in the drafting of Æthelberht's laws, Gregory's ruling on theft may have been issued in response to the unacceptable provisions of the opening section, a possibility raised briefly by Wallace-Hadrill.¹⁴ Recent work on the *Libellus* itself, addressing the issue of why Augustine asked the questions to which Gregory sends his considered answers, may support this view. In an important article on the implications of the *Libellus* for missionary activity in southern England, Rob Meens points out that Augustine is unlikely to have been unfamiliar with church doctrine on matters such as ritual purity, the topic of questions 8 and 9, and suggests that the questions were raised because of points of difference between the British and Roman Churches.¹⁵ A similar explanation may underlie question 3 on theft from a church. It is equally unlikely that Augustine would have been unfamiliar with church doctrine concerning theft, so it seems reasonable to deduce that here too what he required was not information but authority. Whether this was also necessitated by a challenge from the British Church, or by an excess of enthusiasm on the part of the compilers of the opening section of Æthelberht's code, the logical conclusion is that the *Libellus* in fact post-dates the promulgation of this sequence of laws. I would therefore suggest that the code as a whole must have been issued before rather than after 601, the most likely dating parameters being c. 599–600.

The second series of Kentish laws represents the only legislation to survive in the joint names of two Anglo-Saxon kings: Hlothhere, who succeeded his brother Egbert (664–73) to reign from 673 or 674 to 685, and Egbert's son Eadric, who defeated his uncle in battle in February 685 but held the throne only until an invasion by Cædwalla of Wessex in the following year. It is uncertain whether the laws were actually issued jointly. Alternative possibilities are that Eadric may have reissued during his own reign laws previously drawn up by Hlothhere, or that the extant series was compiled later from laws originally issued separately by each king. However, since there is evidence to support a tradition of joint kingship in Kent,¹⁶ it is perhaps most likely that Eadric was associated

¹⁴ Wallace-Hadrill, *Early Germanic Kingship*, p. 40.

¹⁵ R. Meens, 'A Background to Augustine's Mission to Anglo-Saxon England', *Anglo-Saxon England* 23 (1994), 5–17.

¹⁶ B. A. E. Yorke, 'Joint Kingship in Kent c. 560 to 785', *Archæologia Cantiana* 99 (1983), 1–19; *Charters of St Augustine's Abbey Canterbury and Minster-in-Thamet*, ed. S. E. Kelly, Anglo-Saxon Charters 4 (Oxford, 1995), 195–203.

with his uncle for part of the latter's reign, and that the laws were issued during a period of amity between the two rulers.

It is clear from the preamble that the laws of Hlothhere and Eadric were intended not as a self-contained code but as a supplement to the existing body of Kentish legislation:

Hloþhære 7 Eadric Cantwara
cyningas ecton þa æ, þa ðe
heora aldoras ær geworhton,
ðysson domum þe hyr efter
sægeþ.¹⁷

Hlothhere and Eadric, kings of
the people of Kent, augmented
the laws which their predecessors
had made by these decrees
which are stated hereafter.

Æthelberht's laws were therefore still in force. The new series is again largely concerned with financial compensation, providing fuller details of procedural matters than the earlier code. The opening sequence, dealing with manslaughter committed by an *esne* (chs. 1–4), follows almost directly on from clauses concerning the unfree towards the end of Æthelberht's code. A widow's right to custody of her children, briefly alluded to in Æthelberht 79,¹⁸ is here reaffirmed with additional information on the age of majority and the role of the paternal kin (ch. 6). Information is provided on the value of the Kentish *wergild* (chs. 1 and 3), as well as on procedures for law-suits (chs. 5, 7–10) and on violations of a householder's *mund* (chs. 11–14). Introduced for the first time is a concern with trade, relating both to merchants and others visiting Kent, and to Kentish men buying goods in London (chs. 15–16).

Æthelberht's code was further supplemented by a third series of Kentish laws issued by King Wihtred (691–725) in 695. In contrast with the essentially secular legislation of Æthelberht and of Hlothhere and Eadric, the emphasis throughout Wihtred's code is on establishing Christian principles and strengthening the position of the church. The church is exempted from taxation and allocated a *mundbyrd* equal to that of the king (chs. 1 and 2). Illicit cohabitation is prohibited (chs. 3–6), penalties are established for working on the Sabbath or eating during a fast (chs. 9–11, 14–15), and for the first time, laws are issued forbidding heathen practices, that is, making offerings to devils (chs. 12 and 13). In chs. 16–24, the legal status of different ranks of the clergy is specified, and

¹⁷ *Gesetze*, ed. Liebermann I, 9.

¹⁸ C. Hough, 'The Early Kentish "Divorce Laws": a Reconsideration of Æthelberht, chs. 79 and 80', *Anglo-Saxon England* 23 (1994), 19–34, reprinted in this volume.

a communicant is allowed to swear an oath of greater value than a non-communicant.

The Kentish laws offer many difficulties of interpretation, partly because they represent a stage of the language for which little other evidence survives. Æthelberht's code comprises not only the beginning of legislative tradition in Anglo-Saxon England, but the earliest extant text in Old English. As Patrick Wormald demonstrates, its simplicity of syntax corresponds to a very primitive state of prose writing, with some 75 per cent of clauses representing simple conditionals.¹⁹ A more sophisticated phraseology is found in the laws of Hlothhere and Eadric and of Wihtred, reflecting a developing prose style which offers little support for a recent suggestion that the extant version of all three codes may represent a translation from an original Latin text.²⁰ Given, however, that the continental Germanic law-codes are in Latin, it remains uncertain why the vernacular was used in England. Wormald suggests the possibility that 'in England (as in Ireland) there was no one with the knowledge of Latin to bridge the gap between local custom and Latin vocabulary',²¹ but as Susan Kelly points out, Theodore and/or Hadrian were resident in Kent at the time when the later seventh-century law-codes were produced.²² The archaic vocabulary of all three codes, containing a high proportion of *hapax legomena*, presents a number of interpretational cruces, and these are exacerbated by the cryptic wording of the laws, which assume a pre-existing knowledge of the circumstances and tend to state baldly the amount of compensation due in a particular situation without specifying who is to pay it or to whom. This lack of clarity has led to much uncertainty concerning the application of individual laws, and is in part responsible for the current polarization of opinions concerning the position of women in early Anglo-Saxon England, with one group of scholars believing that women paid and received compensation on their own behalf, while another concludes that a male relative or guardian must have been responsible for all such transactions.

Roughly contemporary with Wihtred's legislation are the laws of the West Saxon King Ine (688–725/6), extant only as an appendix to the late-ninth-century *domboc* of Alfred the Great, but originally issued

¹⁹ P. Wormald, "'Inter cetera bona ... genti suae": Law-Making and Peace-Keeping in the Earliest English Kingdoms', *Settimane di studio del Centro italiano di studi sull'alto medioevo* 42 (1995), 963–93, at 969–70.

²⁰ Lendinara, 'The Kentish Laws'.

²¹ Wormald, '*Lex Scripta* and *Verbum Regis*', p. 115.

²² S. Kelly, 'Anglo-Saxon Lay Society and the Written Word', *The Uses of Literacy in Early Mediaeval Europe*, ed. R. McKitterick (Cambridge, 1990), p. 57.

between 688 and 694. These are much less coherently structured than the Kentish codes, with several topics treated more than once; and it is possible, as Wormald suggests, that the extant compilation represents six individual sets of laws.²³ In this case, the dating evidence, based on a reference in the preamble to a bishop known to have died by 694 (Bishop Erconwald), would apply only to the first set (chs. 1–27), so that Ine's other laws may have been issued at any time up to the end of his reign in 725 or 726. It is uncertain to what extent they were edited by Alfred prior to inclusion with the composite *domboc*, but since a number of provisions are included which clash with Alfred's own,²⁴ there is a reasonable probability that Ine's laws have been reproduced in their entirety. A degree of co-operation between the kingdoms of Wessex and of Kent is reflected in a clause which appears in almost identical form in Ine 20 and Wihtrud 28, stating that a stranger who leaves the road and neither shouts nor blows a horn may be killed with impunity on the assumption that he is a thief. Although sometimes taken as evidence of borrowing from one code to the other,²⁵ the fact that the clause is concerned with travellers, possibly from one kingdom to another, seems rather to reflect a reciprocal agreement between the two rulers.

No other regional law-codes have survived; and unless some of Ine's laws do indeed date from the latter part of his reign, no Anglo-Saxon legislation is extant from the eighth century or the first three-quarters of the ninth. From the late ninth century onwards, however, Anglo-Saxon kings became prolific legislators. The first national code was issued c. 887–93 by Alfred the Great, and survives in six manuscripts, the earliest being the mid-tenth-century Cambridge, Corpus Christi College 173. It is possible that, like Alfred's translation of Pope Gregory's *Cura pastoralis*, copies were distributed to various parts of his kingdom for consultation by the local authorities.²⁶ This would account for a number of references to the *domboc* in later codes, to which Simon Keynes draws attention.²⁷ Its practical value, none the less, must have been very limited. In all extant manuscripts, the combined laws of Alfred and Ine are prefaced by a lengthy translation of Mosaic law and are divided into 120 chapters to

²³ Wormald, ‘“Inter cetera bona ...’, 977–83.

²⁴ C. Hough, ‘Alfred's *Domboc* and the Language of Rape: a Reconsideration of Alfred, ch. 11’, *Medium Ævum* 66 (1997), 1–27, at 2–3, reprinted in this volume.

²⁵ Richardson and Sayles, *Law and Legislation*, p. 13.

²⁶ S. Keynes, ‘Royal Government and the Written Word in Late Anglo-Saxon England’, *The Uses of Literacy in Early Mediaeval Europe*, ed. R. McKitterick (Cambridge, 1990), pp. 226–57, at p. 232.

²⁷ *Ibid.* p. 233.

reflect, as Wormald argues, a symbolic unity between the Israelites and the Anglo-Saxons as the chosen races of God.²⁸ The chapter-divisions are illogical in terms of subject matter, and would have made it difficult to use the *domboc* for any practical purpose; but the symbolic value of 120 as the age of Moses the Lawgiver and as the number of members of the early Church evidently took precedence over functional considerations. There is in fact reason to believe that the Anglo-Saxon law-codes were not primarily intended for practical use. Not only are they highly selective and occasionally inconsistent, as with the discrepancies between the Alfred/Ine sections of the *domboc*, but there is little evidence that they were actually consulted in courts of law. Wormald points out that none of the Anglo-Saxon charters recording judicial decisions makes any reference to the written texts,²⁹ and Katherine O'Brien O'Keefe draws attention to two documented cases where the written law was evidently not put into effect.³⁰ The law-codes do not represent legislation in the modern sense, but served a symbolic purpose, establishing the role of the king as law-giver. As Simon Keynes and Michael Lapidge comment in connection with Alfred's *domboc*, 'The act of law-making was a public display of a king's royal power, and provided an opportunity for him to express his political and ideological aspirations in legal form'.³¹ It was a matter not simply of legislative content but of image-building.

The symbolic function of law-making helps to explain why so many Anglo-Saxon kings issued law-codes, even when they were essentially reiterating existing legislation. The extant body of Anglo-Saxon law is highly repetitive, with many clauses reproduced either exactly or in modified form in later codes, and it is likely that the preservation of early texts was often due to their potential use in the drafting of new laws. At least two series of laws were issued by Alfred's son Edward the Elder (c. 900–25), six by Alfred's grandson Æthelstan (c. 925–39), three by Edmund (c. 939–46), four by Edgar (c. 959–63), ten by Æthelred (c. 978–1014), and two by the Danish conqueror Cnut (c. 1020–3), many of whose laws, like those of his predecessor Æthelred, were drafted by Archbishop Wulfstan of York.³² Not all represent royal codes as such,³³

²⁸ Wormald, 'Lex Scripta and Verbum Regis', p. 132.

²⁹ Wormald, "'Inter cetera bona ...', 122.

³⁰ K. O'Brien O'Keefe, 'Body and Law in Late Anglo-Saxon England', *Anglo-Saxon England* 27 (1998), 209–32, at 228–9.

³¹ S. Keynes and M. Lapidge, *Alfred the Great: Asser's 'Life of King Alfred' and Other Contemporary Sources* (London, 1983), p. 39.

³² D. Whitelock, 'Wulfstan and the Laws of Cnut', *English Historical Review* 63 (1948), 433–52, reprinted in her *History, Law and Literature in 10th–11th Century*

and not all survive in their entirety. For instance, fragments only are extant of IX and X Æthelred, while III and IV Æthelstan, III Edmund, and IV Æthelred are preserved only in an early twelfth-century Latin translation of Anglo-Saxon law known as *Quadripartitus*, recently discussed in detail by Wormald.³⁴ Some codes have been lost altogether. These include treaties relating to the northern and eastern parts of England mentioned in II Edward 5.2, and laws issued to enforce the Christian religion by Æthelberht's grandson Eorcenberht (r. 640–64), now known only from a passing reference by Bede in *Historia ecclesiastica* III.8.

No legislation is extant from the kingdoms of Mercia or Northumbria, although Alfred claims in the Preface to his own law-code to have drawn on the laws of Offa of Mercia as well as those of Æthelberht of Kent and Ine of Wessex:

49.9. Ic ða Ælfréd cyning þás
 togædere gegaderode 7 awritan
 het, monege þara þe ure
 forengan heoldon, ða ðe me
 licodon; 7 manege þara þe me ne
 licodon ic áwearp mid minra
 witenra geðeahte, 7 on oðre
 wisan bebedad healdanne.
 Forðam ic ne dorste geðristlæcan
 þara minra awuht fela on gewrit
 settan, forðam me wæs uncuð,
 hwæt þæs ðam lician wolde ðe
 æfter ús wæren. Ac ða ðe ic
 gemette awðer oððe on Ines
 dæge, mines mæges, oððe on
 Offan Mercna cyninges oððe on
 Æþelbryhtes, þe ærest fulluhte
 onfeng on Angelcynne, þa ðe me
 ryhtoste ðuhton, ic þa heron
 gegaderode, 7 þa oðre forlét.³⁵

I then, King Alfred, gathered
 these together and ordered to be
 written many that pleased me of
 those which our forefathers kept;
 and I rejected many of those that
 did not please me with the
 advice of my councillors, and
 ordered them to be kept in a
 different way. I did not dare
 presume to set in writing many
 at all of my own, because I did
 not know what would please
 those who should come after us.
 But I collected herein those that I
 found which seemed to me most
 just, either from the time of my
 kinsman Ine, or of Offa, king of
 the Mercians, or of Æthelberht,
 who first received baptism
 among the English, and I
 omitted the others.

England (London, 1981); D. Whitelock, 'Wulfstan's Authorship of Cnut's Laws', *English Historical Review* 70 (1955), 72–85, reprinted in her *History, Law and Literature in 10th–11th Century England*, (London, 1981).

³³ Keynes, 'Royal Government and the Written Word', pp. 235–42.

³⁴ P. Wormald, "'Quadripartitus'", in *Law and Government in Medieval England and Normandy: Essays in Honour of Sir James Holt*, ed. G. Garnett and J. Hudson (Cambridge, 1994), pp. 111–47.

³⁵ *Gesetze*, ed. Liebermann I, 46.

No trace of Offa's laws has survived, unless, as Wormald suggests, Alfred was referring not to a vernacular law-code but to an extant Latin capitulary of twenty canons dating from 786.³⁶ The capitulary was presented by papal legates to a synod held by Offa under their auspices, and has a number of points in common with some of Alfred's own laws. For instance, there are striking parallels between the treatment of marriage and inheritance in the fifteenth and sixteenth canons and in Alfred 8, one of three clauses in the *domboc* to contain Mercian vocabulary.³⁷ This in itself, however, seems to point to the existence of an intermediate text in the vernacular. Furthermore, Wormald's suggestion that Offa's laws may have taken a different form from 'a code in the mould of Æthelberht's, Ine's and Alfred's own'³⁸ may allow insufficient weight to the political value of such a code. Wormald himself has done much to demonstrate the prestige-value of early legislation as a reflection of 'the ideological aspirations of Germanic kingship',³⁹ and since both Kent and Wessex had already produced written legislation, it would be surprising if Mercia had not taken the opportunity to do the same. Although some at least of the Mercian laws mentioned in Alfred's Preface may have borne a close resemblance to the capitulary of 786, this does not preclude the existence of a separate law-code. Possibly the papal legates took existing legislation into consideration when drafting their canons for the Mercian people: alternatively, as Whitelock, Brett and Brooke suggest, the laws of Offa may well have been influenced by the legatine decrees.⁴⁰

Apart from any of Offa's laws that may be represented in the 786 capitulary or in Alfred's *domboc*, the only records of either Mercian or Northumbrian legislation are preserved in short texts known as *Norðleoda Laga* 'Law of the North people' and *Mircna Laga* 'Law of the Mercians'. These form part of a group of unofficial texts concerned with social rank and *wergild* values, apparently compiled by Archbishop Wulfstan during the early eleventh century. In the same group are *Gephyncðo* 'Rank', *Að* 'Oath', and *Hadbot* 'Compensation for offences

³⁶ P. Wormald, 'In Search of King Offa's "Law-Code"', *People and Places in Northern Europe 500–1600: Essays in Honour of Peter Hayes Sawyer*, ed. I. Wood and N. Lund (Woodbridge, 1991), pp. 25–45. The capitulary is published in *Alcuini Epistolae*, ed. E. Dümmler, *Monumenta Germaniae Historica, Epistolarum Karolini Aevi* 2 (Frankfurt, 1895), no. 3.

³⁷ *Councils and Synods with other Documents Relating to the English Church: I. AD 871–1204*, ed. D. Whitelock, M. Brett and C. N. L. Brooke, 2 vols. (Oxford, 1981) I, 18.

³⁸ Wormald, 'In Search of', p. 43.

³⁹ Wormald, '*Lex Scripta and Verbum Regis*', p. 106.

⁴⁰ *Councils and Synods*, ed. Whitelock et al. I, 18.

against people in holy orders'. Marriage law is documented in another unofficial text known as *Be Wifmannes Beweddunge* 'On the betrothal of a woman', also generally dated to the late tenth or early eleventh century despite close parallels with a sequence of laws dealing with the marriage contract in the seventh-century code of Æthelberht. Both state that a payment is to be made by the prospective bridegroom (Æthelberht 77; *Wif* 2); both refer to the *morgengifu*, or property granted by the bridegroom to the bride (Æthelberht 81; *Wif* 3), both specify the amount of property to which the woman will be entitled if her husband dies first (Æthelberht 78; *Wif* 4); and both stipulate that the widow's inheritance rights are to be reduced on remarriage (Æthelberht 80; *Wif* 4). Comparison of the two texts would suggest that marriage law remained remarkably stable throughout the Anglo-Saxon period.

The same cannot be said of Anglo-Saxon law in general. In other respects, there are fundamental differences between the seventh-century law-codes and those of later kings. Crimes are increasingly regarded as offences against society rather than against individuals, leading to a change of emphasis from the compensation of victims to the punishment of offenders. The principle of straightforward financial redress which underlies much of Æthelberht's legislation is replaced by punitive fines, capital punishment and mutilation. Thus whereas the penalty for theft in Æthelberht's code ranges from twofold to twelvefold restitution depending on the status of thief and victim (chs. 1, 4, 9, 28, 90), the same offence under Wihtred is punishable by slavery or death (chs. 26–8), and under Ine by slavery, death or mutilation (chs. 7, 12, 37). By the time of King Alfred, anyone who stole from a church might lose his hand (ch. 6), while IV Æthelstan 6 provides for a thief to face death by drowning if a free person, and by stoning or burning if a slave. An effective illustration of changing attitudes is provided by the treatment of adultery in seventh- and eleventh-century law. According to Æthelberht 31, the adulterer has to pay a *wergild* (whether his own or that of the woman or her husband is unclear), and also to meet the financial costs of acquiring a second wife for the wronged husband. Under II Cnut 53, on the other hand, the guilty woman forfeits all her property to her husband, and loses her nose and ears.

3. Charters

Like the practice of written legislation, charters were introduced to England by the church during the seventh century. Characteristically written in Latin on a single sheet of parchment, their initial purpose was

to record a grant of land or of privileges by the king to a religious house, and to act as the title-deed for the estate of 'bookland' thereby created. These royal grants are known as 'diplomas', a term which also includes confirmations of earlier grants by later kings. Gradually, however, charters came to be used for a wider range of purposes, including grants to laymen, records of dispute settlements, memoranda, and over a hundred extant leases, some of which are in the vernacular. The vernacular was also used for the boundary clauses of diplomas, identifying the extent of the estates granted and exchanged. These are of the first importance in the study of land use and administration, and often contain early forms of place-names otherwise recorded only in post-Conquest sources.

Out of *c.* 1,100 extant diplomas, about two hundred survive in their original single-sheet form, preserving crucial evidence for the study of Anglo-Saxon script and manuscript production. The rest comprise later copies, often entered into cartularies, and these can be difficult to distinguish from forgeries fabricated in support of a spurious claim to land or privileges, some of which may include genuine elements. Indeed, the authenticity even of single-sheet versions can only be verified through close study of palaeographic, linguistic and diplomatic features.⁴¹ Scholarly opinion in respect of individual charters is summarized by P. H. Sawyer,⁴² whose total of 1,539 entries (excluding bounds and lost or incomplete texts) includes not only the royal diplomas issued in Latin by Anglo-Saxon kings, but also the various other types of charters to be discussed below. A new edition of the entire corpus is currently in progress.⁴³ All will be cited by the number assigned to them in Sawyer's catalogue, abbreviated as S.

⁴¹ P. Chaplais, 'Some Early Anglo-Saxon Diplomas on Single Sheets: Originals or Copies?', *Journal of the Society of Archivists* 3.7 (1968), 315–36, reprinted in *Prisca Munimenta*, ed. F. Ranger (London, 1973), pp. 63–87.

⁴² *Anglo-Saxon Charters: An Annotated List and Bibliography*, ed. P. H. Sawyer, Royal Historical Society Guides and Handbooks 8 (London, 1968). A revised version is now available at <http://www.esawyer.org.uk>.

⁴³ *Charters of Rochester*, ed. A. Campbell, Anglo-Saxon Charters 1 (London, 1973); *Charters of Burton Abbey*, ed. P. H. Sawyer, Anglo-Saxon Charters 2 (London, 1979); *Charters of Sherborne*, ed. M. A. O'Donovan, Anglo-Saxon Charters 3 (Oxford, 1988); *Charters of St Augustine's Abbey Canterbury and Minster-in-Thanel*, ed. S. E. Kelly, Anglo-Saxon Charters 4 (Oxford, 1995); *Charters of Shaftesbury Abbey*, ed. S. E. Kelly, Anglo-Saxon Charters 5 (Oxford, 1996); *Charters of Selsey*, ed. S. E. Kelly, Anglo-Saxon Charters 6 (London, 1998); *Charters of Abingdon Abbey, Part 1*, ed. S. E. Kelly, Anglo-Saxon Charters 7 (Oxford, 2000); *Charters of Abingdon Abbey, Part 2*, ed. S. E. Kelly, Anglo-Saxon Charters 8 (Oxford, 2001); *Charters of the New Minster*, Winchester,

The date at which charters were first produced in England is uncertain. The earliest authentic examples date from the 670s, but display a variety of formulas which suggests that the charter tradition was already well established and beginning to diversify. It is fully possible that earlier documents may have been lost, and although circumstantial evidence points to Archbishop Theodore as the instigator, a case has also been made for Augustine.⁴⁴ It is even possible that the origins of the charter tradition are to be sought outside the Roman mission. As with the law-codes, the majority of early records are from the south of England, weighting the evidence in favour of a connection with the Italian church; but Wormald⁴⁵ argues for a more diverse origin, including both Frankish and Celtic influences, and this view may be supported by recent work highlighting the role of the Frankish and British churches in the conversion process.⁴⁶

The structure of the royal diploma is heavily formulaic, characteristically beginning with an invocation, followed by a religious proem, the grant itself, a sanction, boundary-clause, dating-clause and witness-list. There are many variations from this norm, however, and distinctive groups of charters have been identified, such as the ‘alliterative’ type of the 940s and 950s, and the ‘Dunstan B’ type of the mid-tenth century. Characteristic features of the former include a rhythmical style with much alliteration,

ed. S. Miller, *Anglo-Saxon Charters 9* (Oxford, 2001); *Charters of St Paul’s*, London, ed. S. E. Kelly, *Anglo-Saxon Charters 10* (Oxford, 2004); *Charters of Malmesbury Abbey*, ed. S. E. Kelly, *Anglo-Saxon Charters 11* (Oxford, 2005); *Charters of St Albans*, ed. J. Crick, *Anglo-Saxon Charters 12* (Oxford, 2007); *Charters of Bath and Wells*, ed. S. E. Kelly, *Anglo-Saxon Charters 13* (Oxford, 2007); *Charters of Peterborough Abbey*, ed. S. E. Kelly, *Anglo-Saxon Charters 14* (Oxford, 2009); *Charters of Glastonbury Abbey*, ed. S. E. Kelly, *Anglo-Saxon Charters 15* (Oxford, 2012); *Charters of Northern Houses*, ed. D. A. Woodman, *Anglo-Saxon Charters 16* (Oxford, 2012); *Charters of Christ Church Canterbury, Part 1*, ed. N. P. Brooks and S E Kelly, *Anglo-Saxon Charters 17* (Oxford, 2013); *Charters of Christ Church Canterbury, Part 2*, ed. N. P. Brooks and S. E. Kelly, *Anglo-Saxon Charters 18* (Oxford, 2013).

⁴⁴ P. Chaplais, ‘The Origin and Authenticity of the Royal Anglo-Saxon Diploma’, *Journal of the Society of Archivists* 3 (1965), 48–61, reprinted in *Prisca Munimenta*, ed. F. Ranger (London, 1973), pp. 28–42; P. Chaplais, ‘Who Introduced Charters into England? The Case for Augustine’, *Journal of the Society of Archivists* 3 (1969), 526–42, reprinted in *Prisca Munimenta*, ed. F. Ranger (London, 1973), pp. 88–107.

⁴⁵ P. Wormald, *Bede and the Conversion of England: the Charter Evidence*, Jarrow Lecture (1984), pp. 13–19.

⁴⁶ Meens, ‘A Background to Augustine’s Mission’; I. Wood, ‘The Mission of Augustine of Canterbury to the English’, *Speculum* 69 (1994), 1–17.

the use of the third person rather than the first, and some unusual inclusions in the witness-lists. This group appears to be associated with Bishop Cenwald of Worcester, who appears in all examples with full witness-lists. The ‘Dunstan B’ charters, produced between about 951 and 975 and using a diplomatic protocol apparently developed by Abbot Dunstan for the Glastonbury scriptorium, begin with a dating-clause instead of an invocation or proem, and share a preference for particular formulas to introduce the boundary-clause and witness-list, and for the attestation.⁴⁷

By the later Anglo-Saxon period, writs had also come into use. Generally much shorter than diplomas and written in the vernacular, these were sealed letters intended to be read out to the shire court or other official meeting, announcing changes in land ownership and the like. Some 120 writs survive, six of them in their original form. Characteristic features include an opening protocol which names the sender and the addressee(s) and contains a greeting. Although writs are extant only from the eleventh century, the occurrence of a similar protocol at the beginning of King Alfred’s Preface to his translation of Pope Gregory’s *Cura pastoralis* suggests that they were already current in England by the late ninth, and this is confirmed by a reference to an *ærendgewrit* in a passage interpolated by Alfred into his translation of St Augustine’s *Soliloquia*.⁴⁸

Up to the end of the ninth century, royal charters appear to have been drawn up at religious houses by ecclesiastical scribes acting on behalf of the beneficiaries. Thus Kentish charters were produced at Rochester and at Christ Church, Canterbury, and Mercian charters at Worcester. The situation during the tenth and eleventh centuries is less clear. There is evidence for some form of centralized production from the 930s and 940s, and much discussion has focused on the putative existence of a royal chancery. On the one hand, the case that charters continued to be produced in ecclesiastical scriptoria has been strongly made by Pierre Chaplais.⁴⁹ On the other hand, the view that a central agency attached to the king’s household was responsible for the production of royal diplomas and writs

⁴⁷ S. Keynes, ‘The “Dunstan B” Charters’, *Anglo-Saxon England* 23 (1994), 165–93.

⁴⁸ F. E. Harmer, *Anglo-Saxon Writs* (Manchester, 1952), pp. 10–11.

⁴⁹ Chaplais, ‘The Origin and Authenticity’; P. Chaplais, ‘The Anglo-Saxon Chancery: From the Diploma to the Writ’, *Journal of the Society of Archivists* 3 (1966), 160–76, reprinted in *Prisca Munimenta*, ed. F. Ranger (London, 1973), pp. 43–62; P. Chaplais, ‘The Royal Anglo-Saxon “Chancery” of the Tenth Century Revisited’, *Studies in Medieval History Presented to R. H. C. Davis*, ed. H. Mayr-Harting and R. I. Moore (London, 1985), pp. 41–51.