© Copyrighted Material

Chapter 12

Pre-Conquest Laws and Legislators in the Twelfth Century*

Bruce O'Brien

The early twelfth century has received a good deal of attention from English legal historians because the texts and manuscript copies of Anglo-Saxon law codes produced before *c.*1125 can be used as evidence both for pre-Conquest law and for the impact of the Norman Conquest on English law. The late twelfth century is conversely a neglected period in the history of Anglo-Saxon law codes, despite the large number of Latin, Anglo-French and English texts created or copied between *c.*1150 and *c.*1200 which claim or were thought to represent the law in England before 1066. There are cogent reasons for this neglect. Scholars looking for records to show the consequences of the Conquest on law would say that they did not need to look beyond the evidence provided by the retrospective and present-minded creations of the post-Conquest period to c. 1150, and certainly not at the later copies of these same sources, except when these were needed to produce editions. Those interested in the developing law of the late twelfth century would aver that they were interested in texts that were statements of contemporary law, and especially texts of Henry II's assizes, the treatise known as *Glanvill*, charters, and fiscal and judicial rolls, which allowed them to study the stages of the careful crafting of the new system known to us as the common law. The later-twelfth-century copies of Anglo-Saxon laws satisfy neither interest. They appear to be late and derivative memorials of pre-Conquest law and self-evidently disengaged from contemporary legal developments. It is not an unreasonable conclusion that these late copies would not provide useful evidence of late-twelfth-century law.

Because such copies do fall outside the ambit of Anglo-Saxon legal historians, and are in fact for the most part merely derivative of texts created earlier in the twelfth century, their failure to find a place among the sources of those studying pre-Conquest law is understandable. The neglect from scholars of the early common law, however, arises from their anachronistic approach to law. Many legal historians of the common law have been all too ready to repeat *Glanvill*'s tendentious remark that, before his day, England's laws were unwritten.[1] With

* I would like to thank Julia Crick and the editors for their many comments on the whole piece; Michael Gullick and Tessa Webber for advice concerning the principal manuscript

© Copyrighted Material

© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

such an authoritative judgement from the author of the first manual of the common law, as well as with the growing body of late-twelfth-century evidence for the actual application of this law, few have been willing to turn their gaze aside from these sources to look at the books of Anglo-Saxon law which were being produced and read in the 1170s, 1180s and 1190s.[2]

The mistake here is not that historians have concluded that these later copies of Anglo-Saxon law do not represent the realities of late-twelfth-century law, but rather that they assume that twelfth-century *thinking* about law can only be found in texts that appear to report the black-letter law of the day. These later Anglo-Saxon lawbooks, however, arose in *Glanvill*'s world. They were part of the thought, discussions and practices of those interested in the law, and were collected and read by some of the same individuals who collected and read *Glanvill* and the assizes. For that reason, scholars should be as interested in explaining the cultural products these Latin, Anglo-French and English lawbooks constitute as in understanding innovative English legal practices. It is worth asking, then, about more than any source's status as a contemporary legal authority, because memory of law's past was a significant dimension of late twelfth-century political debates about law, especially during and after the conflict between Thomas Becket and Henry II. The Anglo-Saxon lawbooks produced during this time are testaments to that memory of law, but testaments whose uneasy confluence with, and distance from, contemporary law as practised has suggested to scholars a treacherous memory at best. Nevertheless, these books attracted the attention of many patrons, compilers, writers, editors scribes, and readers in the second half of the twelfth century. Understanding why has the potential to help us describe in greater detail the actual culture out of which the common law came.

Another aspect of law's past and present on which they shed light is the languages of law, and, in particular, the role of English as a language of written law under the Angevin kings. We should take it as given, despite fairly modest

---

used for this study; Peter Stokes both for advice on its script and for copies of forthcoming work; John Blair for comments on burial rights; and Richard Sharpe for sharing with me his unpublished edition of the charters of Henry I. Abbreviations for all law codes are those used by the Early English Laws project and are listed online at www.earlyenglishlaws.ac.uk.

[1] *Treatise on the laws and customs of the realm of England commonly called Glanvill*, ed. G.D.G. Hall, with a guide to further reading by M.T. Clanchy, Oxford 1993, prologue, p. 2; for the falsity of Glanvill's remark, see B.R. O'Brien, 'The Becket conflict and the invention of the myth of lex non scripta', in J.A. Bush and A. Wijffels (eds), *Learning the law: teaching and the transmission of law in England, 1150–1900*, London 1999, 12–14.

[2] D.M. Stenton, *English justice between the Norman Conquest and the Great Charter*, Philadelphia 1964, 22–53; T.F.T. Plucknett, *Early English legal literature*, Cambridge 1958; J. Hudson, *The formation of the English common law: law and society in England from the Norman Conquest to Magna Carta*, London 1996, 151–5.

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

evidence, that written English was still a language used by a select group of people for some tasks – though none of these tasks was exclusive to English.[3] Homilies, liturgical books, translations of the Bible and glosses, for instance, all show the important place held by vernacular texts and collections alongside the growing volume of Latin and French texts. One class of evidence of written English not investigated yet are the English terms, phrases and sayings found embedded in many of the Latin law codes composed and copied after the Conquest.[4] Yet such a deployment of English has much to tell us about the authority of English as a language of the law. Further, in perhaps no genre of twelfth-century literature are all three major written languages – Latin, Anglo-French and English – as intertwined as they are in legal texts. Understanding, then, how twelfth-century writers and readers viewed Anglo-Saxon law and legislators has the ability to tell us about more than the evolving status of older written law. It can also help chart the changing and variable authority of law's written languages.[5] It adds a new dimension to current discussions of how English writings of any shape or size were valued and used at the very end of the century.

What then do the surviving manuscripts holding Anglo-Saxon law tell us about their late-twelfth-century writers, editors, and readers during the age of Angevin legal reforms? This chapter will identify evolving trends in the creation and copying of Anglo-Saxon laws throughout the twelfth century. It will then turn to the origins, shape, contents and languages of one particular lawbook, probably an exact contemporary of *Glanvill*, to see what it reveals about late-twelfth-century views of the Anglo-Saxon legal past, as well as what it can tell us about some widespread but curious ideas about law and its languages during a time when a good deal of careful thought was going into law's development. One clear conclusion is that the thinking about law behind *Glanvill* was a minority position in the late twelfth century, and that law's past then, regardless of its language, was still in some respects very much a part of law's present.

Let me begin by acknowledging that books of Anglo-Saxon laws in the late twelfth century, regardless of their language, are historical artefacts. These books are filled with texts of proscriptive law which are all or in part explicitly labelled as laws promulgated before or immediately after the Conquest. They were not intended to be principally records of law as practised or as experienced at the time of their copying, but instead are self-consciously constructed remembrances of the law. Both Latin and Anglo-French texts of this law are

[3] M. Faulkner, 'Rewriting English literary history, 1042–1215', *Literature Compass* ix (2012), 275–91.

[4] This class of English text is not covered by O. Da Rold, T. Kato, M. Swan and E. Treharne (eds), *The production and use of English manuscripts, 1060 to 1220*, University of Leicester 2010, available at http://www.le.ac.uk/ee/em1060to1220.

[5] B.R. O'Brien, *Reversing Babel: translation among the English during an age of conquest,* c.*800 to* c.*1200*, Newark, DE 2011, 211–21, with citations to earlier literature.

© Copyrighted Material

© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

speckled with English words and phrases which evoke law's former vernacular, a language no longer being used as a vehicle for new legal compositions and whose older monuments were no longer even being copied. These legal texts are in one sense old, recording the desires and commands of kings long dead by 1100. But these texts were, for the most part, living artefacts rather than museum pieces dug fresh from the ground after a thousand-year slumber. They are monuments of the past whose every copying provided an opportunity to rewrite, reorder and recombine them – in a sense to revivify them.

The twelfth century as a whole has left more Anglo-Saxon lawbooks than all previous centuries combined. Excluding pontificals holding only ordeal manuals, excommunication formulas and coronation oaths, there are seventeen surviving twelfth-century manuscripts holding one or more texts that identified themselves as Anglo-Saxon law codes.[6] For the period before 1100, there are fifteen manuscripts of this pre-Conquest law which are either extant or well attested, even if now lost.[7] The number of manuscripts copied after 1100 is persuasive testimony to the long afterlife of interest in Anglo-Saxon law. Of course, the lesser number of earlier manuscripts may be a trick of survival. It does seem likely that there were more copies of laws around in *c.*950 or *c.*1025 than have in fact survived; how many more, however, can only be guessed.[8] But

[6] The extant MSS (hereinafter cited by sigla) are: BL Harley 55 (A); BL MS Add. 24066 (Ad); CCCC MS 383 (B); BnF, lat. 10185 (Ba); BnF, lat. 4771 (Cb); Bodl. Lib., MS Digby 13 (Di); BL Cotton Domitian viii (Dm); Medway Archives and Local Studies Centre, Strood, MS DRc/R1 (H); BL MS Add. 49366 (Hk); BL Royal 14. C. ii (Hv); Lambeth Palace Library, MS 118 (La), Lambeth Palace Library, MS 179 (Lb); The Law Society, London, MS 1 (Ls); John Rylands University Library, Manchester, MS Lat. 420 (M); BL Royal 11. B. ii (R); Bodl. Lib., MS Rawlinson C 641 (Rl); BL Cotton Titus A. xxvii (T). Images of the folios in these manuscripts holding legal texts are available online at http://www.earlyenglishlaws.ac.uk/laws/manuscripts/.

[7] The early manuscripts are listed in P. Wormald, *The making of English law: King Alfred to the twelfth century*, i. *Legislation and its limits*, Oxford 1999, 164–5. The total includes manuscripts (e.g., BL Cotton Otho A. x) which once existed, but are no longer extant and are of uncertain date.

[8] This is one of the implications of S. Keynes, 'Royal government and the written word in late Anglo-Saxon England', in R. McKitterick (ed.), *The uses of literacy in early medieval Europe*, Cambridge 1990, 232–44, D. Pratt, 'Written law and the communication of authority in tenth-century England', in D.W. Rollason and others (eds), *England and the Continent in the tenth century*, Turnhout 2010, 331–50, and S. Foot, *Æthelstan: the first king of England*, New Haven and London 2011, 138. A few of the manuscripts in Wormald's list survived by the slightest margin (for example, *Making of English law*, 256–62). How many did not? Some guessing could be done by studying the development of individual texts, and thus being at times in a position to justify the existence of hyparchetypes; this method, however, is not practised much these days by those who edit Old English texts. A welcome exception is Keynes, 'Royal government', 232.

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

even if earlier manuscripts suffered greater losses over time, the later ones at least demonstrate a strong and continuous desire throughout the twelfth century for records of the laws of pre-Conquest kings.

Interest in these records was not indiscriminately directed toward any pre-Conquest rulers, but was concentrated on the laws of two Anglo-Saxon kings, Cnut (1016–35) and Edward the Confessor (1042–66).[9] This narrower interest in the laws of these two kings rather than on the products of the entire roster of five centuries of Anglo-Saxon lawgivers was present, though not exclusive, at the beginning of the twelfth century, and this interest sharpened with each passing decade. Cnut's laws were the most important at the beginning of the twelfth century. Two of three legal encyclopedias composed in the early part of the century put Cnut's Winchester code at the head of their collections. *Quadripartitus*, whose first book, completed possibly before 1100, comes close to being a Latin translation of the laws of all pre-Conquest kings, begins not with its oldest code, Alfred's *Domboc*, but with Cnut's code.[10] *Textus Roffensis*, an equally comprehensive collection of Anglo-Saxon laws, mostly in their original languages, began with Cnut's, but in a Latin translation rather than the original Old English version.[11] This Latin version, known now as the *Instituta Cnuti*, was itself composed in the late eleventh or early twelfth centuries, and combines a number of legal sources, including Cnut's Winchester code, in a new text which travelled under Cnut's name. Like the *Instituta*, the *Consiliatio Cnuti*, created in the early decades of the twelfth century, holds a translation of the Winchester code to which have been joined several other pre-Conquest works, the whole of which is attributed to Cnut.[12] Instead of representing merely a soon-to-fade burst of interest in Cnut during the immediate post-Conquest period, these texts proved instead to be just the start of an upward trend in the copying of Cnut's laws. They provided the materials for an increasing multiplication of his laws which reached its crescendo in the final decades of the twelfth and the

[9] Laws attributed to Edward the Confessor are always recorded as if in a form confirmed by William I (1066–87).

[10] F. Liebermann, Quadripartitus: *ein englisches Rechtsbuch von 1114*, Halle 1892, 89–90 (hereinafter the law code will be cited as Quadr.); P. Wormald, 'Quadripartitus', in G. Garnett and J. Hudson (eds), *Law and government in medieval England and Normandy: essays in honour of Sir James Holt*, Cambridge 1994, 111–47. For the date of the translations, see R. Sharpe, 'The dating of *Quadripartitus* again', in S. Jurasinski, L. Oliver and A. Rabin (eds), *English law before Magna Carta: Felix Liebermann and 'Die Gesetze der Angelsachsen'*, Leiden 2010, 81–93, at 91. Alfred's *Domboc* follows immediately after I–II Cnut.

[11] *Textus Roffensis: Rochester cathedral library manuscript A. 3. 5*, ed. P. Sawyer, Copenhagen 1957, 11–12. A new edition of the *Instituta Cnuti* will appear in 2014 at www.earlyenglishlaws.ac.uk

[12] F. Liebermann, Consiliatio Cnuti*, eine Übertragung angelsächsischer Gesetze aus dem zwölften Jahrhundert*, Halle 1893, pp. v, 2–25.

© Copyrighted Material
© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

beginning of the thirteenth centuries. By then, at least twenty-two copies of Cnut's laws in some Old English or Latin version had been created, of which sixteen are still extant.[13]

While references to the pre-Conquest laws in force under Edward the Confessor appear soon after the Conquest, interest in recording the actual contents of Edward the Confessor's laws began somewhat later than Cnut's, only appearing for the first time in the 1130s or 1140s with the composition of the *Leges Edwardi Confessoris* and *Leis Willelme*.[14] The *Leges Edwardi* claims to record the laws English nobles recited for William I at an assembly in 1070, but in reality represents an anonymous description of local customs dating probably from the late 1130s.[15] The *Leis Willelme* also pretends to be a record of the laws of Edward the Confessor as affirmed by the Conqueror, but is likewise a privately composed and unofficial collection of customs.[16] By 1200, however, these two works had been enriched and reworked by revisers, compilers and translators into eight distinguishable texts or versions of texts which continued to attribute the foundation of their laws to King Edward, with a ninth, the grandest of the lot, appearing in the first decade of the thirteenth century, imbedded within a chronological presentation of English royal laws from Ine on.[17] These nine versions themselves survive in twelve extant

[13] MSS A, B, Ba, Cb, Di, Dm, H, Hk, La, Lb, M, R, Rl and T. There are good reasons for including BL Cotton Nero A. i (MS G) in this list, as it is just as likely from after as before the Conquest: see Wormald, *Making of English law*, 224–8, and H. Gneuss, *Handlist of Anglo-Saxon manuscripts: a list of manuscripts and manuscript fragments written or owned in England up to 1100*, Tempe, AZ 2001, 64. I am also including John Rylands University Library, Manchester, MS Lat. 155 (MS Rs), which was copied in the first decade of the thirteenth century. The additional five copies of Cnut's laws represent the bare minimum count of no longer extant hyparchetypes, archetypes and autographs. For a stemma of the *Instituta Cnuti* (hereinafter cited as In Cn), see B.R. O'Brien, 'The *Instituta Cnuti* and the translation of English law', *ANS* xxv (2003), 177–97. For stemmata of the Old English text (hereinafter I–II Cn) and the *Consiliatio Cnuti* (hereinafter Cons Cn), see (with some reservation) *Die Gesetze der Angelsachsen*, ed. F. Liebermann, Halle 1903–16, iii. 193 and 333.

[14] The *Articuli Willelmi* (hereinafter Wl art.), which probably was composed or assembled in the late eleventh century, is attributed solely to William the Conqueror and appears to include an actual edict of that king. Although its contents are aimed at the immediate post-Conquest situation, it nevertheless does affirm the *lex Eadwardi*, for which see *Gesetze der Angelsachsen*, i. 488 (Wl art 7). In its early life this text appears as an appendix to the *Instituta Cnuti*, while in the second half of the twelfth century it also begins to accompany the *Leges Edwardi Confessoris*.

[15] B.R. O'Brien, *God's peace and king's peace: the laws of Edward the Confessor*, Philadelphia 1999, 31–48.

[16] Wormald, *Making of English law*, 407–9.

[17] The nine versions arising from the *Leges Edwardi Confessoris* (hereinafter ECf) and *Leis Willelme* (hereinafter Leis Wl) consist of four versions of ECf (ECf1, the 34-chapter text; ECf2, the 39-chapter text; ECf3, a revised version of ECf2 which Liebermann labelled

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

copies, and provide good evidence for an additional twelve copies consisting of autographs, archetypes or hyparchetypes.[18]

Only two post-Conquest writers saw a connection between the law-making of Cnut and of Edward, although each writer has a different explanation for this phenomenon. One, the author of *Quadripartitus*, tells us that the *laga Edwardi* often confirmed by Anglo-Norman kings meant, in practice, Cnut's laws. *Quadripartitus*' author begins the *Argumentum*, or preface, of his work with the statement that he is providing 'the laws that go by King Edward's name, derived from the institutes of Cnut in the first place, as we received them from our ancestors'.[19] More than that, the author tells us how Cnut came to issue his laws at an assembly of all the leading men of England and Denmark 'in order to suppress vices and increase virtues', and that these laws were what Edward later had to swear an oath to maintain before the thegns of England would make him their king.[20] That Edward was not legislating, but maintaining the laws of his predecessors is found not only in *Quadripartitus*, but also in William of Malmesbury's account of Cnut's laws. In the *Gesta regum Anglie*, William tells us that Cnut commanded that all the laws of ancient kings, especially those of Æthelred, should be observed. William links Cnut's command to a practice current in William's own time, when 'for the observance of these laws ... an oath is taken in the name of King Edward, not because he established them, but because he kept them'.[21] In William's *Gesta regum*, in fact, neither Cnut nor Edward is

the *Retractatio*; ECf4, a revision and enlargement of ECf3, appearing only in copies of the collection known as the London *Leges Anglorum*, the earliest of which, MS Rs, is from the first decade of the thirteenth century); ECf Hk, a hybrid text combining ECf2 and some of Cons Cn, called by me the Holkham *Leges Edwardi*; ECf3 Fr, an Anglo-French translation of ECf3 entitled *Le livre des leis de Engletere*; two Anglo-French versions of the *Leis Willelme* (a 28-chapter text and a 52-chapter text); and the *Leges Willelmi* (Leges Wl), a Latin translation of the long version of Leis Wl. For the stemma of ECf1, ECf2, with reference to that of ECf3, see O'Brien, *God's peace*, 109 and 138. For the stemma of Leis Wl, see *Gesetze der Angelsachsen*, iii. 284. Editions of ECf1 and ECf2 are available at www.earlyenglishlaws.ac.uk

[18] The extant manuscripts are: Ad, Ba, Cb, Hk, Hv, La, Lb, Ls, Rl, Rs; BL Harley 746 (s.xiii ex./xiv in., for Leges Wl), and Cambridge, University Library, MS Ee. 1. 1 (1280–89, for ECf3 Fr).

[19] 'Leges quas dicunt Eadwardi regis ex Cnudi primum institutione diductas esse, sicut ab antiquis accepimus': Quadr, Argumentum 1, in Liebermann, *Quadripartitus*, 83; translation (as above) by R. Sharpe, 'The prefaces of *Quadripartitus*', in G. Garnett and J. Hudson (eds), *Law and government in medieval England and Normandy*, Cambridge 1994, 148–72, 162–3.

[20] Quadr, Argumentum 2–9, in Liebermann, *Quadripartitus*, 83–5. J. Maddicott, 'Edward the Confessor's return to England in 1041', *EHR* cxxii (2004), 650–66, argues that Quadr's account of Edward's affirmation of the law at his accession should be accepted.

[21] '... in quarum custodiam ... sub nomine regis Eduardi iuratur, non quod ille statuerit sed quod obseruarit': Malmesbury, *GR* i. 328–30 (bk ii. 183. 9).

© Copyrighted Material
© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

much of a legislator.[22] Other twelfth-century narrative works, however, often give law-making credit to either Cnut or to Edward, and therefore allege no law-making or law-maintaining relationship between the two kings.[23] They merely parallel what is found in individual codes and lawbooks, where either Cnut's or Edward's laws are the basis for English law, the *laga Edwardi*, after 1066.

Affirmations by Norman kings of this *laga Edwardi* must in part be the explanation for the production of these texts in the seventy-five years after 1066. The well-known and probably official confirmation of the *laga Edwardi* by William I found in the brief collection entitled *Articuli decem* or *Decreta Willelmi* is matched by what he promised in some writs and charters.[24] These affirmations were followed in 1100 by Henry I's coronation edict's restoration of 'the law of King Edward along with changes by which my father improved it with the advice of his barons'.[25] In 1136 King Stephen offered similarly 'all liberties and good laws which my uncle Henry, king of the English, gave and conceded to his barons and men, and I concede to them all the good laws and good customs which held

[22] Even though William did include an act modern scholars treat as legislation, the letter Cnut sent in 1027 from Rome to the people of England, he did so because it was the letter of a royal pilgrim and showed both the king's 'reformed life' and his 'royal magnificence' ('... ad documentum emendatioris uitae et regalis magnificentiae'): Malmesbury, *GR* i. 324–5 (bk ii. 182).

[23] Gaimar, for example, gives all credit to Edward the Confessor: 'Puis tint la terre, asist ses lais; / unkes tels ne furent anceis. / Peis ama mult, dreit e justise, / pur ço les asist en tel guise / ke unc devant ço, ne puis son jur, / ne pout nul rei feire meillur' [Thereafter he ruled over the country and instituted laws the likes of which had never before been seen. He was sincerely committed to peace, the law and justice. So successfully did he lay down the law that neither before him nor after could any king have done better]: Gaimar, *Estoire*, ed. and tr. Short, 264–5 (lines 4861–6). I have slightly modified Short's translation. The Ramsey chronicler, on the other hand, records that Cnut 'coepit ... justas leges vel novas condere vel antiquitus conditas observare' [established just or new laws or observed laws established in the past]: *Chronicon abbatiæ Rameseiensis*, ed. W.D. Macray (RS [lxxxiii], 1886), pp. lxxx and 125.

[24] 'Hoc quoque precipio et uolo, ut omnes habeant et teneant legem Eadwardi regis in terris et in omnibus rebus, adauctis iis quae constitui ad utilitatem populi Anglorum': *Gesetze der Angelsachsen*, i. 488 (Wl art 7); William I's writ to London promises '... eallra þæra laga þeorðe þe gyt þæran on Eadþerdes dæge kynges': *Regesta regum Anglo-Normannorum: the acta of William I (1066–1087)*, ed. D. Bates, Oxford 1998, no. 180, whose edition of this writ is also now available at www.earlyenglishlaws.ac.uk. I have restored the original's use of wyn.

[25] 'Lagam regis Eadwardi ... cum illis emendationibus quibus pater meus eam emendauit consilio baronum suorum': *Gesetze der Angelsachsen*, i. 522 (Hn cor 13); calendared at *RRAN* ii, no. 488. The text above is that of Richard Sharpe, whom I thank for sharing with me his forthcoming edition of the coronation charter of Henry I, which will appear in print, but is now available in part at www.earlyenglishlaws.ac.uk.

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

force in the time of King Edward'.[26] While William I has been dropped from the chain of legislators and amenders of law in Stephen's charter, the link to Edward the Confessor remained firm. These are only the most famous and broadest statements. Some charters issued to individuals or to ecclesiastical institutions by the Norman kings guaranteed to the recipients the customs and rights they had possessed in Edward's day, which, if not giving credit for promulgating good law to that king, at least directed the readers' gaze to Edward's reign as a legal benchmark.[27] And the link of his laws to Cnut's, clear in the minds of some contemporaries, especially in the fifty years after the Conquest, meant that this rising tide under the *laga Edwardi* floated both of these boats, but not others. The affirmations by the Norman kings were not generic promises to restore an unspecific *laga Anglorum*, *lex antiqua* or *lex terrae*, for instance, but were specific

[26] '... omnibus baronibus et hominibus meis de Anglia omnes libertates et bonas leges quas Henricus rex Anglorum avunculus meus eis dedit et concessit. Et omnes bonas leges et bonas consuetudines eis concedo quas habuerunt tempore regis Edwardi': *RRAN* iii, no. 270.

[27] There is in fact a variety of combinations in the charters of named kings and others whose reigns or specific grants defined the origins and authority of the rights and properties: Edward alone (*RRAN* ii. no. 1046 [1100×1116, prob. 1114]); Cnut and Edward (*RRAN* ii. no. 644 [1102×1103]); Edward and William I (*RRAN* ii. no. 487 [1087×1100]; *RRAN* ii. no. 579 [June 1102]); Edward, William I and William II (*RRAN* ii. no. 1072 [1115×1129, probably 1116]); Edward, William I and Archbishop Thomas (*RRAN* ii. no. 885 [27 May 1108]); William I and William II (*RRAN* ii. no. 1335 [1122]); William II (*RRAN* ii. no. 1969 [1100×1135]); William I and Henry I (*RRAN* iii. no. 1 [1149×54]); Henry I (*RRAN* iii. no. 10 [1139×54]); Henry I and other kings (*RRAN* iii. no. 2 [1136×54]); unnamed kings (*RRAN* iii. no. 100 [1138×54]). The later one goes in the twelfth century, the more likely a reference to Edward is due to the presentation of an older charter for confirmation which was issued by, or mentioned, King Edward: see, for example, *RRAN* iii. no. 4 (1140 or 1142x43), and *RRAN* iii. no. 99 (1136). A number of the above references fall into this category. It is only rarely, and under suspicious circumstances, that earlier kings are named – a particularly striking reluctance given the prestige of Cnut's laws after 1066 (and before): for example, the account of the York inquest of 1106, preserved in the Southwell White Book, credits the cathedral's special customs to King Æthelstan, but this is a reference to a grant by the king rather than to Æthelstan's reign in general or to his 'good laws' (*English lawsuits from William I to Richard I*, ed. R.C. van Caenegem, London 1990, i. no. 172). The York charter of Henry I, allegedly recording this inquest, refers to the customs of ancient kings and archbishops, especially King Edward and Archbishop Aldred (*RRAN* ii. no. 1083). The canons at York are to have the same customs as the king in his own lands and as the archbishop held them from King Edward, and so on for other customs. Stephen confirms this (*RRAN* iii. no. 975). In his forthcoming edition, Richard Sharpe presents convincing reasons for thinking that both of these York charters, Henry I's and Stephen's, were forged, possibly as late as the early thirteenth century.

© Copyrighted Material
© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

references to the laws of the last acknowledged legitimate ruler of the English before 1066.[28] These were royal affirmations of royal law.

Whether or not writers were motivated by an affirmation by a Norman king, the path they took to create a text of the old law depended on whether they aimed to produce Cnut's or Edward's laws. The shape of Cnut in the twelfth century was controlled to a great extent by the existence of what was produced in the time of the actual king, the Old English text of his Winchester code, whose contents remained relatively intact into the twelfth century.[29] Latin translations either were based wholly on the Old English source, as was *Quadripartitus*' translation, or adopted it as the core source for a composite text, which was what the *Consiliatio Cnuti* and *Instituta Cnuti* did. Even a fabricated code, an imposture produced late in the twelfth century which claims to represent Cnut's regulations on use of royal forests, borrowed a good deal of language and some substance from the *Instituta Cnuti* – which resulted in a text that echoed here and there the phrasing of the most common version of Cnut's legislation in late twelfth-century legal collections.[30] Pseudo-Cnut (as the author is now called) did not borrow from any other Anglo-Saxon law codes. With this exception, the shape of Cnut in the twelfth century was determined largely by the shape of Cnut's laws in the early eleventh century.

Records of Edward's laws, however, are all new creations of the twelfth century, and not derived in any significant way from written sources. The *Leges Edwardi Confessoris* may borrow some language in its prologue and a story about Pippin's accession to the Frankish throne from existing narrative sources, but, except for one chapter on sanctuary, none of its actual laws is borrowed from any written law code.[31] Instead, the contents of the *Leges Edwardi* may have been derived in part from the contents of some ecclesiastical institution's writs and charters and in part from the experience of that institution's agents in courts.[32] The earliest form of the *Leis Willelme* also consists mostly of original material. At two points,

[28] Harold receives surprisingly high marks as a law-giver and just ruler, despite his condemnation by the Normans for perjury and rebellion: see JW *Chronicle* ii. 600–601, whose work was adopted wholesale by Symeon of Durham, *HR* ii. 179, and borrowed from Symeon by Roger of Howden, *Chronica*, ed. W. Stubbs (RS [li], 1868–71), i. 111. On the rejection and elimination of Harold as a legitimate ruler, which developed during the course of William I's reign, see G. Garnett, *Conquered England: kingship, succession, and tenure, 1066–1166*, Oxford 2007, 1–44.

[29] The copy of I–II Cnut in MS A, produced *c.*1150, shows fewer significant variants than the earlier copy in MS G.

[30] This text is the so-called *Constitutiones Canuti regis de foresta*, on which see *Gesetze der Angelsachsen*, i. 620–26; iii. 335–9, and F. Liebermann, *Über Pseudo-Cnuts* Constitutiones de Foresta, Halle 1894.

[31] O'Brien, *God's peace*, 32–4, 65, 69–70, 82–4.

[32] O'Brien, *God's peace*, 41–4.

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

however, it appears to follow the sequence of the amounts for heriots in Cnut's code and for fines for wounds to the face and hands in Alfred's *Domboc*, and shows some similarities with the structure of chapters or with certain phrases of a few additional chapters of these two codes.[33] Difference between the two codes' treatments of heriots make derivation of one from the other unlikely: the *Leis Willelme* mirrors neither II Cnut's order of the persons who owed heriot nor the contents and number of the actual items to be handed over according to the status of the deceased. The points of agreement between these two texts are probably a reflection of common knowledge.[34] Fines for wounds to the face and hands in Alfred are likely, however, to have been the source of what is found in the *Leis*; but even here, the differences between the two texts show that, if Alfred's *Domboc* was the source, it has been freely adjusted.[35] Other than these exceptions, the material in the two treatises claiming to record Edward the Confessor's laws is very probably original.

The implied corollary of our identification of this creative approach to producing the Confessor's laws in both the *Leges Edwardi* and *Leis Willelme* is that Edward produced no laws like Cnut's. Negative evidence is no evidence, but it would be odd for the author of *Quadripartitus* to have written that Cnut's laws were the *laga Edwardi* if a code of Edward's had in fact existed.[36] The authors of the *Leges Edwardi* and *Leis Willelme* were legal writers who did not know of any linkage between Cnut's laws and the *laga Edwardi*, or, at least, who did not share the belief in the link described by *Quadripartitus* and implied by the Latin translations of Cnut. So when a writer in 1135 came to ask 'What was the *laga*

[33] Leis Wl 10–11, 20; II Cn 71; Alfred's *Domboc* (hereinafter Af) 45, 56.1, 57, 59, 60, 66.

[34] While II Cn 71 lists the heriots of earls, king's thegns, ordinary thegns, king's thegns in the Danelaw, thegns close to the king, and men of inferior wealth, Leis Wl 20 covers reliefs owed by counts, barons, vavasours with or without equipment, and villeins. The amounts of the heriot/relief are similar in the two texts, but there are some significant differences: money payments included in II Cn are not part of relief in Leis Wl; while Leis Wl specifies the types of horses counts and barons must offer, II Cn does not. Given these differences, the agreement in the number of weapons and equipment in the three categories covering those of highest status may just as easily reflect well-known customary obligations as textual derivation.

[35] There is agreement on types of wounds covered and the amounts owed by the person who caused the wound (for example, in Af 45 wounds to the face, if hidden, are assessed at 1*s.*, while visible ones are 2*s.*; in Leis Wl, the amounts are 4*d.* and 8*d.* respectively). This agreement demonstrates the derivation of Leis Wl from Af. It is also telling that the author of Leis Wl (ch. 11.1) has added a gloss to explain that an English shilling had four pence rather than the Norman twelve – this gloss would only have been necessary if the author took his amounts from an English source.

[36] Wormald, *Making of English law*, 128, admits the possibility that laws of Edward might have existed, but says that they also must have been lost before 'the "Law of Edward" acquired its talismanic force'.

© Copyrighted Material
© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

Edwardi', there was little around to say that the post-Conquest generations had assumed it was Cnut's laws. The link between the *laga Edwardi* and Cnut had faded before the middle of the twelfth century; William of Malmesbury does not say whose laws Edward had maintained, except that they were issued by previous kings.[37] Knowledge of the Cnut-Edward connection was, in the most important sense for law, irrelevant. Versions of Cnut's and Edward's laws produced before *c.*1150 were not separate species of law codes, however different their origins and sources, but rather related sub-species, covering much the same territory of criminal and procedural law.[38]

These approaches to recording the *laga Edwardi* – translating Cnut's Winchester code or composing original descriptions of 'Edwardian' customs – though separate and distinguishable in their original early-twelfth-century versions, did not remain so. Although the Old English copies of I–II Cnut produced in the twelfth century remained stable, showing few differences from earlier witnesses, the Latin translations moved quickly away from being principally lexical equivalents of their Old English source.[39] Only in *Quadripartitus* is Cnut's law code derived almost entirely from an Old English source very similar but not identical to any of the three extant copies of the Old English text. The contemporary *Instituta Cnuti* and *Consiliatio Cnuti* grow Cnut's legislation by grafting on to his laws chapters selected from the corpus of pre-Conquest laws. The *Instituta* adds to I–II Cnut selections or complete copies of at least ten pre-Conquest codes, drawing particularly on Alfred's *Domboc* for its comprehensive list of compensations for bodily injuries.[40] The author has not simply added new codes to the end of II Cnut, to create a larger collection; rather, he has woven relevant sections from other codes into a core sequence of I–II Cnut in addition to tacking on at the end a long piece derived from Alfred's law code and a group of short tracts by Wulfstan. The original sequence of Cnut's laws has been broken in four places by the intrusion of borrowed passages from II Edgar, the Northumbrian Priests' Law and Alfred's *Domboc*.[41] In addition, the translator has reconfigured his sources. He has omitted and occasionally rearranged chapters throughout I–II Cnut and has reordered in his third book the long addition from Alfred-Ine: selections from Ine come first

[37] One exception is whoever was responsible for adding the *Instituta Cnuti* to the fifth version of Henry of Huntingdon's *Historia Anglorum*, on which, see below, 243–4.

[38] On the boundary between translation and original composition, see O'Brien, *Reversing Babel*, 45–52.

[39] On the existence of a post-Conquest 'vulgate' version of I–II Cnut, see Wormald, *Making of English law*, 351.

[40] F. Liebermann, 'On the I*nstituta Cnuti aliorumque regum Anglie*', *TRHS* N.S vii (1893), 77–107, and *Gesetze der Angelsachsen*, iii. 330.

[41] The order of sources used in In Cn can most easily be seen at *Gesetze der Angelsachsen*, i. 612–13.

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

even though Ine's code always forms an appendix to Alfred's, and those parts of Ine are followed by chapters from Alfred that are out of their usual order.[42] The remaining section of the *Instituta*, which translates Wulfstan's short tracts, shows a similar rearrangement of its sources.[43] The combined and reordered laws all travel as Cnut's laws. The *Instituta* was a conscious attempt to craft a new version of Cnut's code. The same conclusion holds true, *mutatis mutandis*, for the *Consiliatio Cnuti*, which adds a new prologue and appends some or all of four other statements of the law. In the later part of the twelfth century, the only author who made an attempt to amend these two 'translations' of Cnut did so by combining them together, about which more in the second part of this chapter.

While Cnut's original code was being expanded and revised as it was being translated, some copies of the *Leges Edwardi* and *Leis Willelme* were also expanded by the addition of a translated portion of Cnut's laws. At some point between the composition of the *Leis Willelme* and the end of the twelfth century, someone (whether or not the author of the original version is hard to say) added a series of chapters on peasants, execution, inheritance, adultery, poisoning and shipwreck derived from Roman law and fourteen chapters translated from various parts of an Old English copy of II Cnut.[44] This long form of the *Leis*, which was the source of all later witnesses, was translated, according to Felix Liebermann, into Latin between *c.*1170 and *c.*1200.[45] The net result of the additions was to increase the treatise's length by 50 per cent and expand its treatment of both legal principles and judicial practices. Around 1175, at least one copy of the *Leges Edwardi* was similarly expanded, increasing in size by one-half.[46] Here the compiler added without break to the end of a copy of the second version of the *Leges Edwardi* thirty-seven chapters from the *Consiliatio Cnuti*

[42] The sequence is Ine 9, 13.1, 14, 15; Af 29–31.1, 44–77, 19–19.2, 23–23.2.

[43] For example, the short Wulfstanian code called *Grið* is reordered in In Cn with chapters 5 and 12 following chapters 6, 8, 7 and 11.

[44] Leis Wl 29–38 (from Roman law), and 39–52 (from II Cn); F. Liebermann, 'Über die *Leis Willelme*', *Archiv für das Studium der neueren Sprachen und Literatur* cvi (1901), 113–38; Wormald, *Making of English law*, 408–9. On the evidence showing that passages in Leis Wl are translated directly from an Old English source, see B.R. O'Brien, 'The *Instituta Cnuti*', 185–6.

[45] Liebermann, 'Über die *Leis Willelme*', 126, dates it to *c.*1200, but possibly from as wide a span as 1170–1300. In *Gesetze der Angelsachsen*, iii. 285–86, Liebermann shifts from *c.*1200 to 1170–1200, but still thought 1170–1300 was possible. The manuscript holding Leges Wl's only witness (BL Harley 746) was written between 1275 and the early fourteenth century: see O'Brien, *God's peace*, 144–5.

[46] Significantly enough for this text to be treated as a separate treatise: see my edition of the Holkham *Leges Edwardi* at http://www.earlyenglishlaws.ac.uk/laws/texts/ECf2-Hk/.

© Copyrighted Material

© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

focused primarily on procedures, highly selective but in the sequence in which they appear in the source.[47]

For our purpose, there are three aspects to note about what has happened to these Edwardian texts. First, two compilers independently improved different versions of texts claiming to be the laws of Edward the Confessor by adding significant selections from Cnut's laws, and not those of any other king (assuming we can trust that they could tell whose laws they were borrowing). Second, in both cases, these additions consisted of more practical, procedural chapters from the secular half of the Winchester code (II Cnut), rather than from the ecclesiastical chapters of I Cnut or the homiletic chapters spread throughout. Last, neither the *Leis Willelme* nor *Leges Edwardi* identify their additions as Cnut's; the new chapters travel as part of the *laga Edwardi* attributed to King Edward and authorised by William I.

While created in different ways, the texts which recorded either the laws of Edward or the laws of Cnut were not mutually exclusive, and appear together in three legal collections of the latter half of the twelfth century as well as in one version of Henry of Huntingdon's *Historia Anglorum*. The first book, the Holkham lawbook, which includes the unique enlarged version of the *Leges Edwardi* and the only copy of the original version of the *Leis Willelme*, also holds a copy of *Quadripartitus* that starts with its translation of Cnut rather than with its prefatory matters.[48] The second, the Colbertine lawbook, holds the amalgamated version of the *Consiliatio Cnuti* and *Instituta Cnuti* which I call the Colbertine *Cnut* after its later home in the library of Jean-Baptiste Colbert de Torcy (1619–83).[49] The laws of Cnut are here joined to copies of the *Articuli* of William I, an early copy of the third version of the *Leges Edwardi*, and a royal genealogy.[50] The third lawbook, Oxford, Bodleian Library, Rawlinson C 641, is not wholly a legal collection.[51] Nevertheless, it holds among its legal

[47] See B.R. O'Brien, 'An English book of laws from the time of *Glanvill*', in S. Jenks, J. Rose and C. Whittick (eds), *Making the common law: institutions, lawyers, and texts: studies in medieval legal history in honour of Paul Brand*, Leiden 2012, 51–67.

[48] MS Hk, fo. 17r.

[49] MS Cb. The Colbert library, including this manuscript, was sold in 1732 to the Bibliothèque royale. How and when the book travelled from England to France before ending up in the Colbert library is unknown.

[50] An edition of Cnut's laws in this manuscript was published in *Legum regis Canuti magni*, ed. J.L.A. Kolderup-Rosenvinge, Copenhagen 1826. A new edition is in preparation for Early English Laws.

[51] In addition to contemporary copies of the Assize of Clarendon, a French verse version of the Constitutions of Clarendon, the *Instituta Cnuti*, *Articuli* of William I and *Leges Edwardi*, the manuscript also holds short treatises on original sin, the Incarnation, commands of Pythagoras, riddles of Aristotle, all in Latin, and a collection of proverbs in Latin and French.

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

materials a copy of *Textus Roffensis*' text of the *Instituta Cnuti* along with a copy of the *Leges Edwardi* related to the one appearing in the Holkham lawbook.[52] These two texts were not found by the compiler of the Rawlinson manuscript together in one book, but collected from different sources and joined in this book.[53] Although it is hard to say with absolute certainty, it appears that both the selections from the *Consiliatio Cnuti* and version 2 of the *Leges Edwardi* probably came from a common source. An early-fourteenth-century manuscript holding the only complete copy of the *Consiliatio Cnuti* and a copy of the second version of the *Leges Edwardi* related to, but not derived from, either the Holkham or Rawlinson copies, together with the combination of both texts in the Holkham lawbook, strongly suggests that these two texts were available at an early date in the same manuscript and this was used as the source for the construction of the Holkham *Leges Edwardi*.[54] This combination of texts was only one of many found in twelfth-century books. Given the mixing of short and long forms of the *Instituta* and *Quadripartitus*' translation of I–II Cnut with copies of the second and third versions of the *Leges Edwardi*, it is clear that all of these combinations of Cnut's and Edward's laws come not from a single common ancestor, but from several. These books are independent evidence of the desire of compilers in the later twelfth century, unlike their early twelfth-century predecessors, to have both Cnut's and Edward's laws together in the same book.[55]

The *Instituta Cnuti* and the third version of the *Leges Edwardi* were also added to a branch of the fifth version (5B) of Henry of Huntingdon's *Historia Anglorum*.[56] Who added them is unknown, though at least it was not Henry himself: the texts are not integrated fully into his narrative and neither code appears in his sixth and final version. While the *Instituta* has been inserted just

[52] P. Wormald, '*Laga Edwardi*: the *Textus Roffensis* and its context', *ANS* xvii (1994/95), 243–66, at 260–62, saw MS Rl as independent of MS H, and therefore both as witnesses to a now lost exemplar for *Textus Roffensis*. For the evidence that the copy in MS Rl is derived from MS H, see O'Brien, 'The *Instituta Cnuti*', 180, and n. 17; on the relation of the text of ECf2 in MS Rl to that in MS Hk, see O'Brien, *God's peace*, 149–50.

[53] In Cn in MS Rl came from MS H; however, the text of ECf2 does not appear in MS H, but elsewhere, and in any case was probably composed at least a decade after the copying of MS H.

[54] The fourteenth-century manuscript is BL Harley 1704 (Hr), which has ECf2 and Cons Cn: see O'Brien, *God's peace*, 142, for a description.

[55] Combinations of Cnut's and Edward's laws: the Rawlinson MS (Rl) combines a long form of the *Instituta* with the second version of the *Leges*; all other books (three early copies of version 5B of Henry of Huntingdon's *Historia*) combine the short form of the *Instituta* with the third version of the *Leges*. Although MS Hk subsumes Cons Cn in ECf2, the lawbook begins with a copy of Quadr's translation of Cnut, which is the only place these two texts (Quadr and ECf) appear together.

[56] HH, pp. lxviii–lxix, cxviii, 839–41.

© Copyrighted Material
© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

before Cnut's obituary in book six of the *Historia*, the *Leges Edwardi*, along with the *Articuli decem* of William I and a genealogy of the Norman dukes (a commonly found combination of texts called by Liebermann the *Tripartita*), have been appended to the end of the *Historia*.[57] The insertion of the *Instituta* and appending of the *Tripartita* may have happened as late as *c.*1190, the earliest date of London, Lambeth Palace Library MS 118, the oldest extant witness to what Diana Greenway labels version 5B. This version along with version 5A (which holds only the *Instituta*) were relatively popular: three extant witnesses dating to the decades either side of *c.*1200 indicate that a further five hyparchetypes holding one or all three of these law codes had been created before then.[58]

Records of Anglo-Saxon laws did not shrink over time. Neither Cnut's nor Edward's laws, as they stood in the early twelfth century, diminish in length as the century proceeds. There is no evidence that they were ever abridged; selections taken from Cnut were not attributed to that king and were intended to increase the size of records of the *laga Edwardi* rather than reflect a shortened form of Cnut's laws. All versions of these laws either remained as they were created or grew. *Quadripartitus*' large collection continued to be copied. Other law codes began to congregate in what look like collections of not just laws, but of significant laws. In two cases – the Rawlinson lawbook and Roger of Howden's *Liber de legibus Anglie* – the older laws even appear alongside texts of Henry II's assizes, though one might argue that in Howden's *Liber*, the *laga Edwardi* texts served as a kind of Anglo-Saxon and Anglo-Norman Old Testament to Angevin legislation's New.[59] In another case, the first version of the *Leges Edwardi* always accompanies a text of *Glanvill*, probably intended to represent the varying laws of the counties whose recording *Glanvill* neatly sidesteps at the end of the treatise.[60] The growth of individual texts and the combination of old and new laws shows that interest in Anglo-Saxon laws grew throughout the century.

---

[57] Ibid. pp. cliv–clvi, 366 n. 89.

[58] Ibid. p. cxviii; the copies are MSS Ba, La and Lb.

[59] In addition to In Cn, ECf2 and Wl art, MS Rl holds a text of the Assize of Clarendon (fo. 19). The *Liber de legibus* Roger of Howden attached to his *Chronicle* holds Wl art (MS Hv, fos 214v–15r), ECf3 (215r–23v) and *Glanvill* (226r–74r) as well as the Assize of Northampton (156v–58r), articles of the eyre (274r–v), the Assize of Woodstock (274v–75r), Assize of Clarendon (275r–76v), Assize of Arms (Oxford, Bodleian Library, MS Laud misc. 582, fos 4r–5r), edictum regis (154r–v), Assize of Weights (166r), Pleas for itinerant justices (172r–v) and Assize de precepta de forestis (172v–73r). For discussion of these texts, see J.C. Holt, 'The assizes of Henry II: the texts', in D.A. Bullough and R.L. Storey (eds), *The study of medieval records: essays in honour of Kathleen Major*, Oxford 1971, 85–106; D. Corner, 'The texts of the assizes of Henry II', in A. Harding (ed.), *Law-making and law-makers in British history*, London 1980, 7–20. A useful chronological narrative covering the origins of most of these assizes is in Hudson, *Formation of the English common law*, 126–39.

[60] O'Brien, 'An English book of laws', 67.

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

One thing clear so far is that during this time the written evidence behind the image of the *laga Edwardi* was changing. All aspects of the laws were evolving: individual codes were being invented, the contents of many codes adjusted, the framework in which they were presented altered, and their language changed. This last aspect should be particularly noted, because the recent focus on the continuity of written English in the twelfth century, including Old English texts found in collections of laws, has minimised the shift. A search for Anglo-Saxon law undertaken in the first quarter of the century would as likely have led to large collections of Old English law texts as to similar Latin collections like *Quadripartitus*, or to an amalgamated text like the *Instituta Cnuti*. By mid-century, a greater variety of texts was available to those interested in Anglo-Saxon laws, texts in Old English, Latin and Anglo-French, but there was also an increasing probability that someone searching would find a Latin version of either Cnut's or Edward's laws first. During the second half of the century, yet more texts were in circulation, though almost all claimed to be Cnut's or Edward's laws, and Latin versions of both kings' laws would often be found together in the same books. So, for those in the twelfth century who wanted to know what Anglo-Saxon law was or had been, there was no single text to supply the need at any point in the century. By the end, while the variety of texts describing pre-Conquest law had increased, the kings to whom the laws were attributed had been reduced in all but one case to two, as had their languages, to Latin and Anglo-French. Based on what has survived, then, and despite worries about the representativeness of what has survived, it nevertheless appears that English as a language for legal collections or legal compositions faded away (if not disappeared) soon after *c.*1150.

By the last quarter of the twelfth century, then, judging from the number of texts and books produced, interest in Anglo-Saxon law – almost exclusively in those laws attributed to Cnut and Edward – was strong. Enough copies had been made for every episcopal household and many abbeys to have had one (though there is no evidence that they actually did).[61] These copies appeared in collections as grand as encyclopaedias or as modest as portable pamphlets.[62] They stood on their own, or alongside Roman law procedural manuals or canon law collections.[63] They were intruded into narrative histories, or, when they do

[61] Adding up extant manuscripts, hyparchetypes, archetypes and autographs gives us roughly 45 copies of Cnut's or Edward's laws by *c.*1200.

[62] For legal encyclopedias, see above, 233; the pamphlets are MSS A and Di.

[63] For Roman law texts alongside English law, see MS Hk, as described in O'Brien, 'An English book of laws', 57–9, 64–6; for canon law, see MS H (Textus Roffensis), where a short collection derived from the *Collectio Lanfranci* appears, described by M. Brett, 'The *Collectio Lanfranci* and its competitors', in L. Smith and B. Ward (eds), *Intellectual life in the middle ages: essays presented to Margaret Gibson*, London 1992, 157–74 at 162, and MS R, whose decretal collection is described and analysed in C. Duggan, *Twelfth-century*

© Copyrighted Material
© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

not appear in the narrative itself, can be shown in at least one instance to have been used as a source by the author.[64] They were combined with genealogies, French poetry and even lapidaries. The motive behind this interest remains puzzling. Why were these texts and books created? What did they signify to contemporaries whose taste for them was specific, not random?

So far, what I have done is sweep through the collective evidence from different directions to find patterns in the treatment of individual texts and their extant copies. These patterns of preference and treatment, while real, I have described at some distance and this approach only hints at, but does not provide, answers to questions of purpose and significance. My focus on the patterns reduces, in fact, the individuality of each text and of each copy. A more persuasive explanation of the purpose of these texts can be provided only by studying the details of all of the texts and their copies. Since there is no typical artefact to represent the rest or even the majority of legal records, the only way forward is to examine them one by one. Some of these twelfth-century lawbooks – *Textus Roffesnsis*, Corpus Christi College 383 and the Holkham lawbook – have already been the subject of studies and have revealed both common drives, but also unique understandings of the law.[65] Another particular lawbook, produced during the late twelfth century, offers new evidence for how law and its languages were perceived at that time, evidence which differs from what these other books teach us. Its quirks may help clarify the terms by which some of the puzzling aspects of this interest in Anglo-Saxon law might be understood. This book is evidence for the usual late-twelfth-century combination of Cnut's and Edward's laws in one lawbook, but is also unusual, even unique, in how those responsible for the book treated their texts – from the reconstruction of the texts to the script used for individual words. This complex piece of evidence has not been studied before and yet has much to say about who was creating such books, what were their motives and goals, and perhaps what they expected of their readers.

The book, which I call the Colbertine lawbook, is a small, modestly produced English legal collection, written in the last decades of the twelfth century.[66] It

decretal collections and their importance in English history, London 1963, 69–70, 152–4, and M.G. Cheney, *Roger, bishop of Worcester, 1164–1179*, Oxford 1980, 200–202.

[64] Wace, *Rou*, 290–91 (bk iii vv 8997–9010) is based on his reading of ECf 34 in one of its first three versions.

[65] Wormald, '*Laga Edwardi*'; T. Gobbitt, 'Cambridge, Corpus Christi College, 383', in O. Da Rold, T. Kato and M. Swan (eds), *The production and use of English manuscripts 1060 to 1220*, University of Leicester 2010, available at http://www.le.ac.uk/english/em1060to1220/mss/EM.CCCC.383.htm; O'Brien, 'An English book of laws'.

[66] MS Cb (BnF lat. 4771). For previous descriptions, see *Legum regis Canuti magni*, pp. i–xii; Liebermann, Consiliatio Cnuti, pp. xv–xviii; F. Liebermann, *Über die* Leges Edwardi Confessoris, Halle 1896, 127; O'Brien, 'The Becket conflict', 5 n. 20. Descriptive terms used here are generally those of A. Derolez, *The palaeography of Gothic manuscript*

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

is made up of four quires, each consisting of four bifolia which have received continuous pagination in the modern period.[67] There are quire marks at the bottoms of the last pages of quires 2 (p. 32) and 3 (p. 48), and breaks between all quires are bridged by texts. The contents are in their original order, with no evidence that anything else which might have been part of the book has been detached. The pages are ruled sometimes in hard point, sometimes in pencil, with the margins of the writing area marked by double vertical lines. The writing itself is in long lines of twenty-six lines per page, an odd and old-fashioned format at a time when most texts were written with two columns per page. Chapters begin with large ink-drawn flourished initials in red, blue and green, with red or blue vine patterns within the empty spaces in the initials.[68] Brief chapters in one place begin with simple undecorated red, green and blue capitals, with each chapter beginning on the left margin with its own initial.[69] Only on two pages are black capitals beginning clauses within chapters given a red infill.[70]

At least three scribes collaborated to produce the book. One scribe (the main scribe) was responsible for almost all of the writing, including the rubrics. Another scribe (the illuminator) added the flourished initials and plain-coloured capitals.[71] The third scribe (the corrector) performed three tasks: he completed the last six lines of the final text, a genealogy, corrected the manuscript throughout, and added Old English terms and phrases in spaces left by the main scribe. Additional correctors probably did work on the book, though distinguishing their work from that of the principal corrector is not

books from the twelfth to the early sixteenth century, Cambridge 2003. The identification of the book as English I owe to Michael Gullick and Tessa Webber (pers. communication).

[67] The quires are as follows: 1^8 2^8 3^8 4^8.

[68] The pattern of the initials is red, blue, red, green, red, blue and so on, with only occasional missteps (found on pp. 15–6, 29–30, 30–31, 32, 47–9, 51–2 and 53–7). Not all texts receive the same level of rubrication; the second text, the *Articuli Willelmi*, receives only one initial, the first letter of its first word (**S** written in error for **H**), and has no markings for chapter divisions other than black-ink capitals to begin each clause. Tessa Webber identifies (pers. comm.) this style of decoration as one found in English manuscripts from *c.*1175 to *c.*1225.

[69] Pp. 29–30.

[70] Pp. 1 and 17. For the first, they mark out the clauses of the preface. The second, however, is peculiar, as the red-filled capitals on this page distinguish not the clauses of a special chapter, but rather whatever sub-chapters from In Cn ii. 30.3 to 31.1a began on that page: these chapters cover the procedure for the triple ordeal forced on those who chose not to offer oath and the beginning of the description of a lord's suretyship over his *familia*.

[71] In a few places (for example, pp. 4, 5) the margins preserve the letter placed there to signal to the illuminator what letter to add; this suggests that the main scribe and illuminator were not the same person.

© Copyrighted Material
© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

always possible.[72] Someone (called here the reviser) was responsible for editing all of the texts before they were copied into the book, though whether this was done when and where the book was copied is unknown.

The book they created holds three law codes and a genealogy of the dukes of Normandy and their descendants, the kings of England. The first code is a unique text, which I call the Colbertine *Cnut*. It consists of a heavily edited version of the *Instituta Cnuti*, on to which have been grafted the prologue and first and last chapters of the *Consiliatio Cnuti* (pp. 1–35). The second text is the *Articuli decem* of William I (pp. 35–7).[73] The final code is a revised text of the *Leges Edwardi Confessoris* in its third version, created between *c.*1140 and the writing of the Colbertine lawbook (pp. 37–60). The untitled *Genealogy* follows directly after that; it begins with the reign of Rollo as duke (911–*c.*931) and ends with the coronation of Richard I in 1189 (pp. 60–63).[74] These last three texts travelled as a group in the twelfth century, forming, as was mentioned above, a popular collection labelled the *Tripartita* by Liebermann. The main scribe of the manuscript was responsible for all of the laws and for the *Genealogy* up to the coronation of Henry the Young King in 1170, where he stopped without supplying the full regnal years as was the pattern for the rest of the entries. The main scribe's hand is a competently drawn pregothic characteristic of the late twelfth and early thirteenth centuries.[75]

Another scribe picked up directly from the coronation of the Young King and completed the *Genealogy* to the coronation of Richard I in 1189 (Figure 12.1). This change of script has been used to date the copying of the laws and most of the *Genealogy* by the main scribe to the period between those two coronations.[76]

[72] A number of corrections may not be by the principal corrector; some may even have been inserted by the main scribe. It is not always easy to tell because the cramped nature of the writing space between the lines reduces features that otherwise help identification.

[73] See above, n. 14.

[74] The edition of the *Genealogy* in Liebermann, *Über die* Leges Edwardi, 134–9 stops at the end of Stephen's reign despite being based on the copy in MS Cb; Liebermann argued that the author of the *Genealogy* might very well be responsible as well for creating ECf3, ibid. 119.

[75] Tessa Webber (pers. comm.) described the hand as 'well on the way towards a fully-developed *littera textualis*, with the treatment of the feet of minims that comes to characterise the variety of *textualis formata* known as *sine pedibus* or *prescissa*'. On this type of northern *textualis*, see Derolez, *Palaeography*, 76–7.

[76] Liebermann offered several dates for the copying of the texts other than the *Genealogy*, assigning the laws to *c.* 1150 in 1893 (*Consiliatio Cnuti*, pp. xv–xviii), and 'um 1160' in 1896 (Über die Leges Edwardi, 127), which remained his verdict in 1903 (*Gesetze der Angelsachsen*, i. pp. xx–xxi). According to Liebermann, the *Genealogy* was added later to MS Cb, though by the main scribe of the laws, who carried it up to 1170. This scribe's belief that the coronation of the Young King in 1170 signalled a change in rule suggested to Liebermann that this portion of the *Genealogy* must have been composed before 1173, when the rebellion made clear that Henry II, the father, was still ruling. In 1893 Liebermann noted

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

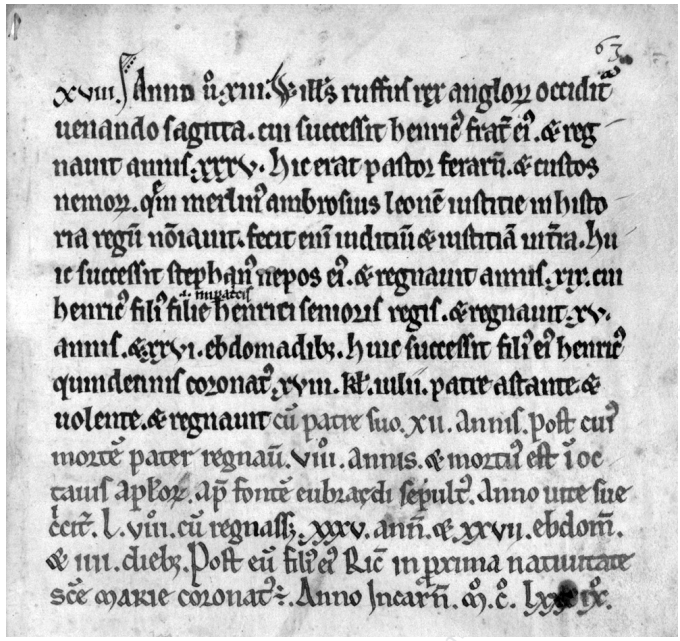

Figure 12.1 Paris, Bibliothèque nationale de France, lat. 4771, p. 63 (The End of the *Genealogy*).

The scribe who completed the genealogy, however, is very likely to have been the corrector of the manuscript, who was also responsible for adding Old English legal jargon throughout the text in spaces left by the main scribe. The evidence for this shared identity is the common letter forms and suspension marks used by both corrector and the scribe who completed the *Genealogy* (Figure 12.2 below). The scribe who did the latter employs a pregothic minuscule having a rounded, Caroline aspect, with feet curving up to the right; these characteristics are found in many corrections throughout the manuscript. Forms for **a**, **e**, **n** and **t** in some corrections, in the last lines of the *Genealogy*, and in some Old English words are very close if not identical to one another. The main scribe marks the vast majority of his suspensions with a crossbar with downward-angled tails, particularly thin and long on the right side; the corrections and *Genealogy* both exhibit a left-tilted **u** as a suspension mark for **m**, **n** and medial **s**, and the *Genealogy* shows the use of a crossbar for other

the change in ink between the main scribe's text and the continuation, but was uncertain whether it was a different hand as well (Consiliatio Cnuti, p. xvii n. 7); by 1896, he was more confident that it was a later hand (*Über die* Leges Edwardi, 139 n. 12).

© Copyrighted Material

© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

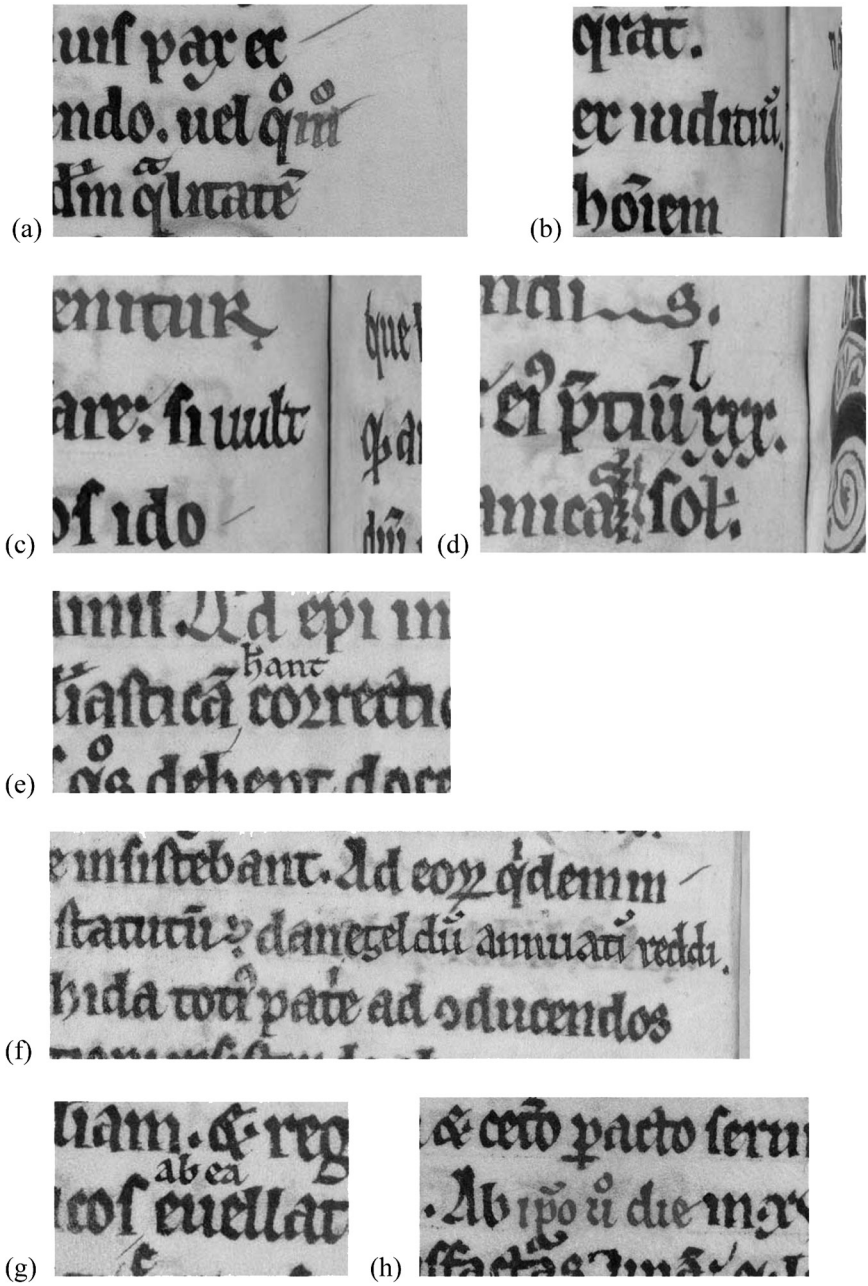

Figure 12.2 Paris, Bibliothèque nationale de France, lat. 4771, pp. 3, 14, 30, 34, 42, 46 and 58 (The Corrector's Hand).

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

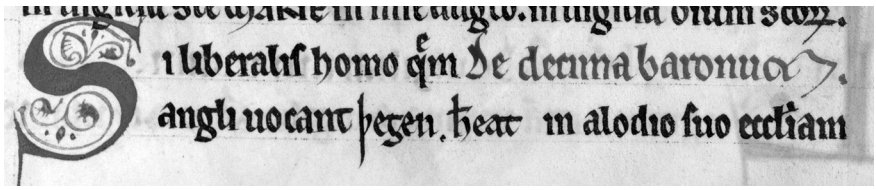

Figure 12.3 Paris, Bibliothèque nationale de France, lat. 4771, p. 7 (The Corrector's Insular and Pregothic Scripts).

suspended letters, such as **-ud**, **-it**, **-er**, **-os**, **-ardus** and **-ationis**; this crossbar often, but not always, has an angled tab up on the left side and down on the right.[77]

In one particularly telling example, the main scribe has, as usual, left space for the writing the Old English term *þegen*, which belonged in the text at that point (In Cn 1.11), but resumed writing with *in alodio*, accidentally skipping over the Latin word *habeat* which followed *þegen* in his source (Figure 12.3). It may be that the two words appeared to be one word in the source; the main scribe has left far more space than was needed for *þegen* alone and surely would have supplied the *habeat* if he had recognised his singular error. The corrector later filled in the Old English *þegen* and the missing Latin *habeat*, though switching from the insular letter-forms used for *þegen* to a round pregothic script for *habeat*. The hand of *habeat* looks identical to that of the end of the *Genealogy* and shares some letter forms (e.g. **a**) and ink colour with some examples of the corrector's hand elsewhere in the manuscript.[78] The letter-forms and ductus (and in part the ink colour) at the end of the *Genealogy* and in the English terms and phrases, compared with many of the Latin corrections spread throughout the book, lead to the conviction that some of the corrections and all of the insular script were written by the person who completed the *Genealogy*. This identification means that the manuscript cannot be older than 1189. A date at or near to that in fact is supported by the probable date of the script used by the main scribe.

The writing of embedded Old English terms by a separate scribe using vernacular letter-forms in a Latin text is peculiar. While the Latin text is written in a pregothic minuscule, many of the English terms were written in an insular script which is for the most part very much like some of those still used in the twelfth century for vernacular texts. Although there are a few imitative or archaising insular letter-forms, the hand as a whole does not appear to be

[77] Pp. 14 (line 20), 58 (line 25). In the *Genealogy*, see suspension marks on p. 63 at line 10 (cu*m*), line 11 (morte*m*, regnau*erit*, i*n*), line 12 (ap*ud*, fonte*m*), line 13 (ci*r*cite*r*, cu*m*, anni*s*, ebdom*adibus*), line 14 (eu*m*, Ric*ardus*) and line 15 (s*anc*te, Incarn*ationis*).

[78] P. 7 (at In Cn i. 11) and corrections cited above, n. 77.

© Copyrighted Material

© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

an imitative one.[79] Such a treatment of English in a Latin text of laws is to my knowledge unique.[80] Not all of the Old English terms in the texts were left for the corrector to insert (Figure 12.4).[81] In ninety-two places in the Colbertine lawbook, the corrector has filled spaces with words or phrases in his hand. In eighty-one other places where Old English terms appear, the main scribe left no blank spaces and instead simply wrote the terms in the pregothic script he uses for the Latin text. The key to the differing treatments lies in the presence or absence of certain vernacular letter-forms.[82] When an English word had the vernacular letter-forms **þ**, **ð**, **ƿ** or **æ**, the main scribe skipped the word, leaving space to be filled later by the corrector. When the English word had no vernacular letter-forms, it was almost always written in pregothic minuscule by the main scribe.[83] The same word appearing sometimes with and sometimes

[79] He used a form of **e** more often seen in English manuscripts of the tenth century than afterwards, forming it as a **c** with a long horizontal tongue centred and extending beyond the top and bottom limits of the horns of the **c** (i.e., **ϵ**). On distinguishing imitative from non-imitative script in the twelfth century, see M.B. Parkes, 'Archaizing hands in English manuscripts', in J.P. Carley and C.G.C. Tite (eds), *Books and collectors, 1200–1700: essays presented to Andrew Watson*, London 1997, 101–41; J.C. Crick, 'Script and the sense of the past in Anglo-Saxon England', in J. Roberts and L. Webster (eds), *Anglo-Saxon traces*, Tempe, AZ 2011, 1–29; eadem above in this volume, 159–90; and P.A. Stokes, 'The problem of grade in English vernacular minuscule, *c.*1060–1220', in E. Treharne, O. Da Rold and M. Swan (eds), *Producing and using English manuscripts in the post-Conquest period* (New Medieval Literatures xiii, 2011), 23–47.

[80] Liebermann noted in 1896 the use of 'Anglo-Saxon letters and runes' to write the English words in this manuscript: *Über die* Leges Edwardi, 127. Other lawbooks (Ad, Di, H, Hk, Hv, Hy, Ls, M, R, Rl, Rs and T) use on occasion a few vernacular letter-forms (**þ**, **ð**, **æ**, **ƿ** and, less often, **g**), but always integrated into the principal script of the Latin texts. The only analogue to Cb's practice is found in a near-contemporary copy of Adelard of Bath's translation of the astronomical tables of al-Khwārizmī, where a scribe uses a rubricated display script to represent transcribed Arabic technical terms retained in the Latin translation: C. Burnett, *The introduction of Arabic learning into England*, London 1997, 39–41, and pl. 3 (Bodl. Lib., MS Auct. F. 1. 9, fo. 99v), discussed in O'Brien, *Reversing Babel*, 102–4.

[81] Consider, for example, the following pattern of treatments seen in Figure 12.4 (p. 12 of the Colbertine lawbook), with the letters I (for insular) and P (for pregothic) identifying the scripts: 'fede oðe forðie' (line 1; I); 'gecydne utlage' (line 3; I); 'mertia' (line 3; P: both Wessex and East Anglia are done in insular script elsewhere); 'feohƿite' (line 5; I); 'ferdƿite' (line 6; I); 'Griðbrec\h/e' (line 6; I); 'hamsocne' (line 7; P); 'friðlesne man' (line 10; I); 'lashlit' [*sic*] (line 18; P); 'lashlit' (line 19; P); 'cherl man' (line 21; I); 'lashlit' (line 26; P).

[82] I am grateful to Peter Stokes for this observation.

[83] Consider the pattern of treatments in ECf3 12 on p. 43: 'kingeshandsealdegrið' (line 9; I); 'patlinge stret . Fosse . Ikenildestret . Ermingestret' (lines 12–13; I); 'hundreta' (line 20; P); 'dene-laga' (lines 20–21; P-I); 'were' (line 21; P); 'manbote' (line 22; P); 'Manbote' (line 23; P); 'de-nelage' (lines 23–4; P); 'manbote' (line 25; P). It would have been easy to have left blank spaces for many of the English words, given that a majority are prefaced by some

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

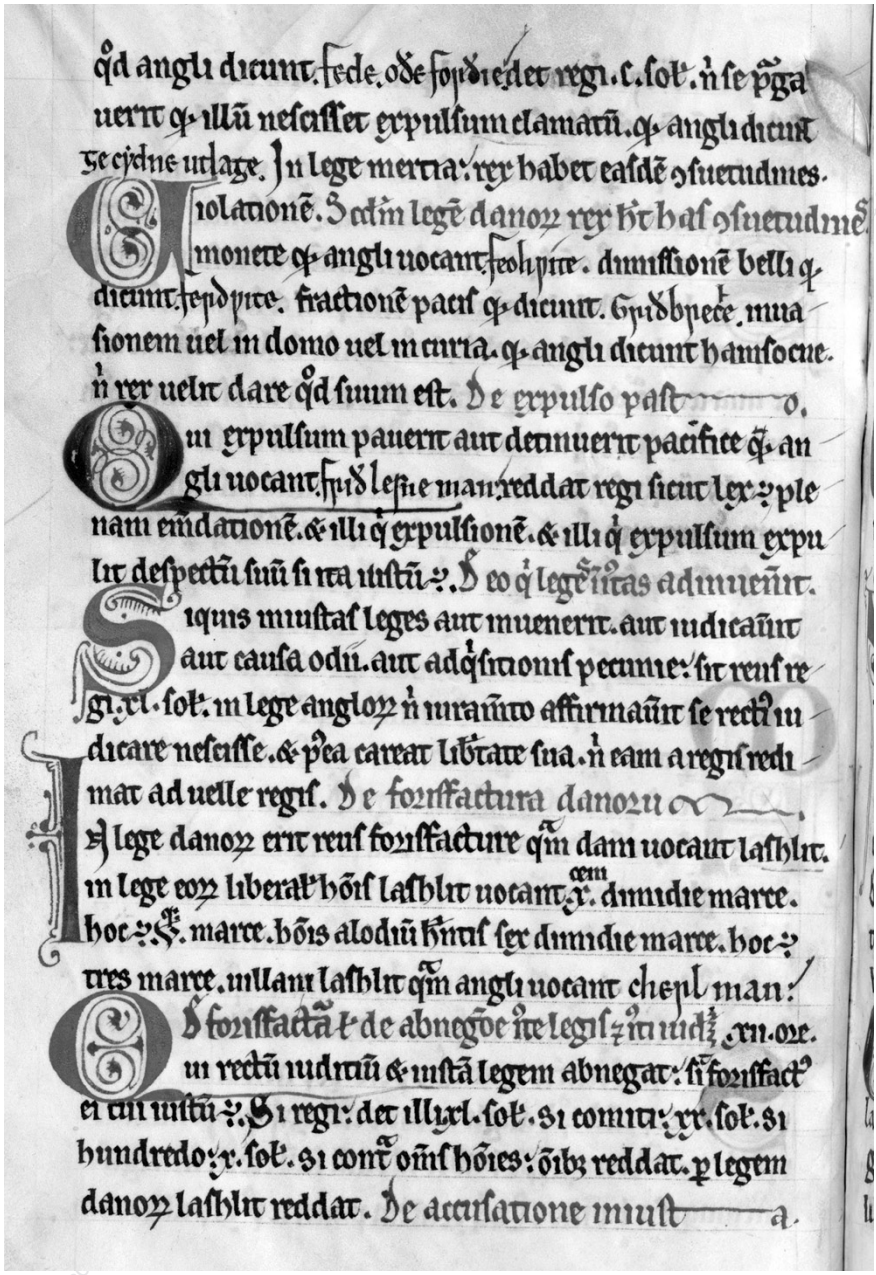

Figure 12.4 Bibliothèque nationale de France, lat. 4771, p. 12 (Insular and Pregothic treatments of pre-Conquest legal terms).

© Copyrighted Material
© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

without special letter-forms received the expected treatments: 'æðeling' (In Cn 2.58) appears in the corrector's insular hand, while several occurrences of 'edeling'/'adeling' (ECf 35.1) appear in the main scribe's pregothic minuscule.[84] The exceptions to this rule suggest that more insular letter-forms (but not too much more) were better than less.[85] The main scribe could write at least one of these special letter-forms (**þ**), which raises the possibility that the decision to write these terms using different letter-forms and added by a different hand was not based on the main scribe's inability to write a few special letters, but rather on a desire by the person in control of the book to achieve greater distinctiveness or visibility for this special presentation of English words by assigning the task to a scribe with an obviously different hand.[86]

If the corrector had the best hand in the scriptorium for enhancing the Colbertine lawbook's vernacular visibility, his skill at writing the script, nevertheless, was not impressive, nor was his understanding of vernacular letters infallible. His insular hand resembles in some ways the novice hand responsible for writing the vernacular bounds of charters in *Codex Wintoniensis*. It may very well be that, as Alexander Rumble hypothesised about Scribe A of that cartulary, the corrector of the Colbertine lawbook 'had to learn [the vernacular's] special insular letter-forms during his transcription'.[87] In the case of **e**, the corrector appears to have adopted a letter-form current in the tenth century, but found

variation of 'quod Angli dicunt', and they all could exhibit some insular letter-forms (i.e., **f**, **g**, **r**, **s**, **t**, **ẏ**), albeit not ones representing letters used only in English words. The instructions to the main scribe could not have been to leave spaces for all English words, but only for those words having at least one of a select group of vernacular letter-forms.

[84] The same is true of 'þere' / 'were': 'þere' at pp. 13 (ll. 4, 24), 17 (l. 24), 18 (l. 3), 21 (ll. 9, 16), 23 (l. 2), 24 (ll. 7, 16), 28 (ll. 6, 10, 12), 33 (l. 20) and 34 (l. 2) are all insular; it appears as pregothic 'were' at p. 43 (l. 21).

[85] For example, 'saulescot' (In Cn 1.13); 'gecydne utlage' (In Cn 2.13.2); 'cherlman' (In Cn 2.15a and 3.42), are all in the corrector's hand though none has any of the four letter-forms exclusive to the vernacular.

[86] The main scribe's three words that use **þ** are pregothic words in all other particulars except for this one letter-form. On p. 49, the main scribe has written 'infangeneþief' twice on the same line, once in the rubric and once at the beginning of the chapter. He also used a thorn for 'þrihinga' (ch. 31.1), and what appears to be a very tentative eth (**ð**) for **d** in 'leð' (p. 53, line 24; note that 'led' appears with a **d** five lines above on the same page). These three instances of **þ** written are noticeably inconsistent in form. As for who was in charge of the book project, it was probably the corrector, who would be expected to be a senior scribe.

[87] A.R. Rumble, 'The structure and reliability of the *Codex Wintoniensis* (British Museum, Additional MS 15350); the cartulary of Winchester Cathedral Priory', unpubl. Ph.D. diss., London 1979, i. 57. For full analysis, see ibid. 56–60, 235–40. For similar observations about Ely and Bury St Edmunds, see Stokes, 'The problem of grade', 23–47.

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

rarely in twelfth-century insular minuscule.[88] He (and the main scribe) also at times misread the Old English letter ash (æ) as an ampersand (&), which both converted to 'et', garbling Old English words.[89] Overall, the compression and size of his letters are irregular. There is also a significant variety in some individual letter-forms. None of this suggests he had copied a great deal of English prior to his work on this lawbook. If he was the best available, then the Colbertine lawbook was probably created in a scriptorium with almost no experience copying English books.[90]

[88] See above, note 80. For examples of the corrector's fluctuating **e** letter-forms, see pp. 18 (l. 26, 'æþespyrðe'), 19 (l. 11, 'þerelade'), 21 (l. 4, 'eðgelde', with initial and final **e** as ɛ and medial as the corrector's rounded pregothic **e**). Further examples can be found on pp. 5, 7, 12, 16 and 43. This same form of **e** is used as the standard minuscule **e** by a Westminster forger of the second quarter of the twelfth century for one of his creations: *Facsimiles of Anglo-Saxon charters*, ed. S. Keynes, Oxford 1991, 11 (no. 37).

[89] Both the corrector and the main scribe were confused by Old English ash. Resemblance between ash and ampersand in contemporary manuscripts can be close, a point also raised by Crick in this volume, 170: see MS R, fo. 146r, lines 19–20 (Quadripartitus). In MS Cb, on p. 17 (line 24) the corrector wrote 'þetre' for what must have been 'þære' in the source (which itself is unusual), after which someone erased the **t**, leaving a gap. In three other places, the corrector has accurately copied ash (p. 7, l. 1; p. 17, l. 12 [this last on the same page as his 'þetre']; p. 22, l. 14). In other places where we might expect to see the corrector writing **æ**, we find e and cannot say what was in the source (e.g., p. 13, l.6 ['hundred']; p. 14, l. 3 ['husfest and folgeres']; p. 14, l. 3 ['berst']: all of these examples appear with **æ** in the oldest copy of In Cn [MS H]). The main scribe wrote 'metibote' for what must have been 'mæibote' in the source (p. 3, l. 10). At ECf 32 (p. 53), the main scribe wrote 'Gretue' (line 21) for what must have been 'Græue' (a mid-twelfth-century form of the Old English word 'gerefa' [reeve]) in the source, and four lines down again wrote 'gretue' (line 25); in both cases the **t** has been erased just as it had been in the insular script. On the bottom of the page (line 26), the word appears abbreviated as 'gue' with a suspension mark above the **g** used by the main scribe for **ra** and **ua**. On the next page (54), the word appears, without any erasure, as 'Gr&ue' (line 3), and this is clearly an ampersand rather than ash. On p. 53, at ECf 31, the word had appeared correctly in the compound 'trehingreue' (line 14). The error was spotted and the correction made to 'gretue' probably before the rubric was added by the main scribe, since he has spelled it as 'greue' in the rubric on the same line as his first 'gretue' (p. 53, l. 21).

[90] It is unlikely to have been produced at Christ Church, Canterbury, Rochester, or Worcester, all of which had a good deal of experience copying English-language books in the twelfth century. But does the corrector's inexperience mean that the book could not have been made at any of the other houses and cathedrals where we have some evidence for the production of English-language books, places like Abingdon, Barking, Bath, Bodmin, Bury St Edmunds, St Augustine's, Canterbury, Durham, Ely, Exeter, St Paul's London, Peterborough, Salisbury, Sherborne, Thorney, Winchester and York? The identification of sites of production is from O. Da Rold, 'EM in context', in O. Da Rold, T. Kato and M. Swan (eds), *The production and use of English manuscripts 1060 to 1220*, University of Leicester 2010, available at http://www.le.ac.uk/english/em1060to1220/culturalcontexts/2.htm.

© Copyrighted Material
© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

Less noticeable to a twelfth-century reader than the treatment of the Old English terms is the level of revision that the texts have undergone. While I suspect that the particular deployment of insular script for English legal terms is probably original to this lawbook, it is far from clear whether the revisions are similarly original here, or had been done earlier in a different place by someone unconnected to the team of scribes who produced the lawbook. The problem of deciding the date when, and place where, the revisions were made is compounded by the fact that so many aspects of the lawbook are unique – the fundamental shape of one of its principal texts; the revised contents and wording of all of its law codes; and the use of insular script for many Old English terms in its two longest legal sources. We at least can say that the whole collection – Colbertine *Cnut*, *Articuli*, *Leges Edwardi,* and *Genealogy* – was assembled and revised probably at the same time, since the reviser's work appears on every page.

One scenario explaining the sequence of the book's creation might look like this: the *Genealogy*'s incompleteness – ending in mid-sentence – marks where the draft serving as the exemplar ended or where an initial extension of the *Genealogy* at the scriptorium reached. Once the main scribe had reached that point, the corrector added a newly composed final section of the *Genealogy*, corrected the texts, and filled in the spaces with Old English terms. Either after or more probably before the corrector did his work, the pen-drawn initials and capitals were added. It is in this scenario more likely that both the lawbook and its source, with its incomplete version of the *Genealogy*, were produced around the same time in the same place. The coordination between scribes, the complexity of their agenda, and the coherence of their product says as much. It is also much more likely that the blending of the *Instituta Cnuti* and *Consiliatio Cnuti*, as well as all of the other revisions, took place not in the Colbertine lawbook, but in its source.[91] The text in the lawbook is too cleanly written to be the actual object about which so many editorial decisions had to be made and successfully carried out; grammatically muddled revisions in any of the texts are exceedingly rare.[92] This seems to me to be the simplest hypothesis, though it is not testable, and other scenarios, while more complicated, might very well be closer to the truth.

That said, let us turn to the revisions. Someone has edited the book's contents to a degree not seen in any other twelfth-century lawbook. Most of these revisions are a matter of style preference, consciously or unconsciously enacted. The reviser, for instance, thought some words were interchangeable: he changed *dicunt* to *uocant* in some, but not all, 'quod Angli dicunt' phrases,

[91] By 'source' I mean the text copied into MS Cb. This source could be, and probably was, the reviser's draft.

[92] See In Cn 2.66 and 2.71.3.

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

and also switched *uocant* to *dicunt* elsewhere.[93] He replaced the *Instituta Cnuti*'s *insidiator* with *traditor*, a word which also appears in the *Leges Edwardi*.[94] Words that are redundant were sometimes removed: *et uolo* after *precipio*; *populi* from the phrase 'ad utilitatem populi Anglorum'; and many instances of *emendet* in the section of the *Instituta* that translates Alfred's personal injury penalties.[95] In the *Leges Edwardi*, changes of words, inversion of phrases, and rearrangement of syntax are frequent, but rarely do they amount to a substantive change in the law.[96] Some changes, like those in Colbertine *Cnut*, are simply different ways of writing the same thing: *in qua* for *ubi*; *regnum tenuit* for *regnauit*; and *malorum* for *uitiorum*.[97] Other instances suggest a reason behind the choice, though identifying that reason involves a guess: the reviser added *in Anglia* to the title perhaps to remind readers that the laws William I confirmed were for England and not for Normandy; he may have added *confirmate et* to enhance *corroborate* in describing William I's public endorsement of the laws and ancient customs of the English.[98] Longer omissions do not change the meanings of their chapters. For instance, he omits 'de suo proprio Anglorum lege' in the chapter on Peter's Pence, with no real change in the substance of the chapter.[99] Even if the reasons for some changes are opaque, it does seem as if the reviser was interested generally in making his texts clearer than their sources.[100]

For both the *Articuli* and the *Leges Edwardi*, no textual source for the revisions can be identified, and it is simplest to assume that changes are the product of the reviser's desire to tighten up their prose or to improve their idiom. For the Colbertine *Cnut*, stylistic changes are just as frequent, but many are derived from a known source. The reviser used, as Liebermann noted in 1893, a text of the *Consiliatio Cnuti* to supply words, phrases and clauses to replace

[93] For example, he changes 'dicunt' to 'uocant' at In Cn 2.20 (p. 13); 2.59d (p. 23); but not at In Cn 2.13.2 (p. 12) or Wl art 2 (p. 36). In Cn 3.5 (p. 28) shows the reviser moving in the opposite direction.

[94] In Cn 2.64 (p. 23); 'traditor' is what is used at ECf3 18.2 (p. 47).

[95] The first two examples are taken from Wl art 5 (p. 37); the omissions of 'emendare' are at In Cn 3.11, 3.13, 3.14, 3.15, 3.18, 3.19, 3.20 and so on (pp. 28–9). See also the omission of 'teneat et' from 'teneat et habeat' at Wl art 6 (p. 37), and 'uenire' at Wl art 7 (p. 37).

[96] Some changes are scribal error – eye skip at ECf3 12a (p. 43) caused the scribe to drop 'in natale domini dies octo, in pascha dies octo'.

[97] ECf3 10.3 (p. 42); 34.2 (p. 55); 37.1 (p. 59). See also 'redierit' for 'reditum fecerit' at 5.3a (p. 40). It may be that the reviser is trying to match the rhetorical *cursus* of his own day.

[98] ECf3 inscr. (p. 37) and 34.1a (p. 55).

[99] ECf3 10 (p. 42).

[100] His rubrics are often unique and more explicit than other witnesses' rubrics (e.g., ECf3 28 at p. 52). In the one place (ECf3 12.3, at p. 43) where an explanatory interlinear gloss has been added ('id est pacem regis', to explain an isolated *eam*), this may just as likely be the work of a corrector rather than the reviser.

© Copyrighted Material

© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

those found in the section of the laws which come from the *Instituta Cnuti*.[101] Some emendations hide the seam between the two texts. For instance, the new prologue, borrowed from the *Consiliatio*, uses *decretum* to describe the 'common decision' of Cnut's council to fix the laws; the *Instituta*'s prologue has Cnut establish (*instituit*) his laws with the advice (*consilium*) of his chief counsellors.[102] The reviser retained the *Instituta*'s prologue, but changed *consilium* to *decretum*, which brings the two prologues into agreement and gives the counsellors a greater say in legislation.[103] Instances of more direct replacement are common.[104] The very order of the chapters in the *Instituta* has been rearranged in one place (I Cn 17–17.2) to match their order in the *Consiliatio*.

Felix Liebermann saw no logic behind these editorial moves because they did not enhance the substance of the laws. Logic or no, the identification of the source allows us to reconstruct the reviser's priorities and method more securely than we can with only the evidence of the revisions to the *Articuli* and *Leges Edwardi*. The reviser began with two Latin texts of Cnut which differed in major and minor ways. He chose the much longer *Instituta Cnuti* as his base text, perhaps not just because of its length and broader coverage of legal issues, but also because it, unlike the other text of Cnut, was filled with transcriptions of the technical vocabulary of Old English law. Although the second text, the *Consiliatio Cnuti*, is exceptional for having avoided virtually all transcription of Old English legal terms, nevertheless it had some unusual elements the reviser decided to borrow – most notably its prologue. He then read the *Instituta*'s text against the whole of the *Consiliatio* and borrowed language from the *Consiliatio*, it seems very likely, to improve the style and meaning of the composite text he was creating, even if his editorial judgements were mostly solipsistic. He directed more attention to religious matters than to anything else: his borrowings and emendations of all sorts are frequent in the ecclesiastical section of Cnut, and rare thereafter. This scenario still leaves two areas of revision to be explored:

[101] Liebermann, Consiliatio Cnuti, p. xviii. We have little or no knowledge of where copies of these texts could be found in the late twelfth century, but David Rollason's reminder to us of the movement of clerics in search of texts for Durham's historical works makes the question of where the reviser of Colbertine *Cnut* acquired his sources in an important sense moot: see Rollason in this volume, 110–12.

[102] Liebermann, Consiliatio Cnuti, 1; *Gesetze der Angelsachsen*, i. 279.

[103] Cb Cn prol., on p. 2 (line 9).

[104] See the apparatus to In Cn and text of Cons Cn in *Gesetze der Angelsachsen* i, at 1.2.1 ('propria'), 1.2.2 ('Christiani'), 1.2.3 ('concedat'), 1.3a ('dignitas'), 1.4.1 ('ad faciendum populo in necessitate'), 1.5.1a ('assumat sex secum et ipse sit septimus'), 1.5.2 ('uulgaris'), 1.5.2a ('audiutorium'), 1.6.2a ('uoluerit'), 1.7 ('commater'), 1.8.1 ('sicut carruca perarat' in In Cn, but omitted in Cons Cn and for that reason probably omitted from Cb Cn), 1.8.2 ('adeunt cum'), 1.8.2 ('illi dimittant'), 1.15 ('etiam'), 1.16 ('festum'), 1.16.1 ('natalis'), 1.17.1 ('festum'), 2.8.2 ('purgamine'), 2.22.3 ('condonetur'), 2.30.1 ('iuramentum') and 2.54.1 ('ei').

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

what was behind the substantive revisions made to some individual laws, and why was the prologue of the *Consiliatio Cnuti* adopted for this new amalgam?

The substance of the law has been changed in a handful of places in Cnut's laws, almost all of which are in the section dealing with ecclesiastical rights and protections (I Cnut). Though each change represents an editorial intervention in a text, the intention behind any one change is not always clear. Consider the following two examples. In one chapter, the Old English source (I Cnut 3.1–2) assigns different fines for breach of peace (*griðbrice*) to churches depending on their status, which it divides into four categories: chief minsters (*heofod mynstres*), middle-level minsters (*medemran mynstres*), lesser churches (*læssan* [*mynstres*]) and rural churches (*feld cyrice*) which have no graveyards.[105] The *Instituta Cnuti*, which provided the base text for this chapter in Colbertine *Cnut*, translates the four categories as principal churches 'such as bishoprics and abbeys', middle-level churches, minor churches and the smallest churches which have no cemeteries, and assigns each a *mund* amount that maintains for all but the smallest churches the numbers of the Old English source but changes the unit of account for middle-level and minor churches from West Saxon shillings to pounds, while converting the field churches' unit from shillings to pence.[106] The Colbertine *Cnut*, however, amended the *Instituta*'s identification of the churches which belonged in the top two categories: it changed the top category to archbishoprics and bishoprics while dropping abbeys down to the second category, where they joined middle-level churches.[107] It also restored some of the

[105] 'Ne synd ealle cyricean na gelicre mæðe wuruldlice weorðe, þeah hig godcundlice habban halgunge gelice· Heafod mynstres griðbrice is æt botwyrðum þyngum be cyninges munde, þæt is mid fif pundum on Engla lage· And medemran mynstres mid an hundred ⁊ twentigum scyllingum – ⁊ þæt is be cyninges wite· And þonne gyt læssan, þær litel þeowdom sy· ⁊ legerstow þeah sy mid sixtigum scill'· And feld cyrice þær legerstow ne sy· mid ðrittigum scyll.': I Cn 3.1–2 (MS A, fos 5r–5v).

[106] 'Non enim sunt omnes ęcclesię unius eiusdemque honoris · quanuis habeant unam eandemque consecrationem· Principales autem ęcclesię sicut episcopatus & abbatię talem emendationem uiolatę pacis secundum legem anglorum habere debent: mundam regis · hoc est quinque libras· Secundum certe legem danorum · octo libras· Mediocris autem ęcclesię duas libras · hoc est secundum forisfacturam regis · & ad huc minoris ęcclesię hoc est ubi parum seruitii fit & tamen cimiterium habet: forisfactura est unius librę · minime uero ęcclesię quam angli feldcirice uocant · octoginta denariorum': In Cn 1.3.2 (MS H, fos 58v–59r).

[107] 'Non enim sunt omnes ecclesie dei unius eiusdemque honoris: quamuis unam habeant consecrationem· *De principalibus ecclesiis*· Principales uero ecclesie sicut archiepiscopatus & episcopatus: hanc emendationem uiolate pacis secundum legem anglorum debent habere: mundam regis · hoc est ·v· libras · secundum certe legem danorum: octo libras· *De mediocribus ecclesiis*· Mediocres autem ecclesie ut abatie & canonicatus · iuxta forisfacturam regis uidelicet .xxc. solidos hoc est quatuor libras· *De minoribus ecclesiis*· Minores quidem ecclesie · hoc est ubi seruitium fit · & tamen cimiterium habent: xl [*recte* lx]· solidos · hoc est tres libras· *De minimis*· Minime uero ecclesie quam angli feldcherche dicunt: id est carentes cimiterio: xxx·

© Copyrighted Material
© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

amounts of the fines and their unit of account to what is found in the original law code of Cnut. The source used for these restored amounts was not, however, the Old English text, but as for many stylistic changes the *Consiliatio*, which had kept the amounts as they appeared in its Old English source.[108]

These restored amounts raise the obvious question: why would the reviser care? In 1189 it is unlikely many readers would have known that these fines were originally calculated in West Saxon shillings of 4*d*., rather than the twelfth-century shillings of 12*d*.[109] The changes made to the Colbertine *Cnut*, then, gave all but the principal churches a hefty 300-per-cent increase over the *mund* amount in the *Instituta*, which merely converted pre-Conquest fines to the Norman 12*d*. shilling. The reviser here has also changed which churches the *Instituta* said belonged to the highest categories: in Colbertine *Cnut*, the top category is assigned to 'archbishoprics and bishoprics', while the second covers 'abbeys and houses of canons'. The reviser added 'archbishoprics' and 'houses of canons', which appeared in neither the *Instituta* nor in the *Consiliatio*, and demoted 'abbeys' from the first to the second category. One would like to see these changes to amounts and status as reasoned choices which provide clues to the purpose of the text and identity of the creators of the lawbook, and perhaps to developments in the law itself. However, it may not be wise to read these adjustments to *mund* literally; there is no independent evidence that churches in 1189 calculated their status based on *mund*, let alone were protected by fine amounts like these. The changes to this text might be more profitably read as statements of proportions and hierarchy, and the whole passage stands as a seasoned legal authority given retrospectively to the rising authority of archbishops and the status of canons regular in the ecclesiastical landscape. It is very much a bishop's book. The demotion of abbeys does suggest that, if the reviser was a monk, he was a humble one.

The second example appears to add new obligations to Cnut's chapter on soulscot, a payment owed at the burial of a corpse. I Cnut 13 states that, if a family wishes to bury the dead family member or friend in another parish, they were to pay soulscot first.[110] This was translated without change to the substance

solidos·': Cb Cn 1.3.2 (pp. 3–4). I have italicised the rubrics, kept the MS punctuation, but silently expanded abbreviations. All capitals at the start of chapters and some sub-chapters are two-line ink-drawn initials. The scribe has inverted the numbers for the fines of cxx and lx *solidi* – the pound amounts show that these inversions were scribal errors.

[108] For the amounts in Cons Cn 1.3.2, see Liebermann, Consiliatio Cnuti, 3.

[109] The author of the *Leis Willelme* over a half-century earlier had explained, as mentioned above (n. 35), that 'English' shillings contained only 4*d*. in order to avoid, no doubt, this very confusion.

[110] 'And saul sceat is rihtast þæt man symle geleste a æt openum græfe· Ænd gif man ænig lic of rihtscryftscire elles hwær legce gelæste man þone sapel sceat swa ðeah into þam mynstre þe hit to hyrde': I Cn 13–13.1, *Gesetze der Angelsachsen*, i. 294 (MS A, fo. 6v).

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

by the *Instituta*.[111] Colbertine *Cnut* took the *Instituta*'s text, but added that a person (grammatically the corpse) should 'honour his church from his own property according to what he himself is and thus he may be transferred to where he wishes with the licence of his own priest'.[112] This appears to describe a further mortuary which was based on a person's status and payable to the local church where the corpse should have been buried. This payment essentially purchases the licence of the local priest to bury the corpse somewhere other than the dead person's parish church's cemetery. Burial of corpses was an issue generally sorted out between older or mother churches and the newer parish churches and proprietary churches being built in their districts.[113] The right to the corpses of the elite was in particular defended fiercely by the older churches, since the dues such burials brought it, as well as the prestige of high-status corpses in the cemetery, were important to the viability and status of the church.[114] What had once been required became over time the default position, as it was expected in the next century that wealthy people in particular would choose their own burial sites.[115] Colbertine *Cnut* appears to be offering a scheme whereby the family and friends of a dead person could buy a licence to bury a corpse elsewhere, a step in the evolution of burial practices. That may well be what the text is doing, but caution about accepting that conclusion is warranted. Although the added clause may track the development of mortuaries, it may simply be a clumsy reiterative gloss on the meaning of soulscot; the poor quality of the grafting of new on old might justify reading this simply as a restatement of what it follows, rather than anything new.[116]

It is worth remembering that when amending particular laws in Colbertine *Cnut*, the reviser did not need to update everything. He needed only to update what he intended to draw attention to, or what seemed most useful to have the

[111] 'Si quis corpus parentis aut amici sui de propria parrochia alias portare ad sepeliendum uoluerit: faciat prius rectitudinem parrochię ad quam pertinet · scilicet redditus quod angli saulgescot uocant · quod recte persolui debet ad apertum sepulchrum': In Cn 1.13–13.1 (MS H, fo. 62r).

[112] '... & etiam de substantia sua honoret ecclesiam suam secundum quod ipse est · & sic cum licentia proprii presbyteri transferatur quo uoluerit': Cb Cn 1.13–13.1 (MS Cb, p. 8).

[113] J. Blair, *The Church in Anglo-Saxon society*, Oxford 2005, 444 n. 76, 446–7, 451, 463–71. See the rich set of documents mentioning disputes or negotiations over burial rights in *English episcopal acta VII, Hereford 1079–1234*, ed. J. Barrow, Oxford 1993, nos 31, 56, 152, 153, 214 and 235. The earliest is 1131 x 1148; the latest *c.*1190 x 1198.

[114] *English episcopal acta VIII, Winchester 1070–1204*, ed. M.J. Franklin, Oxford 1993, no. 84 (1139 x 1143) and *English episcopal acta VII, Hereford*, nos 137 and 138 (1174 x 1186).

[115] *English episcopal acta VIII, Winchester*, no. 3 (1114).

[116] Though see *Episcopal acta VII, Hereford*, 104–5n, for no. 151 (1180 x 1186), on the separation of mortuaries and burials.

© Copyrighted Material
© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

laws say. To ask for every chapter to be updated – especially when the code is an artefact of the old law – is to ask legal writers of the day to be something they are not – writers of legal textbooks. So the laws live simultaneously in the past and in the present according to what the writer needs or wants. For the Colbertine *Cnut*, then, the reviser wished to alter only a selection of chapters of the law, and these concern a cluster of issues which would have been of moment to some clerics of the day, rather than to the king's court or the secular elite.

A less ambiguous revision comes at the beginning of the Colbertine *Cnut*. The reviser has added a new prologue which recasts Cnut's legislation as an attempt to unify all of England's laws under the authority of its new conquering king (Figure 12.5).[117] This prologue was not composed for the Colbertine *Cnut*, but was borrowed with little change from the *Consiliatio Cnuti*. What the *Consiliatio*'s prologue, and hence the Colbertine *Cnut*'s prologue, says, however, is quite striking, and contrasts with the prologues of all other Old English and Latin versions of Cnut's laws. In the Colbertine *Cnut*, the conquering king learns that England had once been ruled by many kings and, as a consequence, had many different laws for its different and formerly independent regions. In response, King Cnut states that since England now had one king, it should also have one law ('... quatinus sicut uno rege: ita et una lege uniuersum Anglie regnum regeretur'). The anachronism of this imagined observation is beside the point. Cnut is here made to address the legal divisions which appear in the records of Anglo-Saxon law – the existence of the three major legal regions of West Saxon law, Mercian law and the Danelaw, and perhaps also local customs such as those of Kent or East Anglia, memory and textual evidence of which was still around in the twelfth century.[118]

The compiler of the Colbertine lawbook wanted a collection of texts of the *laga Edwardi*, and found a way to integrate these texts by borrowing the *Consiliatio*'s prologue and placing it at the head not only of the revised version of Cnut's laws, but of the lawbook itself. The whole lawbook gives voice to Cnut, Edward and William I, who together form a resounding chorus for the role kings and their barons (which included senior ecclesiastics) played in the creation and maintenance of law in a period of England's past which had already been singled out in the late eleventh and early twelfth centuries as the critical period for the kingdom's laws, the period when the *laga Edwardi* was in force as the good customs of the realm. That the Norman kings had endorsed this *laga* was known in the late twelfth century, even as current kings moved on to Henry I as

[117] See appendix to this article for an edition and translation of the prologue.

[118] The existence and identity of the legal regions of the kingdom appear in most of the codes and treatises: In Cn 2.14–15; Hn 9.10–10a; ECf 12.3–5, 30, 33; Leis Wl 2–3.3, 8, 21.3–4. Richard fitz Nigel also knows of them, though perhaps not independently: *Dialogus de scaccario*, ed. and tr. C. Johnson, F.E L. Carter and D.E. Greenway, Oxford 1983, 63.

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

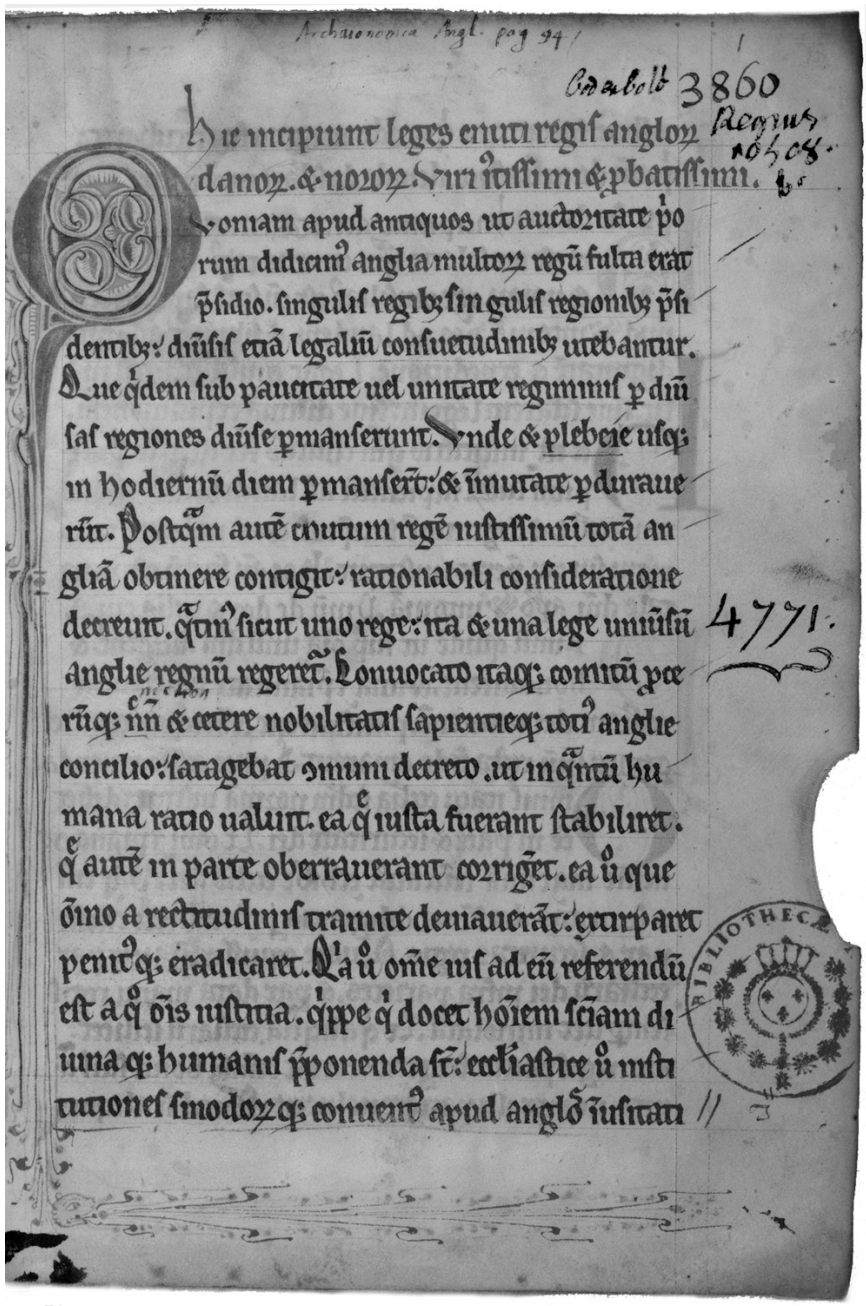

Figure 12.5 Paris, Bibliothèque nationale de France, lat. 4771, p. 1 (Colbertine *Cnut*'s Prologue).

© Copyrighted Material

© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

their benchmark. In the 1160s or 1170s the Anglo-French writer Wace tells the story of William I's confirmation of the laws of Edward, a story he probably had learned from a copy of the *Leges Edwardi*.[119] That Henry I had confirmed the *laga Edwardi* was known by the rebels of 1215; their revision of his coronation charter, a document now known as the Unknown Charter, continued to affirm it. As late as 1215, it was possible, perhaps even usual, to trace back from Henry II's confirmation of the law of Henry I's day, to the reign of William I, and then to the *laga Edwardi* itself, the pre-Conquest law affirmed after the Conquest.[120] England's laws kept their genealogy even as the limits of legal memory and legal authority moved further away from 1066.

The borrowed prologue does serve the purpose of bringing into concord the messages of the laws of Cnut, of Edward the Confessor and of William I: all three legal texts now offer pictures of law's survival over a conquest, pictures which stress the power and authority of a new ruler to impose law, but who, regardless of that power, decided to work with law already in place (whether written or oral). The contents of the *Articuli* are 'what William, king of the English, and his magnates enacted after the conquest of England'; the individual chapters both impose new customs and affirm the *laga Edwardi*.[121] The *Leges Edwardi*'s lengthy two-part story of King William summoning his council of the English, hearing their customs, threatening to impose Norwegian law, and then acquiescing to the nobles' plea for the existing customs, offers a similar picture.[122] It acknowledges some introduction of foreign customs over time, but also royal support for the maintenance of the existing customary law of the kingdom. Such a willingness to both impose law and accept existing custom is missing, though, from the original prologue of the *Instituta Cnuti*. There, the author merely states that 'This is the ordinance which Cnut established with the advice of his wise princes for the praise of God, and for his own honour and the advancement

[119] 'Then he had all the barons summoned and all the English assembled, giving them the choice of which law they would uphold and which customs they wanted, either those of the Normans or of the English, of which lords and which kings. They said they should be those of King Edward; may the king uphold and protect his laws for them. The customs which they knew, which they used to hold at the time of Edward, those were the ones they wanted and those they asked for, those pleased them and those they adopted; this was their will and the king granted it to them' (Wace, *Rou*, 290–91, iii vv 8997–9010). Wace had earlier credited Edward the Confessor with establishing peace and good laws ('pais etabli e bones leis') (ibid. 204–5 [3.4739–40]).

[120] J.C. Holt, *Magna Carta*, 2 edn, Cambridge 1992, 113–14.

[121] '... quid Willelmus rex Anglorum cum principibus suis constituit post conquisitionem Anglie': *Gesetze der Angelsachsen*, i. 486 (Wl art inscr.).

[122] ECf prol., and 34, in O'Brien, *God's peace*, 158–9, 192–3.

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

of all the kingdom over which he presided'.[123] This Latin version discards what one of the two Old English witnesses has: Cnut's regnal titles to the kingdoms of England and Denmark.[124] Nothing in the *Instituta* reveals any hint of Cnut's rule of another kingdom. Reference to his rule of Denmark would have brought to mind the fact that he was a conqueror, and therefore had had the opportunity to impose new laws on his conquered kingdom. This was a lacuna which the borrowed prologue of the *Consiliatio* filled.

The Colbertine lawbook is not a revolutionary text, charting some new course taken by English legal writers during an age of legal reform. Nor, strictly speaking, can it seen as wholly reactionary, an antiquarian product whose gaze is fixed in the past. It is overly narrow to think of it as either one thing or the other. It would, like most if not all books, mean different things to different readers. To some, it might be read as a statement of the criminal law which the contemporary treatise known as *Glanvill* had dodged recording, much as were lawbooks such as the Holkham lawbook and contemporary combinations of *Glanvill* with the *Leges Edwardi*. To others, it could stand as a lightly retouched mirror of princes; only a few years later, a more ambitious writer or group of writers produced such a mirror in the *Leges Anglorum*, which in turn served as a first stage for putting in writing complaints about John's rule in the lead up to Magna Carta.[125] Others would see it as a historically valuable legal *summa*, illuminating the past much as did the inclusion, around the same time, of those same texts in one version of a popular English narrative history as well as in Howden's *Chronicle*. The Colbertine lawbook certainly had historical weight as a statement of the *laga Edwardi*, a term still in use in the late twelfth century, though principally of interest to political readers who raised a demand for it in the early thirteenth century.[126] Kings may have dropped references to the *laga Edwardi* from their charters – such was surely in their best interest – but kings and their councillors were not the only readers with a keen interest in law. Some readers might have seen in this collection a statement of how English kings ruled empires during times of political transition, an issue of some interest under the Angevins. Last, it could easily be seen as a rejoinder to Glanvill's dismissive comment that England was a land without

[123] 'Hęc est institutio quam cnud rex cum consilio principum suorum sapientium: ad laudem dei · & honorem sui ipsius · & profectum totius regni cui preerat · instituit': In Cn prol. (MS H, fo. 58r). The translator was working with something like the text in MS G as his source.

[124] *Gesetze der Angelsachsen*, i. 278 (MS A).

[125] Holt, *Magna Carta*, 93–5; B.R. O'Brien, 'Forgers of the law and their readers: the crafting of English political identities between the Norman Conquest and the Magna Carta', *PS: Political Science and Politics* xliii (2010), 467–73.

[126] Holt, *Magna Carta*, 113–16, 219–24, chronicles these demands.

© Copyrighted Material

© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

written law.[127] For most if not all of the these readers, the lawbook would represent an attempted accommodation of the book's legal and political present to some part of the English legal and political past.

The reason there could be so many uses of this lawbook is simple – the viewers of the legal scene, and not just the objects they viewed, were changing. The prospect from which pre-Conquest law was surveyed was evolving. This evolution is shown by the evidence not only of this lawbook, but of all of the many legal works of the century. This period saw the composition and copying of the first Roman law procedural handbooks in England, as well as of the introduction of the teaching of Roman law.[128] In canon law, the writing of Gratian's *Decretum* in *c.*1140 did not end the study of older canon law collections, which continued to be copied, edited, and collated throughout the twelfth century.[129] Last, it was certainly a period of significant changes in some important areas of English law – namely the customs regarding land and inheritance as well as governing relations between lords and their vassals. Development of this nascent common law from the time of Henry II onwards, happening as it was in a period of accelerated changes in law and in the form and purpose of legal texts, would have shaped the kinds of questions contemporaries would ask of old law, and the questions they would have asked in *c.*1150 had certainly changed from what was asked in the immediate post-Conquest period, and by *c.*1200, the questions had changed from those of the mid-century. In

[127] In O'Brien, 'Becket conflict', 12–4, I argued that *Glanvill* could well have been a response to the multiplication of copies of these older royal laws after *c.*1164, a conclusion expanded here by considering the later texts as also, perhaps, responses to *Glanvill*.

[128] A. Gouron, 'Un traité écossais du douzième siècle: l'ordo "Ulpianus de edendo"', *Tijdschrift voor Rechtsgeschiedenis* lxxviii (2010), 1–13; P. Landau, 'The origins of legal science in England in the twelfth century: Lincoln, Oxford and the career of Vacarius', in M. Brett and K. Cushing (eds), *Readers, texts and compilers in the earlier middle ages: studies in medieval canon law in honour of Linda Fowler-Magerl*, Aldershot 2009, 165–82, whose case for Lincoln has been recently challenged by M. Brett, 'English law and centres of law studies in the later twelfth century', in T. Iversen (ed.), *Archbishop Eystein as legislator*, Trondheim 2011, 98–102. See further P. Landau, 'The origin of civil procedure: treatises in Durham during the twelfth century', in U.-R. Blumenthal, A. Winroth and P. Landau (eds), *Canon law, religion and politics. Liber amicorum Robert Somerville*, Washington, DC 2012, 136–44.

[129] Z.N. Brooke, *The English Church and the papacy from the Conquest to the reign of John*, Cambridge 1931, 84–105, 231–45, with corrections from M. Brett, 'Editions, manuscripts and readers in some pre-Gratian collections', in K.G. Cushing and R.F. Gyug (eds), *Ritual, text, and law: studies in medieval canon law and liturgy presented to Roger E. Reynolds*, Aldershot 2004, 205–19. R. Helmholz, *The Oxford history of the laws of England* I*: the canon law and ecclesiastical jurisdiction from 597 to the 1640s*, Oxford 2004, 67–105. For twelfth-century reworkings of pre-Gratianic collections in England, see Brett, 'The *Collectio Lanfranci*', 157–71 (esp. 161 n. 14); and M. Brett, 'Margin and afterthought: the *Clavis* in action', in Brett and Cushing (eds), *Readers, texts and compilers*, Aldershot 2009, 137–57, at 152–7.

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

England in particular, the Becket conflict and his murder in 1170 would have provoked talk of ancient customs which could not have been disengaged from discussion of writs, eyres and innovative assizes, let alone from evolving ideas of church reform and their implementation. Nevertheless, the function of the old law in this debate would have been changing. By the late twelfth century the laws of Cnut and Edward were no longer just a benchmark of criminal law, which they probably had been in the time of the Norman kings. Instead, the texts of these laws, while still a description of criminal law, supplementing contemporary practices in books like *Glanvill*, were also increasingly likely to be read as setting the historical and political context for a king's exercise of justice in the kingdom. The Colbertine lawbook probably would have been read as one such text.

The lawbook is also a complicated sign of the triumph of Latin as the language of law codes in the twelfth century. English-language lawbooks like Corpus Christi College MS 383 and Harley 55 merely highlight this preference. Law's Latinity was never in doubt throughout the century. This was not, however, the result of a rejection of English as one of the kingdom's languages of law. English did survive in law, but rather than being the principal vehicle for law as it had been before 1066, it became rather quickly a 'language of authenticity', not so much preserving a cultural memory of past status, but locking contemporary Latin into the semantic fields of the authoritative terminology of law.[130] It looks like the mid-century was the transitional period both for the end of English as a language for passing on the law, and for English's real as opposed to rhetorical value within Latin texts. Around that time, two pamphlets were produced – one an English copy of Cnut, the other a Latin copy of the *Instituta Cnuti* – showing the pragmatic place held by each language. It is noticeable, however, that this English pamphlet (BL Harley 55) was the last English lawbook to have survived. By the end of the century, the role of English in law codes was transformed. The Colbertine lawbook shows English to have become a thoughtfully chosen although inconsistently, even carelessly employed tag of authority and authenticity. This is not to say this is what happened to English in other genres.[131] It does suggest, however, that more immediate affairs rather than the Norman Conquest governed the status and function of all languages, and especially

[130] The phrase is borrowed from Faulkner, 'Rewriting English literary history', 279.

[131] See the particularly dynamic intermingling of languages analysed by M. Menzer, 'Multilingual glosses, bilingual text: English, Anglo-Norman and Latin in three manuscripts of Ælfric's Grammar', in J.T. Lionarons (ed.), *Old English literature in its manuscript context*, Morgantown, WV 2004, 95–119, and in B. Millett, 'The pastoral context of the Trinity and Lambeth homilies', in W. Scase (ed.), *Essays in manuscript geography: vernacular manuscripts of the English West Midlands from the Conquest to the sixteenth century*, Turnhout 2007, 43–64, at 52–60. The important collection that launched investigations of the post-Conquest production and use of English texts is M. Swan and E. Treharne (eds), *Rewriting Old English in the twelfth century*, Cambridge 2000.

© Copyrighted Material

© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

English, in the late twelfth century.[132] Regardless of the occasional errors of orthography and infrequent appearance of English lemmata, contemporary readers of the Colbertine lawbook could not have avoided the conclusion that English held a special place among their written languages of law, a place in no way threatened by the increasing use of Anglo-French.

Much more work needs to be done before we can fully map the thought world of these readers – its debates and discussions about past and present law, the interaction between the written laws of kingdom, Church and Rome, the evolving reading tastes of courtiers and clerics, in or out of royal service – but we can at least see the possibility that a book like the Colbertine lawbook, with its positive picture of king-made law and of kings actually making law, of royal authority to lay down new laws, of the power of kings to rule not just kingdoms but empires, would not have been out of place in the royal court or with any of the king's justices, even if it was seen later to be out of the mainstream of England's legal development under the Angevins. *Glanvill*, the innovative work of a smart writer in the Angevin court, offered just one way of talking about law in the 1180s, one with a long future. Other ways were possible and in fact used. And lest these other ways of talking be dismissed as inconsequential to the law in its black-letter sense of forms of action or modes of proof, of descriptions of crimes, procedures, and penalties, let us not forget that the serious and hardened critics of King John did not ask for *Glanvill*'s law in 1215, but for Edward the Confessor's.[133] This thinking about the *laga Edwardi* was as important to the way that they conceived of law, understood it in its grandest sense, as were contemporary manuals of procedure and registers of writs and anything that happened in an actual court of justice.

[132] The contrary position is argued by E. Treharne, 'Periodization and categorization: the silence of (the) English in the twelfth century', *New medieval literatures* viii (2006), 247–73, and by the same scholar even more forcefully in her recent *Living through conquest: the politics of early English, 1020–1220*, Oxford 2012, chs 5–7. For analyses more sensitive to the historical, cultural and linguistic context, see M. Faulkner, 'Archaism, belatedness and modernisation: "Old" English in the twelfth century', *Review of English Studies* n.s. lxiii (2011), 179–203, and G.R. Younge, '"Those were good days": representations of the Anglo-Saxon past in the Old English homily on St. Neot', *Review of English Studies* n.s. lxiii (2012), 349–69. Both of these stimulating articles arise out of recently completed dissertations: M. Faulkner, 'The uses of Anglo-Saxon manuscripts *c.*1066–1200', unpubl. D.Phil. diss., Oxford 2008, and G.R. Younge, 'The Canterbury Anthology: an Old English manuscript in its Anglo-Norman context', unpubl. Ph.D. diss., Cambridge 2012.

[133] *Annales monasterii de Waverleia* for 1215, in *Ann. mon.* ii. 282.

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

Appendix: Prologue to the Colbertine *Cnut*

This is a transcription of the prologue of the Colbertine *Cnut* as found in its only witness, Paris, BnF lat. 4771, pp. 1–2 (MS Cb). The prologue derives from the *Consiliatio Cnuti*, but survives other than here in only one place: the sole witness to the complete text of the *Consiliatio*, the early-fourteenth-century London, BL Harley 1704, fo. 1 (MS Hr). The *Consiliatio* in MS Hr has been joined without break to a copy of version 2 of the *Leges Edwardi Confessoris*; both texts, which fill MS Hr's only quire, travel under a common title: 'Incipiunt leges que uocantur leges Edwardi quia cum diu essent dimisse ipsas fecit reparare et de legibus regis Willelmi'. Readings from MS Hr are provided in the notes. Figure 12.5 above shows the majority of the prologue. Images of all folios of MS Cb and MS Hr are available at www.earlyenglishlaws.ac.uk. The laws of Cnut in MS Cb were edited by J.A. Kolderup-Rosenvinge in his *Legum regis Canuti magni*, Copenhagen 1826. The prologue of the *Consiliatio Cnuti* was edited by Liebermann, *Consiliatio Cnuti*, 1–2, and in his *Gesetze der Angelsachsen*, i. 618; Liebermann used MS Cb in his reconstruction of the archetype of the *Consiliatio*. Wormald, *Making of English law*, 406, provides a partial translation. My edition of the Colbertine *Cnut* will appear at www.earlyenglishlaws.ac.uk

Text

Hic incipiunt leges cnuti regis anglorum danorum . et nororum . uiri iustissimi et probatissimi.[134]

Quoniam apud antiquos ut auctoritate priorum didicimus anglia multorum regum fulta erat presidio . singulis regibus[135] singulis regionibus presidentibus: diuersis etaim legalium consuetudinibus utebantur. Que quidem sub paucitate uel unitate regiminis per diuersas regiones diuerse permanserunt. Vnde et plebeie[136] usque in hodiernum diem permanserunt[137]: et immutate perdurauerunt. Postquam autem cnutum[138] regem iustissimum totam angliam obtinere[139] contigit: rationabili consideratione decreuit . quatinus sicut uno rege: ita et una lege uniuersum anglie regnum regeretur. Conuocato itaque comitum procerumque necnon et cetere nobilitatis sapeintieque totius anglie concilio: satagebat communi decreto . ut in quantum humana ratio ualuit . ea que iusta

[134] Incipiunt leges que uocantur leges edwardi quia cum diu essent dimisse ipsas fecit reparare et de legibus regis willelmi. *rubric in Hr*

[135] singulis regibus *om. Hr*

[136] consuetudines *add. Hr*

[137] indiscusse *Hr*

[138] *Originally* chutum *in Cb, but ascender of 'h' erased*; chuntum *Hr*

[139] optinere *Hr*

© Copyrighted Material

© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

fuerant stabiliret . que autem in parte oberrauerant[140] corrigeret . ea uero que omnino a rectitudinis tramite deuiauerant: extirparet penitusque eradicaret. Quia uero omne ius ad eum referendum est a quo omnis iustitia . quippe qui docet hominem scientiam, diuinaque humanis[141] preponenda sunt: ecclesiastice uero institutiones[142] sinodorumque conuentus[143] apud anglos inusitati /p.2/ adhuc fuerant . ne quis ordo in regno suo[144] titubaret: primum de ecclesiastico . deinde de seculari iure tractare incepit sic dicens . Incipiunt decreta cnuti regis.[145]

Hec est consolatio[146] quam cnutus[147] totius anglie . danorum et nororum[148] rex consiliatus est cum suis sapientibus apud wintoniam deo ad laudem . et sibimet ad regiam dignitatem et expeditionem. Legat quilibet[149] utrum[150] malit . siue secularem legem: siue diuinam expeditionem.[151]

Hec est institutio[152] quam cnutus[153] rex decreto principum[154] suorum sapientum[155] ad laudem dei et honorem ecclesie . et dignitatem sui ipsius . et

[140] aber- *Hr*
[141] merito *add. Hr*
[142] institutiones uero *Hr*
[143] qui *add. Hr*
[144] in suo regno ordo *Hr*
[145] *No rubric in Hr*
[146] conciliacio *Hr*
[147] chuntus *Hr*
[148] norrorum *Hr*
[149] quelibet *Hr*
[150] utram *Hr*
[151] De iure ecclesiastico *rubric add. Hr*
[152] consiliacio *Hr*
[153] chuntus *Hr*
[154] decreto principum] meditacionem *Hr*
[155] sapientum *Hr*

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.

© Copyrighted Material

ad utilitatem totius regni sui cui preerat: instituit.[156] Hoc autem factum est in natale[157] domini apud Wintoniam.

Translation

Here begin the laws of Cnut, king of the English, Danes and Norwegians, a most just and good man.

As we learn from the authority of those who came before, England in former times used to be secured by the protection of many kings, with separate kings governing in each region, and also with differing legal practices which continued in the different regions, whether they were under several governments or a single one. In this way the customs of the common people had continued up to the present day and endured unchanged. Afterwards, however, it happened that Cnut, the most just king, acquired all of England and he decided after reasonable consideration that in so far as the whole kingdom of England was ruled by one king, so also should it be ruled by one law. Having called a council, therefore, of the earls and chief men and also the rest of the great and the wise of all England, he endeavoured by a common decision, that, in so far as human reason was capable, he would make firm those customs which were just; he would correct, however, what was partly in error; and he would pull up and completely destroy those which deviated altogether from the path of righteousness. Since all law should refer to Him from whom all justice comes, and indeed, who teaches man knowledge, then divine matters ought to take precedence over human affairs. Before that time, ecclesiastical regulations and meetings of synods had been unusual among the English. Therefore, so that no order in his kingdom might falter, he began to draw together first from ecclesiastical law, and next from secular law, saying: Here begin the decrees of Cnut.

This is the alleviation which Cnut, king of all England, and of the Danes and Norwegians, deliberated with his councillors at Winchester for the praise

[156] ad laudem ... instituit] consiliatus est deo ad laudem et sibimet ad regiam dignitatem et expedicionem *Hr appears to have garbled its text at this point, repeating some, but not all of the preceding passage in a second short introductory chapter. The reviser in Cb has replaced most of this second introduction with language from the Instituta's translation of the source. It would be odd for the archetype or at least the autograph to have repeated itself intentionally. Might the explanation be that Hr reflects the Consiliatio as it appeared on the exemplar used by the scribe, but also that he has mistakenly included a version of the passage originally marked for deletion in the autograph, a passage which served as a first draft of the passage in the Old English source? It is impossible to say with any certainty. For reference, the passage in the earliest copy of the Instituta reads as follows:* 'Hęc est institutio quam cnud rex cum consilio principum suorum sapientium: ad laudem dei · & honorem sui ipsius · & profectum totius regni cui preerat · instituit."

[157] natali *Hr*

© Copyrighted Material

© Martin Brett, David A. Woodman and the contributors (2015)
From Martin Brett and David A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past*, published by Ashgate Publishing. See: http://www.ashgate.com/isbn/9781472428172

© Copyrighted Material

of God and for his own dignity and advantage. Anyone whosoever can read whether he preferred either secular law or divine enterprise.

This is the ordinance which King Cnut established by the decision of his principal councillors to the praise of God and the honour of the church and his own dignity and for the utility of all his kingdom over which he ruled. This was done at Christmas in Winchester.

ashgate.com ashgate.com ashgate.com ashgate.com ashgate.com ashgate.com ashgate.com ashgate.com

© Copyrighted Material

Copyright material: You are not permitted to transmit this file in any format or media; it may not be resold or reused without prior agreement with Ashgate Publishing and may not be placed on any publicly accessible or commercial servers.