CHAPTER II.1

Authority and community

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England between the late ninth and twelfth century suffered more conquests than any other western European kingdom of the period. Despite the disruption and dislocation caused by events which contemporaries perceived as catastrophes, the kingdom during these three centuries saw the development of structures of power – the state, aristocracy, families, and rural and urban customs – that shaped the lives of its inhabitants, a population numbering close to 2 million at least in 1087. These structures determined much of what the English people did not only by laying out the boundaries for action, but also by compelling it. Everywhere one looks in western Europe, kings ruled through their own agents and, by controlling their aristocracies, reached into the lives of their subjects, provoking comparable praise and complaints. Viewed close up, however, England appears remarkably distinct.

Our understanding of the actions of governments, lords, families and even slaves must rest on a broad understanding of the authority and practices which the different elements of English society enjoyed or to which they were subjected. At a fundamental level, the power behind both authority and actions could work *de iure* or *de facto*. A king or lord, for example, had power to direct others to do or not to do certain things, while those so directed possessed a more limited ability to negotiate their own compliance or to resist. Power in its operation could be thus both institutional and personal: lords qua lords could control the lives of their peasants, but individual lords might do this to very different degrees, regardless of customary limits. How, or rather where, to study power, then, is a principal methodological problem, since most choices of sources, situations or social levels would cover only some of its manifestations.

Of all the evidence, however, law provides unique access to the exercise of authority. There are a number of reasons for this. First, the laws were often issued by deliberative assemblies and therefore are the best evidence we have for the kingdom's norms expressed as policy. Law-making

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in medieval England was reiterative and consultative. It mattered to kings and their *witan* or council to speak on matters of law and justice in almost every reign, and often much more than just once. Sources like chronicles and charters can show whether certain laws were successfully implemented or obeyed, but these sources have limited scope, addressing only those things that concerned people writing accounts of individual cases or gathered at a specific time and place to witness the resolution of a single issue. Second, the laws we have may very well be all the legislation that was ever produced by England's kings and their assemblies, while other sources were less likely to survive in anything like a representative sample. All sources, however, must be used to sketch the norms that governed behaviour, their enforcement and the responses this elicited. Third, law reveals the intentions of the powerful, the actions of their agents and the consequences to, and, at times, the response of, the people. It can also tell something of how people themselves structured their lives. Last, while law does not define all the parameters of power, nevertheless, in its creation and operation it tells us more about these parameters than any other aspect of a culture because it cuts across all the different ways of defining people: free and unfree, male and female, child and adult, tenants and lords, families and kin groups, clergy and laity, lords and agents, rulers and ruled.

This chapter, then, will approach authority and community initially from the standpoint of law. It will first address the creation of law by rulers, along with changes made over time to the system of justice responsible for applying that law. Then it will explore these enforceable and enforced norms for the elite and non-elite families in war or in peace. Next, the crucial social bonds used to ensure enforcement are surveyed. Last, the chapter assesses the spread and scope of royal power among the English.

LAW-MAKING IN ACTION: THE ASSEMBLIES AND CODES OF WOODSTOCK AND WANTAGE

With so much variety in the ideas about legal authority presented in law codes and in practice, and visible developments in these ideas over several centuries in a polity that endured several conquests, it seems wise to start with a pair of related events that typify the workings of law and spell out some crucial social norms. We begin, therefore, with two closely related law-giving assemblies that take us quickly into the exercise of power in medieval England. Both of these assemblies met very probably in the year 997. This year was untypical in that it was a rare good year in the reign

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of King Æthelred II (978–1016). Æthelred had survived a surfeit of bad councillors during his minority, and then the military cataclysms of the early 990s, to enjoy as a mature ruler something approaching a peaceful kingdom. Viking raiders had left after his treaty in 994 with Olaf Tryggvasson (king of Norway, 995–1000), and, except for sporadic attacks along the southwestern coast, they were not, for the time being, a menace. Æthelred had shed the bad councillors who had misled him in the 980s, and raised up others who, though relatives, were also seasoned in government and war, supporters of monastic reform and expansion and, in some individual cases, writers and patrons of writers.[1]

In 997, Æthelred summoned his *witan*, or council, first to Woodstock, and later to Wantage, both within twenty miles of Oxford. We know little about what took place at Woodstock other than the issuance of the code enacted for *friðes bote* (public security) in areas ruled by English law.[2] We know only slightly more about the activities of the Wantage assembly. The king and his councillors not only issued a code similarly for public security, but also sought to resolve 'issues in contentious cases'.[3] The king repaired relationships strained during the bad days of his youth by, for example, returning expropriated land to the Old Minster, Winchester, in repentance for his wrongful acts in the past. It seems clear that the Wantage code was the fraternal twin of the one issued at Woodstock. It was a code that was meant to do for the Scandinavian-settled north what the Woodstock code did for southern England and western Mercia.

Together, these are typical pieces of legislation. They are not long codes, nor unusually short: combined, they are of similar size to King Edgar's (959–75) final legislation two decades before. But where Edgar's last code had attempted something more comprehensive, raising issues ranging from the obligations of tenants to pay rent to the quasi-independence of Danish-settled areas to fix their own customs, both Woodstock and Wantage codes focused on narrow points. Æthelred could very well have done the same as his father. There were certainly issues he had had to deal with over the previous five years since his last law code, his treaty with the Vikings led by Olaf. But there is nothing of geld, military service, the violence of groups or treason here.

[1] Simon Keynes, *The Diplomas of King Æthelred the 'Unready', 978–1016* (Cambridge, 1980), pp. 163–97.

[2] All citations to the Woodstock and Wantage codes are from A. J. Robertson, ed., *The Laws of the Kings of England from Edmund to Henry I* (Cambridge, 1925), pp. 52–5, 64–71.

[3] P. H. Sawyer, *Anglo-Saxon Charters: An Annotated List and Bibliography* (London, 1968), no. 891 (K 698).

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Instead, Woodstock and Wantage focused on particular problems arising from lords' relations to their men, and from all men's obligations, that mattered to the practice of justice. Its point of focus is the particular operations of royal justice that depended on the suretyship of lords over their households and the suretyship witnessing obligations between freemen. It is on these obligations that the administration of justice, and consequently the preservation of order and peace, depended. The arena where these obligations were fashioned was the assemblies called by kings; they were put into practice in England's public courts, evolving institutions during this period.

THE EXERCISE OF AUTHORITY

Assemblies summoned by kings did not just mark moments of importance in the political history of their reigns, but also served as the key fora in which broad socially significant issues, and not just law-making, were aired and resolved.[4] Not all or even most assemblies issued laws, and the law-giving ones are probably disproportionately represented among the meetings of the king's *witan* of which we know. Instead, the usual business of assemblies included judicial hearings, election of prelates, grants of land or rights, as well as discussions of events, policies and foreign relations. Such assemblies would normally have in attendance the majority of the kingdom's prelates, who presided over shire courts, as well as important abbots. Earls and thegns would be there in significant numbers. Occasionally charters give us some of the names of attendees. The importance of these meetings is that they were the principal venue for politics in a kingdom whose kings needed advice and support from their elites. Some were regular occurrences – like the three each year at which, according to later reports, the king wore his crown. Others were ad hoc – Wantage and Woodstock may fall into this category – called up to treat matters of the moment.

The impact of assembly decisions was felt in the courts, which were just emerging under royal control during this period. The tenth century starts with our having only a hazy notion of what courts folk should gather at to regulate behaviour. The courts themselves developed slowly, starting with the order of Edward the Elder (899–924) that reeves preside over their courts regularly, which most likely refers to incipient hundred

[4] Timothy Reuter, 'Assembly politics in western Europe from the eighth century to the twelfth', in P. Linehan and J. L. Nelson, eds., *The Medieval World* (London, 2001), pp. 432–50.

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courts, the foundation of the medieval judicial system. According to our most detailed source, the *Libellus quorundam insignium operum beati Æthelwoldi episcopi* (The small book of certain remarkable labours of the blessed Bishop Æthelwold), reflecting the legal scene around late tenth-century Ely, there is little royal presence in these or other courts; justice was primarily a local matter. The politics of law rather than the nature of cases seem to have determined venue. When people were tried in criminal matters, they were able to buy their freedom with targeted gifts.[5]

By 1200, that dim picture has been replaced by a clear view of a hierarchy of structured courts, overlapping jurisdictions and increasing oversight through sheriffs as well as local and itinerant justices. Between 900 and 1200, these courts increased in number and regularity. By the late twelfth century, there were in place not only hundred courts, but also courts of shire and borough, itinerant justices holding pleas, ecclesiastical courts dealing with matters of morals and wills and honorial courts which lords held for their tenants. There may also have been courts of 'ridings' in Yorkshire and Lincolnshire, though these appear too infrequently in the sources to allow their functions to be observed in any detail. Hundreds and shires sometimes combined to create super-courts when cases merited larger assemblies. Even if tenth-century kings such as Athelstan and a late twelfth-century Angevin monarch like Henry II had a similar power of life and death over subjects, the means by which they could wield this power through courts and royal agents had expanded markedly by the late twelfth century.

In those county or shire courts, as well as in the hundred and borough courts, only the best men attended to hear and decide cases. Such men were the 'best' or 'better' men in the eyes of their neighbours, but also, probably, in the eyes of those who supervised the courts. Attendance became a regular obligation for the thegns and more substantial freemen of the hundreds and shires. In the late tenth century, one description of the workings of the hundred courts tells how the men of the hundred had to assemble 'without fail every four weeks' in order to do justice to one another.[6] In the early twelfth century, again, they continued to be compelled to attend 'the county and hundred courts as they did in the time of King Edward' (1041–66).[7] Such attendance would serve to reinforce the sense of royal control of the courts. The number of those assembling was

[5] Alan Kennedy, 'Law and litigation in the *Libellus Æthelwoldi episcopi*', *ASE*, 24 (1995), 131–83, at 135–6, 140–2, 152.

[6] Robertson, *Laws*, 16–17 (Hu 1).

[7] Robertson, *Laws*, 286–7 (Hn com 4).

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large and the scope for business wide. Jurors, those who swore to facts in the courts, numbered in the thousands for the Domesday survey in 1086, and jurors were only a small minority of the assembled masses. An earlier account shows that these assemblies were more than judicial hearings to determine facts and verdicts. Instead, they were arenas for whatever needed to be done in public, whether a sale of livestock or the passing of property. They may also have been venues for sports such as horse-racing and wrestling.[8] Such courts then would be filled with accusers and those they fingered, their friends, family and dependants, men acting as sureties and witnesses and others, both men and women, along for the show.

Kings and lords grew adept at manipulating these gatherings, either through their agents or reeves, or through their commands which would be read out, in translation into vernaculars if necessary, to all who could hear. These were some of the principal venues where kings in particular made their power felt. Law and justice were the tools of power, and kings learned how to handle, sharpen and adjust them with greater confidence during this time. The laws issued acknowledge the king's right to speak the law, to determine any case (or to tell others to settle them) and to punish those who broke or ignored laws or judgments. From this perspective, there was less difference between the actions of tenth-century kings operating through their ealdormen and reeves, and twelfth-century rulers with their justices, sheriffs and lesser officials. What was different was the system's efficiency and, consequently, its profitability. The passage of time saw kings place under their gaze more aspects of the life of their subjects. It saw an increase in the number of agents whose job was to put the law into effect. This is not to say that in the tenth century royal agents were seen as benign because they were ineffective. The image of these agents was, when expressed in writing, almost always negative, and that cannot just be a bias of the source genres. Ælfric (*c.* 950–*c.* 1010) thought reeves who perverted justice would end up in hell, while Henry of Huntingdon a century and a half later said reeves were 'more frightful than thieves and robbers'.[9]

Such a description of the workings of an imperfect system of justice may leave the impression of a static system with only its rough edges

[8] Aliki Pantos, 'The location and form of Anglo-Saxon assembly-places: some "moot points"', in Aliki Pantos and Sarah Semple, eds., *Assembly Places and Practices in Medieval Europe* (Dublin, 2004), p. 166.

[9] Richard Morris, ed., *The Blickling Homilies of the Tenth Century* (EETS 58, 63, 73; London, 1874–80; repr. as one vol., London, 1967), p. 61; Henry of Huntingdon, *Historia*, ed. and trans. Diana Greenway (Oxford, 1996), pp. 402–3.

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smoothed over time. That may have been the view of the English who attended those increasingly regular courts. From the king's perspective, however, the law changed every time he intervened. Earlier laws like Alfred's (late 880s to early 890s) had a stronger rhetorical frame than later laws, and modern historians have argued that Alfred's code in particular was part of the king's attempt to create the English as one people.[10] Alfred situated his laws in the genealogy of biblical laws and the laws of his predecessors, all to reinforce his code's authority as well as identify the English as a new Israel.[11] It is a perhaps an unanswerable question whether Alfred's royal power created not just a new chosen people, but also a new English identity, or whether he merely refashioned it, or just acknowledged its existence. It is one thing to point to the emergence of English identity in texts, and to attribute motives to the kings who issued them, and quite another to say whether such agendas mattered to anyone other than their creators.

Tenth-century laws are less rhetorical statements than some earlier and later codes, and, consequently, more descriptive of expected and actual practices. They reveal kings flexing their legislative muscles with some effect on the ealdormen, reeves and others who were meant to enforce the laws. If Alfred's laws may possibly have had great effect, his successor's laws more certainly did. One text from the reign of Æthelstan, known as the 'Judgements of the Citizens of London', looks very much like a set of local responses to royal enactments, including copies of the king's commands and his later amendments.[12] What also becomes clear in the run of legislation from Alfred to Cnut is that the king is becoming, through myriad agents, more of a necessary presence in matters of justice. By the end of the Anglo-Saxon period, there is good reason to believe that royal officials were in every court and had become critical to the workings of justice throughout the kingdom.[13]

While the Norman Conquest proved a cataclysmic event for English nobles and a catalyst for a downward slide of the peasantry, it had remarkably few consequences for the law as practised. The expectations of justice people had before 1066 continued for the most part afterwards – true for kings, lords and, to a lesser extent, peasants. This continuity was in large

[10] Patrick Wormald, '*Engla Lond*: the making of an allegiance', *Journal of Historical Sociology*, 7 (1994), 1–24; Sarah Foot, 'The making of Angelcynn: English identity before the Norman Conquest', *TRHS* 6th ser., 6 (1996), 23–49.

[11] *EHD*, i, 408–9. [12] *EHD*, i, 423–7 (VI As).

[13] James Campbell, 'Some agents and agencies of the late Anglo-Saxon state', in J. C. Holt, ed., *Domesday Studies* (Woodbridge, 1987), pp. 207–8 (repr. in James Campbell, *The Anglo-Saxon State* (London, 2000), pp. 210–11).

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part fuelled by the desire of the new kings and lords of the land to know every aspect of the land and its resources they had conquered in order to better exploit it according to its existing rules. The earlier courts remained in operation, with occasional adjustments by the new rulers. The appearance of seigniorial and separate ecclesiastical courts followed from trends already visible before the conquest. Mid-twelfth-century treatises on the law, such as the *Laws of Edward the Confessor* and the Anglo-French *Laws of William*, reflect the fact that law and its administration, its interests and mechanisms, passed relatively unscarred over 1066 and deep into the next century.

It may be that the new nobility was less bound by whatever sense of limits had governed the behaviour of English lords before 1066. Lordship under the Normans was arguably predatory.[14] At no time was this truer than during the reign of King Stephen (1135–54). The hallmarks of the period of his reign when his right to rule was challenged – scorched fields and villages, and, most visibly on the landscape, a plague of castles – were at times the actions of armies fighting in support of the two sides to this succession dispute between Stephen and Henry I's daughter, the Empress Matilda, and her son, the future King Henry II. England was during Stephen's reign after 1139 an armed land embroiled periodically in a war of attrition. More often, however, the depredations were the result of lords seizing opportunities created by the war to grow their retinues and expand the number of estates and peasants they controlled. The author of *The Peterborough Chronicle* tells us that 'every powerful man built his castles and held them against [the king] and they filled the country full of castles'.[15] Nevertheless, during these wars, royal government continued to operate, if at a slightly impaired level. Even rebel barons produced imitations of stable royal government in the regions they had seized.[16]

Henry II (1154–89) began what historians consider a major reform of law and its administration, creating a writ-based system for litigants seeking redress for wrongs, and putting his courts and men in charge. In particular, he is credited with initiating a system of public investigation of crimes. The Assizes of Clarendon (1166) and Northampton (1176) appear to have laid out an unprecedented scheme for investigating crime and punishing its perpetrators. On issues of land and landlords, there can be little doubt about the impact of the king's reforms. Elsewhere, such as in criminal law, there appears to be more continuity with the practices of

[14] Robin Fleming, *Kings and Lords in Conquest England* (Cambridge, 1991), pp. 183–214.
[15] *EHD*, ii, 199 (ASC 1137 (E)).
[16] Graeme J. White, *Restoration and Reform, 1153–1165: Recovery from Civil War in England* (Cambridge, 2000), pp. 17–49, 55–69.

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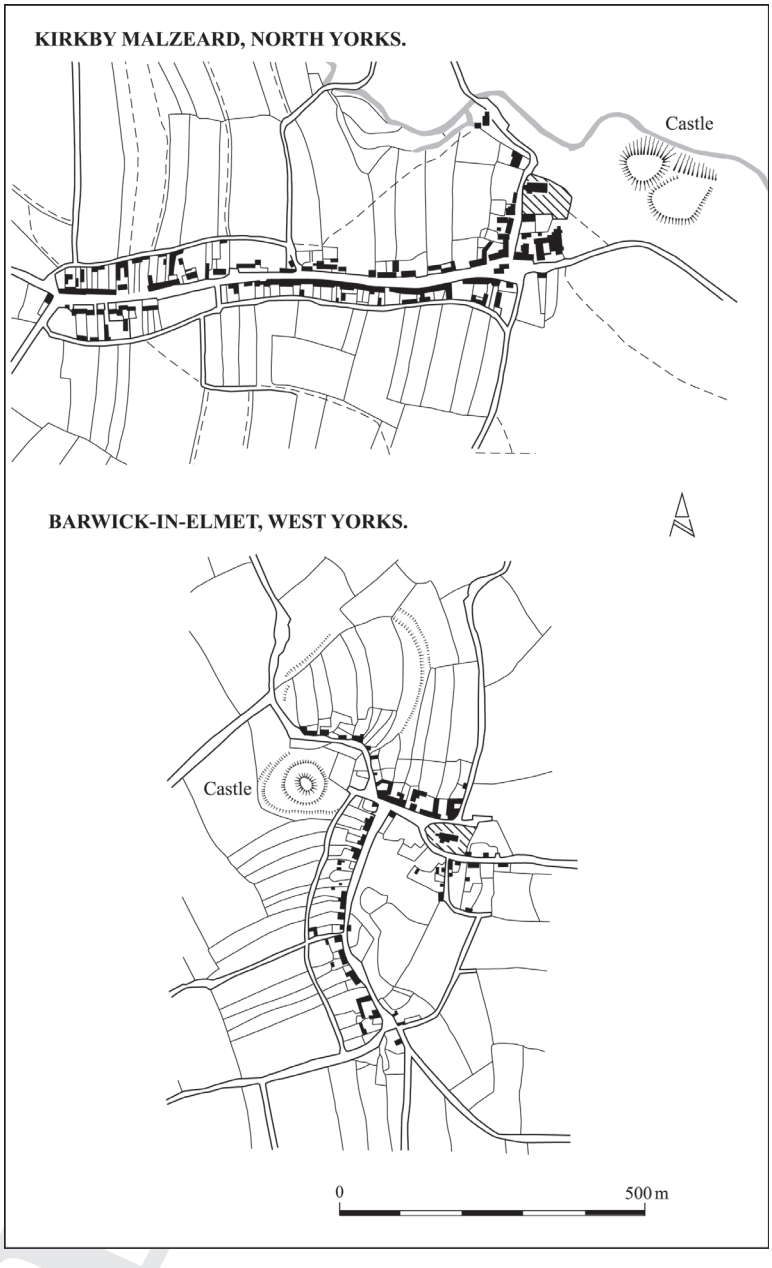

Figure 6 Examples of castles and planned lordships in Yorkshire.
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previous reigns than change to something altogether new. Even on the issue of the freeman's access to justice – that fundamental common law right – there should be some uncertainty over its scope and newness. The records of the administration of justice from before Henry II's reign were mostly private documents and were only in certain circumstances preserved, while Henry II's clerks oversaw the escalation of production of public records, many of which have survived.

LORDS AND THE REALITIES OF POWER

So far we have followed normative sources and charted structures as they were intended to operate. The reality of the people's experience of power through justice must have been rather different. Most of the English would have come into contact with the administration of justice not as suitors in courts, let alone as councillors of kings, but as law's victims or victimizers, participating in a system that could not reliably decide the guilt or innocence of the accused. Instead, courts ordered simple rituals to allow kin and friends to assert the truthfulness of both parties. Recourse to the ordeal was likely common. Almost all bishops, who often acted as judges, had books detailing how to conduct these modes of proof, and some of their texts show that both men and women were expected to undergo the terror of handling fire-heated irons or of being bound and submersed in water.[17] Execution pits must have been filled indiscriminately with the bodies of the innocent and the guilty (see Chapter II.3, Chapter II.6).[18]

During the entire period from 900 to 1200, the kingdom's lords were integral not just to the workings of justice, but also to the maintenance of the structures of English society, of which they constituted the top layer. So, those lords at the assemblies at Woodstock and Wantage who heard Æthelred's laws knew what they were about. They were the king's chief men. A charter issued at the assembly captures the elite nature of this group en masse. Both archbishops were there, along with twelve bishops, fourteen abbots, five ealdormen, and twenty-three men titled 'minister', by which the scribe meant thegn.[19] This was not everyone, just the most important, the most available and the most interested in this

[17] For example, the mid-twelfth-century bishop's pontifical holding ordeal manual that is now Oxford, Magdalen College, MS. Lat. 226, esp. fols. 208–16.

[18] On execution sites used before the twelfth century, see Andrew Reynolds, *Late Anglo-Saxon England: Life and Landscape* (Stroud, 1999), pp. 105–10.

[19] Sawyer, *Anglo-Saxon Charters*, no. 891. Data on almost all of the individuals in the witness list is most easily found in the Prosopography of Anglo-Saxon England database, www.pase.ac.uk.

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particular transaction between the king and Old Minster, Winchester. Attending assemblies like this one, and hearing kings issue laws like Æthelred's Woodstock and Wantage codes, was a normal, if not regular part of how lords helped establish the norms that governed their actions. The laws, charters, narratives of the period along with, most importantly, Domesday Book, tell us a great deal about who they were, what made them lords and what they were expected to do. Surprisingly, the stylized description of the thegn found in a text known as the *Rectitudines singularum personarum* (Rights and ranks of people), written by Wulfstan the Homilist (d. 1023), fits well enough with what is found in other sources and in excavated sites that it bears being quoted:

> Thegn's Law. The law of the thegn is that he be entitled to his book-right, and that he shall contribute three things in respect of his land: armed service, and the repairing of fortresses and work on bridges. Also in respect of many estates, further service arises on the king's order such as service connected with the deer fence at the king's residence, and equipping a guard ship, and guarding the coast, and guarding the lord, and military watch, almsgiving and church dues and many other various things.[20]

Another text written by Wulfstan tells us that someone entitled to the rights of a thegn had 'five hides of land … a bell and a castle-gate, a seat and special office in the king's hall'.[21] Some sites like Goltho in Lincolnshire were likely the estate residence of a thegn: fortified, with a gate, a hall, a chapel and more besides (see Chapter I.1).[22]

Thegns were usually royal servants, and held their status because of this. They were, then, both lords in their own right and king's men, and obligated to follow his commands. One aspect of lords' behaviour which kings regulated – included in both Woodstock and Wantage codes – was the lords' responsibility to be sureties for their men. Those in lords' households – which included everyone from simple servants and slaves to powerful but dependent landowners – could expect their lord to provide surety, which could result in the lord paying his men's wergilds if they fled rather than appear in court.[23] Such an obligation, along with its obverse of protection of his men, bound thegns and other lords tightly to those in their service. There were more and more thegns over time. Thegns in the eleventh century were becoming thicker on the ground as large estates

[20] *EHD*, ii, 813. [21] *EHD*, i, 468 (*Gepyncðo*).
[22] Guy Beresford, *Goltho: The Development of an Early Medieval Manor, c. 850–1150* (English Heritage Archaeological Reports, 4; London, 1987).
[23] *EHD*, i, 459 (II Cn 31).

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were broken up into smaller units consisting of land sufficient to support with tribute a single thegn and his family – usually about 5 hides or so, as we have seen. But thegns also multiplied because higher lords and especially kings found them useful. If anything, the Norman settlement increased their number.

These lords had other concerns, not mentioned in the laws. Inheritance was a matter of concern with them – if it was for others as well, there is little evidence of it. Land was one of the necessities for thegns to enjoy their status. Possession of large amounts of it was crucial for any lord who wished to have power. Before 1066, descent of property to some, or all, male and female heirs was negotiable. No favoured offspring could know what would come his or her way on a father's death. Consequently, the human geography of the elite was fluid. Even the highest members of the elite before 1066, the ealdormen, later called earls, held their earldoms at the pleasure of the king rather than as inherited titles tied to ancestral districts. Stephen Baxter's work has revealed just how precarious was the hold exercised by any earl over his earldom in the eleventh century.[24] The unpredictable nature of inheritance and office holding changed in the twelfth century, with the spread of primogeniture and the growing independence of titles from office.

Paradoxically, even as the number of lords increased, their world was becoming increasingly circumscribed by the power of kings. Visible during the whole period is the rising power of the king, both in the nature of the power he possessed and in its expanding geographical reach. Measuring the level of royal intervention or control, and assessing how much these changed between reigns, has been the major preoccupation of historians of law and government. A question asked less frequently is what any of these intrusions and changes would have meant for the average villager. Henry II, by one report, thought his reforms would bring justice to those 'least able to help themselves', which theoretically might seem a good thing.[25] Expanded and regularized courts, along with a more intrusive administration of law through royal agents and lords, would certainly have brought peasants within reach of royal agendas. A royal reeve in a village might be the point man for policies about crime, status and obligations, and by the eleventh century there is good evidence to suggest every village had a reeve. Whether other villagers appreciated the reeve's

[24] Stephen Baxter, *The Earls of Mercia: Lordship and Power in Late Anglo-Saxon England* (Oxford, 2007), pp. 66–7 (fig. 3.2).
[25] *EHD*, ii, 481 (Ralph de Diceto).

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work depended very much on whether local rapacious lords or equally acquisitive kings were viewed as a greater evil.

REGULATING THE FAMILY

Royal power had its limits, though it is better to see it in some areas as a customary discretion rather than a constitutional boundary. For example, royal power rarely intruded into the family, regardless of whether it could or could not. Its dictates on marriage are mostly about where it was thought inappropriate: among the clergy. Here perhaps more important than royal regulation were the norms governing Christian clergy. The ability of the Church to shape lives was present, but limited. Its concerns were mostly about lay and clerical morality (see Chapter V.2). People, however, continued their practices of religion, relied on charms and incantations to protect them from disease and sought the magic of the land, unaffected by the contempt of high clerics or the prohibitions of Church Councils. Ælfric, writing in the 990s, may have complained about people's reliance on magic, the casting of lots and the purveyors of folk medicine, but such criticisms seem not to have affected the patterns of life and belief of non-elite Christians. Matters as common and fundamental as marriage, abortion or the birth of children and parental responsibilities receive only halting attention in canons. Although there was earlier movement in this direction, it is only in 1076 that Lanfranc, an archbishop of Canterbury with Continental training in canon law, was able to require priests to bless marriages, mostly as a check on incestuous or coerced unions.[26] The overall focus of Church canons was in the promotion of endogamy and monogamy.[27] Continental canon law, which was increasingly discussing the broader issues of marriage, came only sparingly to England before 1066.

But families were undergoing strains during the period. Fundamental aspects of the elite family were changing, as a result particularly of the inroads made by the concept of primogeniture (see Chapter II.5). This had profound effects on the maintenance of power by families. The decline of the role of family and kin in law would have a greater impact on the workings of justice in the realm. Although they were undoubtedly present as supporters of family members involved in quarrels or lawsuits,

[26] *EHD*, i, 468 (Wif 8); *Councils and Synods*, i, 670.
[27] Conor McCarthy, *Marriage in Medieval England: Law, Literature and Practice* (Woodbridge, 2004), pp. 128–30.

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they are rarely named in the laws. Instead, royal attention was directed to regulating the participation of freemen by means of tithings, suretyship groups made up of anyone but slaves. Cnut's laws in the 1020s ordered every freeman who wanted the protections of the law to 'be brought, if he is over twelve years old, into a hundred or tithing'.[28] The old role of kin in disputes had been usurped by the rise of lordship and the expansion of royal power, and was in fact a critical part of that transformation by providing an analogue on which to base a more useful form of social bond. As kings increased their control of lords, so also their control of lords' dependants grew – these proved a more secure means of enacting royal will than operating through kin groups.

OBLIGATIONS OF WAR AND FEUD

Lords were also concerned with the obligations of warfare, and what they owed was spelled out with some care, principally in law codes, but also in charters, chronicles, sermons and poetry (see Chapter II.4). These obligations underwent a series of revolutionary shifts alongside gradual evolutions. In the ninth and early tenth centuries, warfare was for the elite, a standing army, rather than for peasants who became warriors when attacked. In such circumstances, those obligated to fight outside the *burhs* would have grown to recognize in one another a common bond, a bond reinforced by their general wealth and growing role in government. Kings weighed in on the obligations of war. They regulated heriots based on rank, spelled out what weapons a warrior was to have and maintained national taxes to pay for a standing army or to provide for exceptional military circumstances such as an impending invasion.[29] It is not clear how significant the changes were between the tenth century and the twelfth; for example, where earlier military service was tied to possession of an estate, later military service was directly linked to possession of a fief. One significant change lay in where war was taking place, a matter of concern to those obligated to fight. In the first half of the period, wars were principally defensive, fought by local levies against Vikings who had invaded England. In the second half, fighting was often done overseas or in Wales or Scotland, by men drawn from throughout the realm. The strains on resources and commitments caused by these expeditions were larger than those before 1066. The increasingly burdensome obligation

[28] *EHD*, i, 457 (II Cn 20).
[29] *EHD*, i, 465 (II Cn 71); ii, 416 (Assize of Arms, 1181); ii, 161 (ASC 1085 (E)).

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of military service began in the twelfth century to cause serious friction between king and lords.

Of course even those who were not required to fight would on occasion be swept up in warfare, or would witness organized violence at close hand. From Danish and Norman invasions, border raids by the Scots and Welsh and the low-level endemic violence typical of England's feuding society, something like warfare touched all parts of the kingdom at least once during this time. Some periods saw warfare widespread in certain regions. It is likely that we hear about only the most egregious attacks, most destructive raids or, in some cases, insignificant fights, the reports of which might fortuitously make their way to chroniclers. Here we depend on these writers' sensibilities to assess violence. It seems clear from the absence of stories about feuds, which must have been legion, that these chroniclers were selective and purpose-driven rather than representative recorders of all events in their proper proportion or indiscriminate chroniclers fed stories by serendipity.

Public war means something different from feud to us, but in England, from the perspective of those who witnessed the violence of groups, war and feud were hardly distinguishable (see Chapter II.4). Both war and feud imposed similar obligations – legal, customary and familial – on the people. The largest military event after the Norman Conquest and English defence, the crusades, in which the English participated, were seen by contemporaries as part of a great feud, with Christian armies seeking vengeance on those who had injured the Christian kin of the English in the Holy Land. While 'feud' may stir images of family against family, in the medieval context any enmity driven by vengeance was in essence a feud. Where feuds could be ended through deaths or through negotiations along with payments to right wrongs, so also wars. Both could be started on small, personal pretexts. Both could also be stratagems for renegotiating relationships. Both could get out of hand, or remain confined to active and willing participants. The feud begun in 1016 by the murder of Uhtred, earl of the Northumbrians, consumed many of the male descendants of three generations of his and his murderer's families as well as several score of their supporters.[30] Other feuds stayed small, with often only a single killing or injury before both sides removed to the courts, where private war could be conducted by legal means.[31] England's feuds and wars continue throughout the period. What is surprising is

[30] Christopher J. Morris, *Marriage and Murder in Eleventh-Century Northumbria: A Study of* 'De Obsessione Dunelmi' (Borthwick Paper 82; York, 1992), pp. 1–5.

[31] Paul R. Hyams, *Rancor and Reconciliation in Medieval England* (Ithaca, NY, 2003), pp. 189–215.

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that, despite how pervasive they appear to have been, we cannot now say what the full extent and impact of either was.

ENFORCING JUSTICE

The enforcement of justice was a particular concern of both royal government and local communities throughout the entire period (see Chapter II.3). This enforcement depended not just on the existence of courts that could issue judgments, but also on mechanisms that would compel those involved in cases to appear and accept those judgments. What complicated enforcement was the absence of anything resembling a police force to act as agents of courts. Further difficulties came from the still strong obligation of kin to support its members against their enemies in disputes, in or out of court.

Forcing accused and accuser into court required communal trust, some oversight (generally royal) and the various configurations of oath, witnessing and suretyship with which the English experimented uniquely at a kingdom-wide level. Oaths were the means by which parties asserted their facts to be true in cases, as well as accepted their obligation to act lawfully in general. Oath was central to the workings of justice, especially in the tenth and eleventh centuries. 'Each man', King Alfred commanded just before 900, 'shall keep carefully his oath and pledge.'[32] The earliest recorded oath by witnesses to the facts of a case was the Sandwich plea of 1127, when 'twenty-four wise old men full of years and having good testimony' swore that 'the toll of the port of Sandwich … [and other things] belong only to the archbishop and monks of Christchurch Canterbury'.[33] Only those in good standing in their communities were able to give oaths to either their own trustworthiness or to the facts of any matter before a court.

Acting as a witness to important events or transactions was another responsibility of all freemen in England. Witnessing provided accountability in an age without invoices to sales when theft appears to have been endemic. Æthelred's two codes of 997 dealt with this. It was already a subject treated in early laws and continued to claim a place in codes and treatises far into the twelfth century. The *Laws of Edward the Confessor*, a private treatise written just before the middle of the twelfth century, lays

[32] *EHD*, i, 409 (Af 1).
[33] Doris M. Stenton, *English Justice between the Norman Conquest and the Great Charter* (Philadelphia, 1964), pp. 118–21.

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out in detail how livestock that had been found was to be witnessed by priests, reeves and at least twelve of the 'better men' of the four nearest villages.[34] Witnessing involved popular reputation on one level, but also selection by authorities who chose to recognize that reputation. It was an act which, in the Domesday survey of 1086, many thousands of the English performed.

The last of the three mechanisms for enforcing norms, suretyship, occurred in several forms. Fundamentally, every freeman was responsible for other freemen. For practical purposes, the freemen usually were segregated into small groups who would be held responsible for their members' non-appearance in court and, in some cases, for the penalties imposed on one of its members who appeared, was found guilty but could not pay his fine. In Æthelred's Woodstock and Wantage codes, many clauses concern the regulation of suretyship. Woodstock begins with the order that 'every freeman shall have a trustworthy surety who shall hold him to the performance of every legal duty'.[35] Over the tenth and eleventh centuries, this type of suretyship developed into a system in which groups of ten or more men became a *friborh* or frankpledge, as it was later called. The concept of a suretyship group was imported into other arenas; an eleventh-century text speaks of surety groups responsible for the safe-keeping of a betrothed woman. Lords were similarly responsible: 'Every lord shall have his household in his own suretyship.'[36] This last case, however, makes visible the political aspect of suretyship, where lords could pressure courts in favour of their own men rather than merely wait for the results of a case and then fulfil any resultant financial obligation.

England was not a land with a common set of laws, even after the creation of the 'common law' in the twelfth and early thirteenth centuries. Regional or local custom mattered throughout the period. The Wantage code broadened and adjusted Woodstock's narrower precepts to apply to the situation in the Scandinavianized parts of the kingdom, known by the twelfth century as the Danelaw, conquered by Æthelred's predecessors over the previous century, regions that had never been part of any version of the kingdom of the West Saxons ruled by Alfred at his death in 899. However, for us to call northern and eastern England Scandinavian, or the Danelaw, in fact disguises our ignorance of whether the differences in social order found there had anything to do with the settlement of

[34] Bruce R. O'Brien, *God's Peace and King's Peace: The Laws of Edward the Confessor* (Philadelphia, 1999), pp. 182–5 (ECf 24).

[35] Robertson, *Laws*, 52–3 (1 Atr 1).

[36] Robertson, *Laws*, 54–5 (1 Atr 1.11).

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Scandinavian raiders, or were simply existing differences already found in the independent kingdoms of portions of Mercia, and all of East Anglia and Northumbria. The real differences between regions betray a kingdom where customs were local, but also where royal legislation, despite its sensitivity to these customs, attempted to intrude. Although the balance between local custom and royal law may have changed between 900 and 1200, nevertheless even at the end of the period one royalist legal writer, known commonly as Glanvill, could admit concerning common matters of criminal law, which was the most pervasive face of royal justice, that these cases 'are heard and determined according to the varying customs of different county courts', rather than under a uniform royal code.[37]

THE REGULATION OF LABOUR

The one group that had no standing in the great assemblies at Woodstock or Wantage, or for that matter at any major assembly of king and lords, were the agricultural and pastoral labourers of the kingdom, referred to collectively as the peasants. This group would have made up the overwhelming majority of the population during the entire period, but did not constitute an undifferentiated lower class. The categories into which they were divided are difficult to define. Labels like freeman or slave obscure the fact that most lived in some sort of dependent relationship with richer, more powerful people in a variety of circumstances that challenged the skills of even the Domesday commissioners, who, when tasked with their description, were able to visit the shires and ask questions of witnesses. While these commissioners were required by the king to identify only 'villagers, cottagers and slaves' in their inquest, they soon added the missing 'bordars' (*bordarii*) to their list, a group that itself made up over a quarter of the population of the shires they visited and who were domestic servants as well as part of the general peasant labour force.[38] Pre-Conquest regulations under which peasants lived do not always match up comfortably with either Domesday categories or later descriptions. A further problem of identification comes from the fact that peasants were not restricted to rural areas, but also lived in towns in a time when urban centres of all sorts maintained tight relationships with the surrounding countryside (see Chapter III.1). The best

[37] *The Treatise on the Laws and Customs of England Commonly Called Glanvill*, ed. G. D. G. Hall (Oxford, 1993), p. 177 (xiv. 8).
[38] H. C. Darby, *Domesday England* (Cambridge, 1977), appendix 3.

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approach to the problem of defining the social status of the lower classes is to set aside the towns for the moment (see Chapter III.4) and make a general survey of the rural peasantry, those who were more free as well as less free, and to characterize them in relation to their varying burdens. As the early eleventh-century estate description called the 'Rights and Ranks of People' admitted, the burdens on peasants varied: 'at some places … it is heavier, at some places, also, lighter, because not all customs about estates are alike'.[39]

The scope of the burdens depended in part, according to one modern model, on whether the peasants lived on 'warland', land that paid a national tax, or 'inland', the land directly exploited by landlords.[40] Those living on inland were the most hobbled by custom, which burdened them with the physical work needed to run a farm. These peasants included not only those who ploughed and harvested, but also estate craftsmen and those needed in food and ale preparation. What marked them as different from warland peasants was the fact that they were bound to their estates, unable to seek new lords and fresh opportunities. One wealthy woman in tenth-century Wessex asserted that because 'she owned both stock and men', she could grant to the nuns at Shaftesbury 'the peasants [*gebura*] who dwell on the rented land', while the bondsmen [*þeowra manna*] went to her son's daughter.[41] Warland peasants, if not bound to the soil, were responsible for a number of what could be onerous obligations. Some were public burdens, like repairing and maintaining bridges and fortifications; others were of a more personal nature, such as serving lords and king in any number of ad hoc tasks like carrying messages or goods from place to place. While inland peasants paid no *gafol*, tribute, for their land, the warland peasants did. It is important to recognize, however, that much as English estates before the Norman conquest depended on their peasant labour force to plough and harvest, these estates may, in the words of Rosamond Faith, 'have remained for a long time seigneurialized islands in a landscape still largely occupied by the holdings of independent peasant farmers'.

It took the Norman Conquest to change the relationship between authority and labouring people. The break-up of larger estates into individual manors, a remarkable growth in population and the increasing needs of the new lords to get what they could from these small estates

[39] *EHD*, i, p. 814.

[40] This paragraph is much indebted to Rosamond Faith, *The English Peasantry and the Growth of Lordship* (London, 1997), chs. 3 and 4. The quotation below is from p. 177.

[41] Dorothy Whitelock, ed., *Anglo-Saxon Wills* (Cambridge, 1930), pp. 12–13 (no. 111).

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meant in the long run that peasants of all types, including slaves, were pushed into a more or less single class of agricultural labour which could be more easily coerced. There were checks on this reduction of the labour force: Baxter identifies the bargaining power of village communities, the force of custom and some residual mobility by peasants as the means by which peasants might resist. This resistance, however, merely slowed the pace of change rather than reversed it. By the middle of the twelfth century, less than a century after the conquest, free peasants had been reduced in rights and found themselves fixed with new burdens, while slavery all but disappeared, assimilated into this new, relatively homogeneous peasant class. It was not runaway slaves, but all peasants whom Henry I ordered his agents early in his reign to find and bring back to the abbey of Abingdon.[42]

Regulation of slaves appears only rarely in sources (see Chapter II.6). Kings included them occasionally in their codes; the single reference to the penalties for slaves who failed the ordeal is the only place slaves appear in Æthelred's Woodstock and Wantage codes. Such inattention is typical of all normative texts from the period, and is not surprising. The legal status of slaves was not far from that of chattel at the beginning of the period, and whatever rights they acquired in the following centuries at best raised them to the level of the ever-sinking peasantry. They could own property, marry free persons, serve as guarantors of sales and, at the end of the period, merit the protection of wergild and other fines which would be imposed on their killers. These rights are recorded in prescriptive texts; in reality, the incentive to uphold them would rest not on the wishes of the kingdom's law-makers, but on their lord's calculation of their value. The early twelfth-century *Laws of Henry I* says that if a lord's slave killed another slave, the lord could either pay the wergild and fines for the slave, hand the slave over to the lord of the victim or shed financial liability by releasing the slave from service, which would likely result in the slave's death at the hands of his victim's lord or kin.[43]

One issue concerning treatment of slaves which English kings and the clergy tried to change reveals the limits of the coercive authority of both the episcopate and the state. Bishops attacked in sermons and canon law the sale of native Christian slaves out of the kingdom. Æthelred, Cnut and William I, urged on by their clergy, repeatedly banned the practice.

[42] John Hudson, ed., *The History of the Church of Abingdon* (2 vols.; OMT; Oxford, 2002–7), ii, pp. 120–3.
[43] L. J. Downer, ed., *Leges Henrici Primi* (Oxford, 1972), pp. 218–21 (cc. 70.3, 70.5a).

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Nevertheless, in the late eleventh century the trade flourished, most notoriously in the port city of Bristol, where, according to one contemporary, the slave trade was so ingrained that 'neither love of God nor fear of King William had hitherto been able to abolish it'. This fear of the king may be overstatement; the same contemporary witness tells us that William I 'enjoyed a share of the profits from this traffic'.[44] Bishop Wulfstan II of Worcester (1062–95) famously fought against the Bristol trade and had some local success, abolishing it 'gradually' and even inspiring the former slavers to blind one of their number who refused to stop the trade. If stopped in Bristol, it nevertheless continued elsewhere. The Council of Westminster in 1102 banned the trade entirely, though this act had no measurable effect.[45] If kings like William I, and bishops such as Wulfstan of Worcester, tried to end the overseas trade, they did not make any attempt to abolish the institution of slavery within the kingdom. Slavery was thriving in southern England at the time of the Domesday survey and dominating the agricultural labour force in some counties (see Chapter II.6). Nevertheless, before the middle of the twelfth century, it was virtually gone. For the legal treatise writer known as Bracton, writing in the mid-thirteenth century, slavery was an academic subject, immediately followed in his treatise with a discussion of women who give birth to prodigies and babies with six fingers.

The most persuasive explanation for this disappearance is that lords found it more expensive to use slave rather than peasant labour on their estates. Slaves required upkeep and had less incentive to work hard. Peasants, on the other hand, looked after themselves – more and more the further away we move from the year 1000. While slavery might already have been in decline before 1066, this accelerated significantly once acquisitive Norman lords began to press their estates for all they could get out of them. Given these forces, a dependent labour force other than slaves was the most attractive economic option available to lords. What is striking here is that one of the signature social transformations of the period occurred, apparently, without the support or opposition of royal power.

[44] William of Malmesbury, *Life of Wulfstan*, c. 20, in William of Malmesbury, *Saints' Lives: Lives of SS. Wulfstan, Dunstan, Patrick, Benignus and Indract*, ed. M. Winterbottom and R. M. Thomson (OMT; Oxford, 2002), pp. 100–1; William of Malmesbury, *Gesta Regum Anglorum*, ed. and trans. R. A. B. Mynors, R. M. Thomson and M. Winterbottom (2 vols.; OMT; Oxford, 1998–9), i, pp. 496–9 (iii.269.2).

[45] *Councils and Synods*, i, 2, 687.

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No brief survey of the role and effects of kings, lords and laws on themselves as well as on the peasantry can do justice to the complexities of the social situations in England. Major movements or trends might be invisible in some sources, and can only be teased out by detailed analysis. The following chapters will do just that.

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