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Forgery and the Literacy of the Early Common Law*

Bruce O'Brien

The birth of the common law in medieval England has given rise to a long paternity suit. Too often most of the credit is given to Henry II and his advisers burning the midnight oil crafting assizes for the governance of the realm.[1] Here, the king created something new: a system of royal justice, namely the king's court at the Exchequer and the eyre, in which justices passed judgment based on common rules and kept records of their proceedings. The problem with this picture is that it forgets that, when Henry and those advisers sprang to the task at hand, constructing a royal law for the entire realm, the tools they needed for the task were already in their hands. The county courts, for example, on which Henry II's extension of royal jurisdiction over seigneurial courts depended, were in place and eager to administer royal laws.[2] The Anglo- Saxons had set up these shire, as well as hundred and wapentake, courts long before, in the tenth and eleventh centuries.[3] Almost as important, the literacy that Henry must have relied on to communicate his orders to the Exchequer, eyre, counties, hundreds, and wapentakes was ready and waiting. This legal literacy, in fact, should be considered the sine qua non of the common law, for without it, the centralization of the courts, which was the catalyst for the emergence of the common law, would have remained a royal fantasy. From where did the ex-

*I would like to thank Paul Meyvaert, the late John Boswell, Paul Brand, and Bob Stacey for their comments on earlier versions of this paper. In penultimate form, it was presented to the Southeastern Medieval Association, Williamsburg, VA 28 September 1992.

[1]This is the picture in the narrative sources. The firmest statements in favor of Henry II come from F. W. Maitland in Frederick Pollock and Frederic W. Maitland, *The History of English Law before the Time of Edward I*, 2 vols. (2nd ed.; Cambridge, 1899), 1: 136-39, 144-62, and Doris M. Stenton, *English Justice Between the Norman Conquest and the Great Charter, 1066–1215* (Philadelphia, 1964), pp. 30-32, 52-53; and most recently Paul Brand, "'Multis Vigilis Excogitatam et Inventam': Henry II and the Creation of the English Common Law," *Journal of the Haskins Society* 2 (1990): 197-222. Some scholars trust a more serendipitous explanation: see R. C. Van Caenegem, *The Birth of the English Common Law* (Cambridge, 1973), p. 28, S. F. C. Milsom, *Historical Foundations of the Common Law*, (2nd ed.; London, 1981), pp. 3, 11-36, esp. 25-27, and idem, *The Legal Framework of English Feudalism* (Cambridge, 1976). A path between these extremes has been detected by Joseph Biancalana, "For Want of Justice: Legal Reforms of Henry II," *Columbia Law Review* 88 (April 1988): 433-536.

[2]Biancalana, "For Want of Justice," pp. 438-39.

[3]On the administrative origins of the shires, hundreds, and wapentakes: see William A. Morris, *The Medieval English Sheriff to 1300* (Manchester, 1927), pp. 17-39; James Campbell, "Observations on English Government from the Tenth to the Twelfth Century," *Transactions of the Royal Historical Society*, 5th ser., 25 (1975): 43, 45-46, 52-53; S. Harvey, "Domesday Book and Anglo-Norman Governance," *Transactions of the Royal Historical Society*, 5th ser., 25 (1975): 175.

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tensive literacy of the late twelfth-century kingdom come? Without an answer to the question of how the late twelfth-century kingdom had become so literate, the explanation of the development of the common law, dependent as it was on its rolls and writs, is sadly incomplete.

One impressive answer to this question is provided by Michael Clanchy. In discussing the growth of trust in the written word in his study of literacy in medieval England, Clanchy recognizes that "there was no straight and simple line of progress from memory to written record," and that "there was a long and complex period of evolution, particularly in twelfth-century England," behind the spread of literacy, especially literacy in government and public matters.[4] These observations are undoubtedly accurate. Nevertheless, Clanchy concludes, based primarily on the rising literacy of other twelfth-century kingdoms and institutions and on the fact that fewer Anglo-Saxon than Anglo-Norman documents have survived, that the Anglo-Saxon kingdom had, for all intents and purposes, an oral legal culture and that real literacy only began after the Norman Conquest, particularly in the late twelfth century.[5] His twelfth-century scribes, because they lack standard forms, made "a personal and individual but necessarily amateur effort to master the complexities of documentary proof," which clearly implies the adolescence of Anglo-Saxon literacy.[6] Clanchy's Anglo-Norman writers are a long way from control of their medium, maturing haphazardly toward trust in the written word. He illustrates early twelfth-century reliance on oral testimony by citing the case between the abbey of St. Augustine, Canterbury, and Christ Church Cathedral, Canterbury, over the rights and the port of Sandwich. In 1127, the case was settled only after twenty-four jurors swore that Christ Church possessed the port and the rights. Clanchy concludes:

> As the jurors had publicly sworn on the Gospels that they were telling the truth, no more could be said, unless their Christian principles were to be impugned. Thus, without documents, the establishment of what passed for truth was simple and personal, since it depended on the good word of one's fellows. Remembered truth was also flexible and up to date, because no ancient custom could be proved to be older than the memory of the oldest living wise man.[7]

Much of this is undoubtedly true, and thus Clanchy's view of a twelfth-century revolution in literacy has been tremendously influential in Anglo-Norman studies.

Clanchy does not consider the Normans any more likely than the English to have developed a high level of literacy before 1066. The Normans, of course,

[4]M. T. Clanchy, *From Memory to Written Record: England, 1066–1307*, (2d ed.; Oxford, 1993), p. 294.

[5]Ibid., pp. 26-32, 35.

[6]Ibid., p. 231.

[7]Ibid., p. 296.

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had their own literacy, and it might be argued that these notions and practices stand behind the growth of governmental literacy in the century after 1066. As David Bates and Emily Zack Tabuteau have shown, Norman documents were every bit as complex and common as their English counterparts.[8] Surely, the Norman barons and ecclesiastics, who were party to the extensive agreements witnessed by pancartes and charters, would have brought their ideas of documentary proof and trust in written records to the conquered kingdom across the channel? That these Normans filled many, if not most, of the higher positions in church and state has been well-documented.[9] These Normans, however, instead of bringing imports, followed their king's lead and adopted Anglo-Saxon literate practices in governmental and private records: it is the writ and writ-charter, both of English ancestry, that dominate the records at least of Anglo-Norman kings, barons, and clergy.[10] For Clanchy, then, the late twelfth-century English government's literacy was less a creation of either Normans or English and more the product of the needs of bureaucrats in the Angevin court.

While generally accepted by historians of later medieval England, Clanchy's conclusions have been challenged by Anglo-Saxonists who place the late Anglo-Saxon kingdom's literacy at a very different stage of development.[11] For them, English government had much more than a rudimentary literacy. It used documents, such as writs, regularly and with effect, especially in the eleventh century, in a way that suggests that this was fairly common and routine. This extensive use of the written word, these historians claim, is clear from the form and vernacular of the few surviving writs. Anglo-Norman literacy, then, is derived from Anglo-Saxon literacy in its essentials; indeed, it is argued, Domesday Book itself, the grand statement of the new regime's lordship, could not possibly have

[8]David Bates, "The Conqueror's Charters," in *England in the Eleventh Century: Proceedings of the 1990 Harlaxton Symposium*, ed. Carola Hicks (Stamford, 1992), pp. 1-15; Emily Zack Tabuteau, *Transfers of Property in Eleventh-Century Norman Law* (Chapel Hill, 1988), pp. 7-13, 211-22.

[9]For the general picture, see David Knowles, *The Monastic Order in England* (Cambridge, 1941), pp. 100-27; John Le Patourel, *The Norman Empire* (Oxford, 1976), pp. 34-38, 49-51, 66, 250-53; Frank Barlow, *The English Church, 1066-1154* (New York, 1979), pp. 54-103, 177-96, 205-13; Jacques Beauroy, "La conquête clericale de l'Angleterre," *Cahiers de civilisation médiévale, Xe-XIIe siècles* 27 (January 1984): 35-48.

[10]Bates, "Conqueror's Charters," pp. 10-13.

[11]Simon Keynes, "Regenbald the Chancellor (sic)," *Anglo-Norman Studies* 10 (1987): 185-222; idem, "Royal Government and the Written Word in Late Anglo-Saxon England," in *The Uses of Literacy in Early Medieval Europe*, ed. R. McKitterick (Cambridge, 1990), pp. 226-57; Patrick Wormald, "Charters, Law and the Settlement of Disputes in Anglo-Saxon England," in *The Settlement of Disputes in Early Medieval Europe*, ed. Wendy Davies and Paul Fouracre (Cambridge, 1986), pp. 149-68.

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been compiled unless the English had already established the regular use of written records on their estates and in government.[12]

Although these two positions appear irreconcilable, perhaps the problem in understanding post-Conquest literacy has been one of perspective. When one looks back at the Norman Conquest from the vantage point of the thirteenth century, as Clanchy does, one sees a stumbling literacy by comparison with the regular writs, rolls, and charters of later times.[13] There can be here little in the Anglo-Saxon state, no matter how sophisticated or precocious it was, to compare to the thirteenth century's extensive reliance on written record. When one looks only at the Anglo-Saxon record up to 1066 (or to Domesday Book if it is considered an "Anglo-Saxon" record), however, the view is quite different. This perspective witnesses a tremendous development in institutions that needed writing and records, the true extent of which has been effaced by the Conquest, with its violence and expropriations, and the subsequent switch to Latin as the official language. Old English declined precipitously as a language of record; consequently, many older documents in Old English ceased to serve any useful legal purpose and so were translated or destroyed.[14] For the Anglo-Saxonists, literacy in Old English law was extensive, regardless of what happened in the twelfth century. From both perspectives, neither of which looks far beyond the Norman Conquest, the conclusions seem logical and the evidence persuasive.

Perhaps both are right about what they have observed, yet misunderstand the actual effects of the Conquest on literacy. This aspect of the Conquest has, in fact, suffered neglect. Although the Conquest's general effects on the Old English state have attracted much attention for all aspects of contact, including the relationship among the languages,[15] its effects on literacy in its interrelation-

[12]Campbell, "Observations," pp. 48-51; Sally Harvey, "Domesday Book and its Predecessors," *English Historical* Review 86 (October 1971): 753-73; Harvey, "Anglo-Norman Governance," pp. 183-84, 189, & 193.

[13]Clanchy, *Memory*, pp. 1-2, 21, 25-43, and passim.

[14]On the decline of English, see Norman Blake, ed., *Cambridge History of the English Language*, Vol. 2, *1066–1476* (Cambridge, 1993), 5-20, and passim, esp. 423-28. Many earlier works equate the end of the use of written English in official documents with the demise of English as a respected tongue, and so overstate the decline of the language. Latin was not the colonial language of the Normans; rather, it was the neutral language between French and English and quickly became the accepted lingua franca. Some monasteries took advantage of Latin's neutral status; Abingdon, Ramsey, and Ely translated their English documents into Latin by or in the second half of the twelfth century: see F. Harmer, *Anglo-Saxon Writs* (Manchester, 1952), nos. 3-5 (Abingdon), pp. 122-33, 427-29, nos. 56-62 (Ramsey), pp. 245-46, 471-82, and *Liber Eliensis*, ed. E. O. Blake (Camden, 3rd ser., vol. 92, London, 1962), 2. prol., which borrowed from the older *Libellus quorundam insignium operum beati Adelwoldi episcopi*, which included documents translated at the command of Bishop Hervey of Ely (A.D. 1109 X 1131).

[15]Percy Van Dyke Shelly, *English and French in England, 1066–1100* (Philadelphia, 1921; repr. Folcroft Library Editions, 1970); R. M. Wilson, "English and French in England, 1100-1300," *His-*

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ship with law and government has not often been studied outside of work on Domesday Book.[16] However, such a study may resolve the debate, for literacy after the Conquest was not what either side of the debate imagines. Ironically, the Sandwich case chosen by Clanchy to illustrate reliance on orality serves as the best witness not only to Anglo-Saxon literacy and Anglo-Norman orality, but also to the complex development of trust in the written word in the twelfth century.

1127 was not the first time the rights to Sandwich had been disputed or assigned. The port was one of the busiest in England, and its dues and tolls were consequently a lucrative addition to a church's income. St. Augustine's and Christchurch, Canterbury, had been fighting for control of the port for some time before the jurors of Dover and Sandwich delivered their verdict. Whatever oral proceedings or witnesses played a part are now lost or preserved only obliquely in a full dossier of documents that witness the struggle, for the wealth of the object of these disputes provided the incentive for scribes at monastery and cathedral to document their claims as fully as possible.

And document it they did. When a monk of the abbey recorded the 1127 settlement, Christ Church already possessed four grants, three confirmations, and one narrative relating to Sandwich, all of which came from the century and a half before the final settlement.[17] The first grant is Edgar's, between 963 and 971, to Christ Church, of the port and vill of Sandwich.[18] Æthelred strengthened

tory 28 (March 1943): 37-60; John P. Collas, ed., *Year Books of Edward II*, vol. 24, *12 Edward II, Hilary and Part of Easter 1319* (with T. F. T. Plucknett, Selden Society, vol. 70 for 1951, London, 1953), pp. xii-xxi, and vol. 25, *12 Edward II, Part of Easter and Trinity, 1319* (Selden Society, vol. 81, London, 1964), pp. xiv-xlvii; M. Dominica Legge, *Anglo-Norman Literature and its Background* (Oxford, 1963), pp. 1-8; Ian Short, "On Bilingualism in Anglo-Norman England," *Romance Philology* 33 (May 1980): 467-79; William Rothwell, "Language and Government in Medieval England," *Zeitschrift für französische Sprache und Literatur* 93 (1983): 258-70; Roger Dahood, "Hugh de Morville, William of Canterbury, and Anecdotal Evidence for English Language History," *Speculum* 69 (January 1994): 40-56.

[16]See, e.g., Alexander Rumble's "The Domesday Manuscripts: Scribes and Scriptoria," in *Domesday Studies*, ed. J. C. Holt (Woodbridge, 1987), pp. 79-99, and J. McN. Dodgson's "Domesday Book: Place-Names and Personal Names," ibid., pp. 121-37.

[17]Stenton, *English Justice* , pp. 116-23; a contemporary abridgment of this account has been calendared in *Regesta Regum Anglo-Normannorum*, vol. 2, ed. C. Johnson and H. A. Cronne (Oxford, 1956), pp. 210-11 (no. 1511), and edited in the appendix to the same volume, p. 358 (no. 197). Both documents have been collected and translated in R. C. Van Caenegem, *English Lawsuits from William I to Richard I*, 2 vols. (Selden Society 106, London, 1990), 1: 216-19 (no. 254).

[18]P. H. Sawyer, *Anglo-Saxon Charters: An Annotated List and Bibliography* (Royal Historical Society, Guides and Handbooks, no. 8, London, 1968), no. 808 (hereafter cited as S[Sawyer] 808 [etc.]); text in J. M. Kemble, *Codex Diplomaticus Aevi Saxonici*, 6 vols. (London: English Historical Society, 1839-48), 2: 412-13 (no. 519).

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this in 979 with a grant of land in the port.[19] Cnut's 1023 charter, in both Latin and Old English versions, specifically grants "the port of Sandwich and all exit tolls from the same harbor" to Christ Church.[20] An anonymous narrator tells how, between 1037 and 1046, Harold Harefoot, Cnut's illegitimate son, or some of Harold's men seized the port from Christ Church, kept the revenues, and gave the third penny from ship tolls to St. Augustine's until the archbishop complained and Harold returned the port to Christ Church.[21] A general confirmation of Christ Church's lands by Edward the Confessor soon after 1042 included the port of Sandwich in a list of estates added at a later date.[22] Odo of Bayeux in 1077 granted to Christ Church "all the houses which he had in the vill and all the customs that were rightfully his," a grant then confirmed by King William.[23] It is uncertain whether any of these rights had been lost after the Conquest and were here being returned or regranted. In 1093, on the arrival of the new archbishop, Anselm, William II confirmed specifically the port of Sandwich and Odo's earlier grants.[24]

St. Augustine's Abbey, Christ Church's fellow disputant in 1127, also had documentation to back up its claim to, at least, the ferry. Between 1116 and 1118, a dispute arose between St. Augustine's and Christ Church. Henry I's son, William, first ordered an inquest concerning the ferry boat of the port and then, when the verdict had come in, commanded the sheriff of Kent to reseise the abbot of St. Augustine's with his boat as was recognized by the men of the

[19]William Dugdale, *Monasticon Anglicanum*, ed. B. Bandinel, J. Calley, and H. Ellis, 6 vols. (London, 1846), 1: 111 (no. 38: S 1636).

[20] For the Latin version, see A. S. Napier and W. H. Stevenson, eds., *The Crawford Collection of Early Charters and Documents*, (Oxford, 1895), pp. 27-29 (no. 12); for the Old English version, see A. J. Robertson, *Anglo-Saxon Charters*, (2d ed.; Cambridge, 1956), pp. 158-161, 406-11 (no. 82: S 959). Facsimiles are available for four of the manuscripts: see W. B. Sandes, *Facsimiles of Anglo-Saxon Manuscripts*, 3 vols. (Southampton, 1878-84), 1, nos. 19-21; 3, no. 40.

[21]Robertson, *Charters*, pp. 174-79, 422-24 (no. 91: S 1467).

[22]Robertson, *Charters*, pp. 180-83, 427-30 (no. 95: S 1047).

[23]The text of Odo's charter is in *Historical Manuscripts Commission, Fifth Report* (London, 1876), Appendix, p. 457; William I's charter is printed in *Calendar of the Patent Rolls Preserved in the P. R. O. (1232–1509)*, 52 vols. (London, 1891-1916), 12 Hen. VI, p. 416.; both are calendared in *Regesta Regum Anglo-Normannorum*, vol. 1, ed. H. W. C. Davis (Oxford, 1913), pp. 26-27 (nos. 101, 102).

[24]This charter is a general confirmation of liberties and rights, to which a special clause concerning the "portum etiam de Sandwico et omnes exitus et consuetudines" granted by Odo has been added: see *Foedera, Conventiones, Litterae et cuiuscunque generis Acta Publica*, ed. A. Clarke, F. Holbrooke, and J. Caley (London, 1816), vol. 1, p. 5; the charter is calendared in *Regesta*, 1: 87 (no. 336).

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county.[25] Matilda, Henry I's wife, sent similar orders to Ansfrid the Dapifer for enforcement of the verdict.[26]

These charters tell Christ Church's story with a few exceptions, all of which concern a single case. This wealth of evidence from one side is understandable, given that Christ Church eventually won control of Sandwich, and so had the greatest incentive to preserve its titles. St. Augustine's, on the other hand, lost and so had few reasons to hold onto its deeds. Perhaps if the monks of the twelfth-century abbey had compiled a charter-chronicle like Battle Abbey's or the Abbey of Abingdon's, better evidence would have survived; for in the minds of the monks, the case had in 1127 only reached closure with the current king.[27] The monks had only to wait for a new king to dispute Christ Church's claims once again. But instead of being in such a chronicle, St. Augustine's three royal writs were preserved only in the fifteenth-century *Historia* of Thomas Elmham, and Thomas made his selection of bulls and charters long after the possibility of reopening the case had disappeared.[28]

For two further reasons, this simple list of documents tells only part of the tale. First, some of these documents exist in multiple twelfth-century copies. For instance, four copies, three Latin and one Old English, of the text of Éthelred's charter date from the twelfth century, while two of the five Latin notes of Edward the Confessor's grant are from the twelfth century.[29] Judging from the surviving copies, therefore, the number of actual documents of record was much larger than the actual number of distinct grants and confirmations. In the second place, historians have looked on almost all of these documents with suspicion. For example, the first charter in the list, the grant of King Edgar, has been universally condemned as a "rank forgery," in Plummer's words.[30] There are many reasons for this judgment. The surprising subscriptions of Kenneth, king of the Scots, Maccus, king of the Isles, Malcolm, king of Cumbria,

[25]Text in Thomas Elmham, *Historia Monasterii Sancti Augustini Cantuariensis*, ed. C. Hardwick (London, 1858), pp. 353-54; calendared in *Regesta*, 2: 143 (no. 1189); now available in Van Caenegem, *English Lawsuits*, 1: 180-81 (no. 212).

[26]Thomas Elmham, *Historia*, p. 354; calendared in Regesta, 2: 143-44 (no. 1190).

[27]*The Chronicle of Battle Abbey*, ed. E. Searle (Oxford, 1980), and *Chronicon Monasterii de Abingdon*, ed. J. Stevenson (London, 1858). On charter-chronicles in general, see M. Chibnall, "Charter and Chronicle: The Use of Archive Sources by Norman Historians," in *Church and Government in the Middle Ages: Essays presented to C. R. Cheyney on His 70th Birthday*, ed. C. N. L. Brooke, D. E. Luscombe, G. H. Martin, and D. Owen (New York, 1976), pp. 1-17.

[28]On Thomas Elmham's work, see Antonia Gransden, *Historical Writing in England, c.1307 to the Early Sixteenth Century* (Ithaca, 1982), pp. 342-56.

[29]Sawyer, *Anglo-Saxon Charters*, pp. 450, 313.

[30]C. Plummer, ed., *Two of the Saxon Chronicles Parallel*, 2 vols. (Oxford, 1892-99), 2: 159.

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and three *subreguli*, for instance, have raised eyebrows.[31] The majority of the charters in the list have at one point or another been likewise condemned, or at least held in suspicion.

One charter, in particular, serves to illustrate in detail both proliferation of copies and forging. Cnut's 1023 grant of the port and tolls of Sandwich, the first grant to specify those things to which the 1127 jurors swore, exists in two versions, Old English and Latin, in twenty-three copies.[32] Of the three Old English documents, the earliest, a supposed original, dates by its language and script from the second half of the eleventh century. The Latin version survives in twenty copies, of which one is from the second half of the eleventh century and six are twelfth-century, including a note in the midst of the law codes in *Textus Roffensis*.[33] Most of these documents are of Christ Church provenance. One clause of this grant, that the rights extended as far as a taper ax could be thrown, was written sometime in the early twelfth century over an erasure following the entry for 1031 in the A version of the *Anglo-Saxon Chronicle*.[34] The hand of this scribe has tentatively been identified by Florence Harmer with the hand in a number of well-known Canterbury forgeries.[35] Opinions of this charter in any of its forms have been mixed. Napier and Stevenson recognized that the overall grant of privileges was unparalleled and therefore argued that it is "difficult to resist the conclusion that this is a post-Conquest forgery or, at all events, an expansion of a simpler Old English charter,"[36] while A. J. Robertson, pointing out that the *formulae* and witness list agree with its supposed date,

[31]"Ego Kinath rex Scotorum subscripsi + Ego Maccus rex insularum uidi +...Ego Malcolm rex Cumbrorum subscripsi": Kemble, *Codex Diplomaticus*, 2: 413.

[32]Sawyer, *Anglo-Saxon Charters*, pp. 288-89.

[33]The location of this note first raised my interest in the case. While reading *Textus Roffensis*, the collection of charters and Anglo-Saxon and Anglo-Norman laws compiled at Rochester under the direction of Bishop Ernulf around 1123, I came across, on folio 57 verso, a summary of a charter that struck me as odd. First, it was inserted in that half of *Textus Roffensis* devoted to Anglo-Saxon and Anglo-Norman law codes, not the other half, which constitutes the cartulary of St. Andrew's cathedral, Rochester. Furthermore, it concerned Christ Church, and not Rochester. Last, the note's terms were peculiar. It reads as follows: "<C>nud rex Anglorum dedit ecclesie Christi brachium sancti Bartholomei apostoli cum magno pallio, et sui capitis auream coronam, et portum de Sandwic, et omnes exitus eiusdem aque ab utraque parte fluminis, ita ut natante naui in flumine cum plenum fuerit quam longius de naui potest securis paruula super terram proici: Debet a ministris ecclesie Christi rectitudo nauis accipi. Nullusque": *Textus Roffensis*, 2 vols., ed. P. H. Sawyer (Early English Manuscripts in Facsimile, 7, 11. Copenhagen and Baltimore, 1957-62), fo. 57v. Sawyer points out that this is a different hand from that of the main text. Nevertheless, it is still contemporary with that hand. The full charter is in Napier and Stevenson, *Crawford Collection*, pp. 27-29, and notes ad loc.

[34]*The Parker Chronicle and Laws*, ed. Robin Flower and Hugh Smith (London, 1941), fo. 31r.

[35]Harmer, *Writs*, p. 452.

[36]Napier and Stevenson, *Crawford Collection*, p. 136.

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concluded that the "weight of evidence is on the side of regarding it as genuine."[37] Harmer noted, however, that the Old English charter, "from its linguistic forms is of later date than Cnut's reign."[38] Therefore to say, as she does, that its "authenticity...is not certain," is an understatement.[39]

Interestingly enough, considering the number of available documents, authentic and forged, the case was decided in 1127, as Clanchy pointed out, on the oral testimony of jurors of the neighborhood of the port. The record of the final trial is a Christ Church document; its author believed he "knew" all along who rightly held the port. Nevertheless, despite the partisan flavor of the account, the gist of the dispute is clear; men of the abbot of St. Augustine's were taking toll off the boats that, in bad weather, lay up on the shore of the abbey's lands across from the port. The abbot's men had also been using a ferry boat in order to travel to and from the island of Thanet. The archbishop claimed that both tolls and ferryboat belonged to the port of Sandwich, which was his. Henry I, hearing of the many disputes that ensued between the men of the two churches, ordered an inquest. The words of the royal writ Henry issued are included in the narrative: "Cause the truth of the claim concerning customs...to be acknowledged by the oath of twelve law-worthy men of Dover and twelve law-worthy men of the neighborhood of Sandwich...so that each church shall fully have its right."[40] When this had been read to the assembly at Sandwich and the matter discussed, the court administered an oath, first to the men of Dover, then to the men of Sandwich. Each man took hold of the Gospels and swore that "the toll of the port of Sandwich, all maritime customs on either side of the river...and the ferryboat belong only to the Archbishop and the monks of Christ Church, Canterbury."[41] What almost a dozen documents could not do, twenty-four men of the area did do: settle the case in Christ Church's favor.

Here are two paradoxes. Simon Keynes and Patrick Wormald see the Anglo-Saxon state as highly literate, yet despite this achievement most legal cases after 1066 and before Henry II are settled, like the Sandwich case, by oral witness.[42]

[37]Robertson, *Charters*, pp. 406–11.

[38]Harmer, *Writs*, p. 177, n.1.

[39]Harmer, *Writs*, p. 426.

[40]"Facite recognosci per sacramentum duodecim legalium hominum de Douorre et duodecim legalium de prouincia de Sandewico...veritatem de calumpnia consuetudinum...ita quod unaqueque ecclesia plene habeat rectum suum": Stenton, *English Justice*, pp. 118–19 (trans. based on Stenton's).

[41]"[T]heoloneum Sandewici portus, consuetudines omnes maritimas ex utraque parte fluminis...et nauiculam ad transfretandum, solomodo pertinere ad archiepiscopum et monachos ecclesie Christi Cantuarie": Stenton, *English Justice*, pp. 120–21 (trans. is Stenton's).

[42]Oral witness is explicit in the majority of the cases in Van Caenegem's *English Lawsuits*, but the use of written evidence, by itself or with oral testimony, is perceptibly increasing by Henry II's reign: see, e.g., 2: 307 (nos. 352–3), 308 (no. 356), 309 (no. 358), 323–25 (nos. 361–62), 331

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On the other side, Clanchy believes this an oral age of only rudimentary literacy, yet documents were acquired and forged in numbers presumably because the two houses believed this written evidence would help them prove title to the port and its rights. According to what is known about late Anglo-Saxon literacy and law, they were right to think this; as Wormald has shown, in the tenth century, not only were rational proofs, especially written testimony, used to settle many cases, but the "rivalry of variant texts" that Wormald found evidenced in anathema clauses led him to conclude that "[a]wareness that even written evidence was at risk implies a degree of 'charter inflation' in late Anglo-Saxon society."[43] Nevertheless, despite what we might have expected, in 1127 not a single document was mentioned in the final account of how the case was settled. That both houses, but especially Christ Church, recorded or forged with such zeal, and that the case, despite all of the documentation, was decided on the basis of oral testimony, require explanation—and this explanation argues for a refined scenario for the development of law and literacy in the Norman kingdom of England.

This case and its documentation reveal the effects of the Conquest and its aftershocks on the rhythm of the development of literate law under the Norman kings. First, the rhythm was syncopated in several ways. Initially, the Conquest created great instability of tenure and rights. The massive expropriations of the two decades following 1066, the linguistic confusion caused by the uncertain hierarchy of three languages, the use of at least three bodies of customs,[44] and the fragility of collective memory in a violent age all contributed to this. The measure of this fragility is shown quite clearly by the Pinnenden Heath case between 1072 and 1076, where the proof of Archbishop Lanfranc of Canterbury's claims to expropriated property required the testimony of Bishop Æthelric of Chichester, "a man of great age and very wise in the law of the land."[45] Yes, the court relied on oral witness, but it had to travel to find one it trusted. Surprisingly, no one in neighborhood was thought capable of doing the same job.

(no. 369), 334 (no. 374), 343 (no. 380), 344-45 (nos. 382-83), 349 (no. 389), 351 (no. 393), 359-60 (no. 398). Under the Norman kings, recourse to written evidence was rarer: see, e.g., 1: 6-7 (no. 4), 119-20 (146), 126-27 (158-59), 134-35 (166), in addition to the evidence of Domesday Book.

[43]Wormald, "Charters," p. 161.

[44]I.e., Anglo-Saxon, Norman, and Ecclesiastical.

[45]Text in J. Le Patourel, "The Reports of the Trial on Penenden Heath," in *Studies in Medieval History presented to Frederick Maurice Powicke*, ed. R. W. Hunt, W. A. Pantin, and R. W. Southern (Oxford, 1948), p. 23; reprinted with additional documents and translated in Van Caenegem, *English Lawsuits*, 1: 7-15 (no. 5), and translated in *English Historical Documents*, vol. 2, ed. D. C. Douglas and D. Greenaway, (2d ed.; London, 1981), p. 482; the most recent study is by David Bates, "The Land Pleas of William I's Reign: Penenden Heath Revisited," *Bulletin of the Institute of Historical Research* 51 (May 1978): 1-19. While the assembled suitors made the final judgment, they seem, nevertheless, to have needed the guidance of Bishop Æthelric.

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Clerics, however, felt they were in a position to help settle these disputes by invoking the aid of writing. By 1066, the clergy trusted the written word, a trust that had developed in the precociously literate Anglo-Saxon state of the ninth, tenth and eleventh centuries. As Keynes and Wormald have shown, Anglo-Saxon monks had come to rely a great deal on writing. In one ninth-century case concerning Æthelric's inheritance and bequest, Wormald found a frenzied creation of written evidence that led him to conclude: "One does not fabricate superfluous written evidence if one expects to win by out-swearing or out-remembering one's opponents."[46] English monks, carrying their traditions and trusts over the trauma of the Conquest, would surely have felt the same way.[47] Indeed, from 1066 on, the clergy must have been desperate to avoid suffering severe losses under new and extortionate lords, and this led them, in particular the older Benedictine houses favored by Anglo-Saxon royal and aristocratic benefactors, to produce an extraordinary amount of documentation for their lands and rights. In order to retain or regain property and rights, clerics organized their archives, recopied their old charters in a number of places for security, sometimes even translating the English ones into Latin for the new masters, and put these charters into cartularies, all in order to prove their

[46]Wormald, "Charters," p. 157.

[47]Not all monks or clerics were English in speech and identity, but the Englishness of a house can be assumed while the Normanness must be proved. Some monasteries probably saw an increase in the number of English monks, as Emma Mason suggests for Worcester, because entrance into the religious life remained the only path of security and advancement open to those dispossessed by the Conquest: see Emma Mason, *St. Wulfstan of Worcester, c.1008–1095* (Oxford, 1990), p. 131. The evidence for the presence of Norman or foreign monks or clergy is weak except for those who rose at least to the level of archdeacon. While these newly appointed Norman bishops probably brought with them their own household clerics, there is very little evidence to prove this. Chroniclers rarely record such household migrations. Only in the case of new foundations is there better evidence. Not surprisingly, for houses such as Reading, these monasteries were filled from the beginning with foreign monks: see *Reading Abbey Cartularies I*, ed. B. R. Kemp (Camden 4th Series, vol. 31, London, 1986), pp. 14–15. For Normans in the English Church, see the works listed above, note 9. Some indirect support for the continuing presence of English monks at many of the larger Benedictine houses is provided by the surviving manuscripts produced in their scriptoria. Neil Ker pointed out that traditional English minuscules are used with care and skill into the mid twelfth century, when both post-Conquest continental imports and existing traditions blend into a new form: see N. R. Ker, *English Manuscripts in the Century after the Norman Conquest* (Oxford, 1960), pp. 22–39. Illumination also shows continuity in the monastic scriptoria: see F. Wormald, *The Survival of Anglo-Saxon Illumination after the Norman Conquest* (London, 1944). The often-cited hostility between English and French traditions depends for its illustration on a few well-reported incidents (e.g., the 1070 depositions) which might not reflect the full situation: see Richard Pfaff, "Lanfranc's Supposed Purge of the Anglo-Saxon Calendar," in *Warriors and Churchmen in the High Middle Ages. Essays Presented to Karl Leyser*, ed. Timothy Reuter (London, 1992), pp. 95–108. Further signs of coexistence, even accommodation, through patronage and lay fraternities are discussed by H. Tsurushima, "The Fraternity of Rochester Cathedral Priory about 1100," *Anglo-Norman Studies* 14 (1991): 313–37.

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claims.[48] As the translator who compiled the *Liber Eliensis*, the Latin cartulary and narrative of the benefactors of the abbey of Ely, wrote, it made good sense to have records, accessible records, "of who had restored the place and what was in their wills."[49]

This still left gaps in the record. In some cases, property had been given long before charters were commonly expected to confirm oral grants. In other cases, documents had been lost to fires, which frequently swept through the timber-roofed cathedrals and monasteries.[50] Thus, where property had in fact been granted, there might be no record of any sort. In order to fill this gap, clerics forged. Some forged a great deal. While it might be an exaggeration to call certain monasteries and cathedral chapters forgery factories, as has sometimes been done, nevertheless, Westminster, Coventry, Rochester, St. Augustine's, and Christ Church all produced forged charters and writs on a massive scale.[51] Nor

[48]The question of whether working archives were kept by church or crown before the conquest is vexed: see Cyril Hart, "The *Codex Wintoniensis* and the King's *Haligdom*," in *The Agricultural History Review*, vol. 18, Supplement, *Land, Church, and People: Essays presented to Professor H. P. R. Finberg*, ed. Joan Thirsk (1970), pp. 7-38, and contra, N. Brooks, "Anglo-Saxon Charters: The Work of the Last Twenty Years," *Anglo-Saxon England* 3 (1974): 228. The earliest surviving cartularies in England are Heming's cartulary and the Oswald cartulary, both from late eleventh-century Worcester. Clanchy reports that "no more than half a dozen" cartularies were compiled before 1150, and no more than thirty before 1200: see Clanchy, *Memory*, pp. 101-02, 158, n. 48. On the recopying of old charters, Hugh the Chanter accused the monks of Canterbury of having forged a royal charter confirming Thomas of York's submission to Lanfranc and claimed that "the monks sent several copies of this charter to churches and monasteries to be preserved in their archives": *The History of the Church of York, 1066–1127*, ed. Charles Johnson (London, 1961), p. 5. See also n. 20 above on S 959; on translations: see above n. 14. Dodgson, "Place-names," pp. 123-35, provides examples of the confusions caused by the failure of French scribes to understand Anglo-Saxon minuscule.

[49]*Liber Eliensis*, p. 1.

[50]Fires in churches and cities were common: E.g., Eadmer recorded that the fire that swept through Canterbury in 1067 destroyed some papal bulls, *Historia Novorum in Anglia*, ed. M. Rule (London, 1884), p. 296; Orderic Vitalis mentions the fire that destroyed Crowland Abbey's archives in 1091, which set the stage for the forgeries of the later twelfth century, *The Ecclesiastical History of Orderic Vitalis*, 6 vols., ed. Marjorie Chibnall (Oxford, 1969-80), 2: 346; Worcester burned in 1113 according to Florence of Worcester, *Chronicon ex Chronicis*, ed. Benjamin Thorpe, 2 vols. (London, 1848-49), 2: 66, and again in 1133 according to John of Worcester, *Chronicle*, ed. J. R. H. Weaver (*Anecdota Oxoniensa,* Medieval and Modern Series, part 13, Oxford, 1908), pp. 36-37; Gloucester burned with its monastery in 1122, John of Worcester, *Chronicle*, p. 17. On the general subject, see Clanchy, *Memory*, pp. 148-49. Such disasters were a problem everywhere: see the prologue of the cartulary of Saint-Père, Chartres, where the author, Paul, breathes a sigh a relief after recording the privileges of the abbey, because they "are now freed from the danger of fire in our church and in our buildings": *Cartulaire de l'abbaye de Saint-Père de Chartres*, 2 vols., ed. B. Guérard (Paris, 1849), 1: 3-4. See also *Annales Elmarenses*, ed. P. Grierson, *Annales de Saint-Pierre de Gand et de Saint-Amand* (Brussels, 1937), for the years 1120 and 1131.

[51]In general, see Giles Constable, "Forgery and Plagiarism in the Middle Ages," *Archiv für Diplomatik 29 (1983): 1–41; Fälschungen im Mittelalter*, 6 vols., Schriften der Monumenta Germaniae Historica, vol. 33 (Hannover, 1988); C. N. L. Brooke, "Approaches to Medieval Forgery,"

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was this work done by each monastery or chapter in isolation; monastic *scriptoria* shared their expertise in this craft. For instance, Westminster's prior, Osbert de Clare, probably taught the monks of the abbey of St. Mary, Coventry, how to forge their own charters and writs, a lesson they learned with alacrity: the majority of St. Mary's early charters have been doctored or forged outright.[52] Overall, the amount of forgery was staggering; Clanchy estimates that scholars may soon be able to claim that the majority of surviving Anglo-Norman documents are tainted in some way.[53] Moreover, the majority of forgeries, especially of those ascribed to Anglo-Saxon kings, were concocted in the century after the Norman Conquest.

The consequences of forgery for the development of legal literacy and for the development of a more general trust in the written word are clear. The literacy of courts and governance is predicated on trust in the written word. As Clanchy has shown, it is the slow growth of trust in the written records of twelfth-century English administration that explains the spread of literacy.[54] This trust was built upon both increased use of documents during the tenth and eleventh centuries and existing trust in sacred scripture. When Anselm's monks confronted Henry I's episcopal envoys to Pope Paschal with documentation that disproved the message the bishops had relayed orally, the bishops replied, "We do not accept the testimony of monks against bishops, so should we accept the

Medieval Church and Society (New York, 1972), pp. 100-20; F. M. Stenton, *The Latin Charters of the Anglo-Saxon Period* (Oxford, 1955), p. 11; R. A. Brown, "Some Observations on Norman and Anglo-Norman Charters," in *Tradition and Change: Essays in Honour of Marjorie Chibnall*, ed. D. Greenway, C. Holdsworth, and J. Sayers (Cambridge, 1985), pp. 145-63; P. Chaplais, "The Origin and Authenticity of the Royal Anglo-Saxon Diploma," *Journal of the Society of Archivists* 3 (October 1965): 48-61. On Canterbury, see W. Levison, *England and the Continent in the Eighth Century* (Oxford, 1946), pp. 174-233; for pre-Conquest forgeries here, see Nicholas Brooks, *The Early History of the Church of Canterbury* (Leicester, 1984), pp. 191-97, 232-36, 240-43, 388, n. 140. On Westminster, see P. Chaplais, "The Original Charters of Herbert and Gervase, Abbots of Westminster (1121-1157)," in *A Medieval Miscellany for Doris Mary Stenton*, ed. P. M. Barnes and C. F. Slade (Pipe Roll Society, n.s., vol. 36, London, 1962), pp. 89-110; B. Scholz, "Two Forged Charters from the Abbey of Westminster and their Relationship with Saint-Denis," *English Historical Review* 76 (July 1961): 466-78. On other abbeys and cathedrals, see Pierre Chaplais, "The Authenticity of the Royal Anglo-Saxon Diplomas of Exeter," *Bulletin of the Institute of Historical Research* 39 (May 1966): 1-39; *Reading Abbey Cartularies*, 1: 19-22; C. N. L. Brooke, "Episcopal Charters for Wix Priory," in *Medieval Miscellany*, pp. 45-64; Eleanor Searle, *Lordship and Community: Battle Abbey and its Banlieu* (Toronto, 1974), pp. 29ff.; idem, "Battle Abbey and the Exemption: The Forged Charters," *English Historical Review* 83 (July 1968): 449-80; *Chronicle of Battle Abbey*, pp. 2-7.

[52]Joan C. Lancaster, "The Coventry Forged Charters: A Reconsideration," *Bulletin of the Institute of Historical Research* 27 (November 1954): 113-39; Chaplais, "Original Charters," p. 92.

[53]"Recent research may ultimately lead to the conclusion that in England in the century after the Norman Conquest forgery of charters was the rule rather than the exception": Clanchy, *Memory*, p. 318.

[54]Ibid., pp. 1-3, 18-21, 294-327.

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evidence of a sheepskin?" Anselm's supporters replied, "Alas! Are not the Gospels written on sheepskins?"[55] This growth of trust encouraged even greater use and so led to more and more reliance on written records as proof in legal and governmental matters.

The presence of obvious forgeries after 1066 among the already copious records issued by or produced under the Old English state undermined trust in the written word, as probably happened in the case over Sandwich, and the advance of literacy was stifled.[56] Before the Norman Conquest, the confusion caused in disputes by an occasional forgery was bearable and was no threat to the system. The increase after 1066 in the number of forgeries, many of which were probably produced to support active claims, was too much for the courts' ability to discriminate between true and false, too much for written evidence to remain one of the more trusted vehicles for truth. Written record lost any ascendancy it had as much because of its fragile novelty as its rivals' availability; no court would in any individual case have thought it a retreat to turn to oath, duel, or ordeal to reach a settlement.[57]

Contemporaries were not blind to what was happening and knew that there were forgers in their midst. Guerno of Saint- Bertin, the notorious forger for St. Augustine's, Canterbury, and Saint-Ouen in Rouen, confessed his sins on his death-bed, and this confession was made public later to discredit claims to ecclesiastical privilege based on his work.[58] John of Salisbury complained to

[55]Eadmer, *Historia Novorum*, p. 138, cited and quoted by Clanchy, *Memory*, p. 261.

[56]On the return to orality after the Conquest, see also M. Chibnall, *Anglo-Norman England, 1066–1166* (Oxford, 1986), p. 179.

[57]The ordeal appears infrequently in Anglo-Norman records, but a court's decision to use it would be disguised by the taciturnity of the usual records for settlements, where the means was hardly as important as the result. On the use of the ordeal in England, see: Paul Hyams, "Trial by Ordeal: The Key to Proof in the Early Common Law," in *On the Laws and Customs of England: Essays in Honor of Samuel E. Thorne*, ed. Morris C. Arnold, et al. (Chapel Hill, N. C., 1981), pp. 90–126; Colin Morris, "*Judicium Dei:* The Social and Political Significance of the Ordeal in the Eleventh Century," *Studies in Church History* 12 (1975): 95–112; Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford, 1986), pp. 62–69. It is not surprising that ordeal manuals, most of which were based on Frankish models, were especially popular in England before the second half of the twelfth century. According to F. Liebermann's dating, six of eight surviving manuals were composed or edited between the Conquest and 1150, with most originating before 1130: see F. Liebermann, ed., *Die Gesetze der Angelsachsen*, 3 vols. (Halle, 1903–1916), 1: 417–31; 3: 238–40. I am currently reediting these texts for a new edition and translation of all Anglo-Norman legal treatises.

[58]Guerno's confession was reported by Archbishop Hugh of Rouen to Pope Hadrian (c.1155): *Literae Cantuarienses*, 3 vols., ed. J. B. Sheppard (London, 1887–89), 3: 365–67; discussed by Levison, *England and the Continent in the Eighth Century*, pp. 206–11; Brooke, "Approaches," pp. 105–06, 110–11; and Constable, "Forgery and Plagiarism," p. 8. The term *fraus*, used often to describe forgery, is also used very frequently to signify the Devil's crime, which suggests how forgery was viewed by the clergy: see Lambert of Arras, *Epistolae*, no. 23 (Patrologia latina 162) col. 656. Elizabeth A. R. Brown, "*Falsitas Pia siue Reprehensibilis:* Medieval Forgers and Their Intentions,"

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the pope on several occasions not just that he knew forgers were lurking about, but more importantly that their fabrication of papal letters would ultimately undermine papal authority.[59] Finally, royal government sought not only to scrutinize its own documents (though rarely with much method or luck), but also to discourage forgery with severe punishments.[60]

These are merely responses to the malaise of literacy created by the Conquest. Anglo-Norman England suffered from document inflation that devalued the written word for the first century after the Conquest. This inflation, limited to documents capable of serving as proof in the courts, was caused by both the excessive number and poor quality of the circulating charters. As ecclesiastics produced more and more written evidence of their claims and, when those claims could not be substantiated, reverted to *pia* and *impia fraus* with talent and zeal, the value of all documents declined.

All of this leads to some conclusions on the development of diplomatics for documents and of technicality in legal terminology, and thus, ultimately, on the development of the literate common law of the later twelfth century. First, the extensive forgery that stifled the growth of literacy for a period after the Conquest may actually, in the end, have proven the greatest stimulus to the development of the literacy in government and law that characterized Angevin rule in

Fälschungen im Mittelalter, 1: 101-19, counters the all too often accepted dictum that monastic forgery was not viewed as a crime by the monks themselves.

[59]John of Salisbury, *The Letters of John of Salisbury, (1153-1161)*, ed. W. J. Millor, H. E. Butler, and C. N. L. Brooke (London, 1955), pp. 97-98 (no. 57), 109 (no. 67), 116-17 (no. 73), 134-35 (no. 86), 137-38 (no. 88); John of Salisbury, *The Historia Pontificalis of John of Salisbury*, ed. M. Chibnall, (rev. ed.; Oxford, 1986), pp. 86-87.

[60]*Chronicle of Battle Abbey*, pp. 156-59, 214-17. It was not just the crown which responded in this way: Waleran of Meulan in 1141 personally read the abbey of Meulan's charters, checking their seals and witness lists to determine authenticity; see David Crouch, *The Beaumont Twins: The Roots and Branches of Power in the Twelfth Century* (Cambridge, 1986), pp. 207-08, and n. 82. The monks of Ramsey Abbey were especially satisfied with documents sealed by kings; see *Chronicon Abbatiae Rameseiensis*, ed. W. D. Macray (London, 1886), p. 69, cited by Antonia Gransden, *Historical Writing in England, c.550–c.1307* (Ithaca, 1974), p. 276. *Falsarii* are not always merely "coiners of false money," as Downer translates the phrase in his edition of *Leges Henrici Primi*, (Oxford, 1970), 10,1, pp. 108-09, though see 13,3, pp. 116-17; Glanvill clearly includes any type of forgery or counterfeiting under the label *crimen falsi*: *The Treatise on the Laws and Customs of England Commonly Called Glanvill*, ed. G. D. G. Hall, with a guide to further reading by M. T. Clanchy (Oxford, 1993), bk. 14, c. 7, pp. 176-77; see also the Assize of Northampton, ed. William Stubbs, *Select Charters and Other Illustrations of English Constitutional History from the Earliest Times to the Reign of Edward I*, ed. H. W. C. Davis (9th ed.; Oxford, 1921), p. 179 (c. 1); discussed by N. Hurnard, "The Jury of Presentment and the Assize of Clarendon," *English Historical Review* 56 (July 1941), p. 401, n. 9; H. G. Richardson and G. O. Sayles, *The Governance of Mediaeval England from the Conquest to Magna Carta* (Edinburgh, 1963), pp. 198-99, 438-44; Felix Liebermann, *Die Gesetze der Angelsachsen*, 3 vols. (Halle, 1903-16), 1: 314-15 (II Cnut 8,1), 158-59 (II As 14, 1), 234 (IV Atr 5,3), 523 (Hn mon. 2,1).

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the late twelfth and early thirteenth centuries.[61] Courts and officials, faced with a mass of documents that included both authentic and fabricated records, were forced to come up with criteria that would allow them to distinguish one from the other. Signs of this are evident first and foremost in the two places whose records suffer the most abuse in the late eleventh and twelfth centuries: England and the papacy.[62] The language of English law also becomes increasingly technical and formulaic as a result of the increasing use of writing coupled with the legal reforms that are especially frequent under Henry II.

A comparison of post-Conquest England with western France is enlightening. In the vast majority of charters and other legal records from western France between 1050 and 1150, there are few signs of any stable technicality in the language.[63] Legal jargon, the technical language of law, developed rather more slowly in France than in England because France endured tenurial insecurity less acutely. With more chronologically diffused insecurity over property, there was less reason for scribes to forge, which itself meant that fewer bogus documents appeared in court in any brief period. Without a noticeable multiplication of counterfeit documents, there was less incentive for king, magnates, or courts to develop a critical approach to documentary evidence and consequently less movement towards developing a technical language of law.[64] This is not the

[61]For a provocative argument about the direct relationship between forgery and the development of critical approaches to texts during a later period, see A. Grafton, *Forgers and Critics: Creativity and Duplicity in Western Scholarship* (Princeton, 1990).

[62]See Reginald Lane Poole, *Studies in Chronology and History*, ed. A. L. Poole (Oxford, 1934); C. Duggan, *Twelfth-Century Decretal Collections and their Importance in English History* (London, 1963), p. 41, nn. 1-2; Clanchy, *Memory*, pp. 323-27.

[63]I surveyed Latin usage in legal documents for signs of technicality in western and northern French cartularies and individual documents (comparing them to saints lives, narrative histories, chronicles, and letters), and found no consistent signs of technicality during the late eleventh or early twelfth century, even within a single scriptorium during a single decade: see Bruce Roland O'Brien, "Studies of the *Leges Edwardi Confessoris* and their Milieu," (Ph.D. diss., Yale University, 1990), pp. 262-72. Others disagree: see Stephen White, *Custom, Kinship, and Gifts to Saints: The Laudatio Parentum in Western France, 1050–1150* (Chapel Hill, 1988), passim, but esp. 10-11, 32-44, though White's focus is on the oral ceremony and he only claims that scribes were accurate about the names of the *laudatores* (p. 43); and Tabuteau, *Transfers of Property*, cc. 3-10, though she is very sensitive to scribal vagaries and admits that "[o]n rare occasions a church uses a nearly set phrase to indicate the nature of a type of alienation. These formulaic elements do not, however, bulk large in the charters as a group. There is, instead, great fluidity of language concerning even the simplest transactions" (p. 12).

[64]This is a very difficult judgment to make, considering the rather uncritical quality of most editions of cartularies; nevertheless, it seems justified. Compare, for example, the surveys of forged Anglo-Saxon and Anglo-Norman documents in Sawyer, *Anglo-Saxon Charters*, passim, *Regesta*, passim, and the works listed above in nn. 48, 51, with the better editions and calendars of French charters, such as *Recueil des actes des ducs de Normandie (911–1066)*, ed. M. Fauroux (Mémoires de la Société des antiquaires de Normandie, vol. 36, Rouen, 1959); Ferdinand Lot, *Études critiques sur l'abbaye de Saint-Wandrille* (Paris, 1913); *Actes des comtes de Flandre, 1071–1128*, ed. Fernand

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case everywhere in France. Border shifts between, say, Normandy and Anjou in their struggle for control of Maine were bound to cause similar problems to those experienced in Anglo-Norman England. Signs of distrust in writing and the beginnings of a critical approach to documents show up here and there in France, but they are not as general as in England.[65] Nor does it appear to have been as significant to the development of the legal system there at such a fundamental level.

With the establishment of record types in England, such as letters close and patent and rolls for copies of the originals, which discouraged forgery, and with some agreement about criteria for distinguishing true from false, trust in written records returned in force.[66] The legal system, in particular, leaned on written testimony to a much greater extent than courts in France or elsewhere. The common law that appears in the records of Angevin England, from Glanvill's *tractatus* to the curia regis rolls, is, despite Glanvill's counterclaim, a literate

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Vercauteren (Brussels, 1938); *Les chartes de l'abbaye de Waulsort. Étude diplomatique et édition critique*, vol. 1 (946-1199), ed. Georges Despy (Brussels, 1957); Olivier Guillot, *Le comte d'Anjou et son entourage au XIe siècle*, 2 vols. (Paris, 1972), 2: 275-310 (28 forgeries versus 444 authentic acts). The differences between England and the continent are not just, in any case, matters of amount, but also of subject: see Tabuteau, *Transfers of Property*, who points out that Norman clerics forged "privileges of exemption rather than property" (p. 194), and that the development of chirographs and seals in the late eleventh century are signs that forgery was a problem, though the actual extent of it and the way in which courts overcame this problem remain a mystery because descriptions showing the use and testing of charters are so few (pp. 211-22, esp. 220-22).

[65]The sources reveal only irregular movement towards a sense of diplomatics on the continent: the monks of the abbey dispute the authenticity of various documents and their seals in Lantbert's *Libellus de loco sepulturae Floriberti abbatis contra monachos Sancti Sauonis*, ed. O. Holder-Egger (*Monumenta Germaniae historica*, Scriptores, vol. 15, part 2, Hannover, 1887), pp. 641-44. Flemish monks studying an old deed recognized that it was written in "barbarae litterae," in Wery of Saint-Pierre de Gand's *Vita de sancto Bertulpho, abbatie Renticensis*, Acta Sanctorum, Feb. 1 (1863), p. 691. Some fuss is made over seals in *Vita Sancti Simonis, comitis Crespeiensis*, Acta Sanctorum, Sept. 8 (1863), pp. 744-51; Ivo of Chartres, who would probably have known, advised a correspondent that if his charters were good, his church would surely win its quarrel (pp. 202-03), a position which he later undercuts by telling them to submit their dispute to the pope, who would be able to decide the case, though without prejudice to their documents, which suggests that the pope would rely on much more than a few charters to reach a decision (pp. 204-05): see Ivo of Chartres, *Correspondance*, ed. J. LeClercq (Paris, 1949), vol. 1, pp. 202-05. For further examples, see *Cartulaire Blésois de Marmoutier*, ed. C. Métais (Blois, 1889-91), no. 50; and *Cartulaire de l'abbaye de Saint-Aubin d'Angers*, ed. A. Bertrand de Broussillon and E. Kong, 2 vols. (Paris, 1903), 1: 118-22 (no. 106).

[66]On the origin of record types: see Clanchy, *Memory*, pp. 62-73, 76-77, 132-35. The earliest evidence we have is the *Dialogus de Scaccario,* which describes in detail the various rolls and records associated with the Exchequer: see Richard Fitz Nigel, *Dialogus de Scaccario*, ed. C. Johnson, with corrections by F. E. L. Carter, and D. E. Greenway (Oxford, 1983), pp. 17-18, 26-35, 61, 65, and *passim*.

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law.[67] It is unlikely that this would have been as much the case if the Conquest had not started the chain reaction of forgery and distrust in the written word, which led eventually to the regularizing of diplomatic in the late twelfth century. And in such a world, it is unlikely that royal law would have ended up as *ius commune* for any but the king's own court until much later than actually happened.

[67]For Glanvill's subterfuge in claiming English law was unwritten, see my forthcoming "Propaganda, Forgery, and the Orality of English Law," in *English Legal Treatises, 1000–1800: Explorations and Reassessments*, ed. Jonathan Bush.

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