Rape of a married (or inchoately married) woman fell into this category, essentially as an aggravated form of adultery. The husband (or fiancé) was entitled to demand the rapist's death. The wife's lack of consent was only relevant in that it relieved her of culpability for adultery.

Theft covered a broad range of dishonest misappropriations, including embezzlement, deceit, and fraudulent receiving of stolen goods. The innocent receiver might have to pay the same penalty, but could recoup his expenditure from the seller/thief. For aggravated forms of theft such as kidnapping persons for sale into slavery, theft from a temple, or the use of fraudulent weights, death of the culprit was deemed appropriate. The penalty for simple theft was a fixed payment to the victim, often a multiple of the value of the thing stolen. Failure to pay usually resulted in debt slavery.

Minor damage to a neighbor's interests. Minor damage concerned offenses where the harm was mostly pecuniary and the mental element typically negligence. The remedy was accordingly compensation, with debt slavery for failure to pay. Examples are temporary disability from an injury caused without premeditation in a brawl—where compensation was payable for loss of work and medical expenses—and damage to a neighbor's crop from negligently flooding his field. Certain offenses involving deliberate harm also came within this category when there were other mitigating factors. Thus homicide, wounding, and rape were regarded as mere damage to property when the victim was a slave. Likewise, the seduction or rape of an unbetrothed virgin was an offense against her father for which the penalty was to marry the girl and/or compensate the father for the loss of her potential betrothal payment.

Government involvement in the prosecution of crimes varied according to category. Offenses against the gods potentially endangered the whole society and so led to public intervention, sometimes at the authorities' own initiative. In serious offenses like homicide, the ruler had an interest in public order and safety and is found acting as a guarantor of private rights and as an avenger of last resort, where no family members were available. By the same token, he could thwart the right to revenge by pardoning the offender. Minor offenses were regarded as a purely private matter.

International Law. By the mid-second millennium at the latest the Near East was an international society, with universally accepted rules of diplomacy and international law. The system appears to have originated in southern Mesopotamia, where treaties are attested as early as the mid-third millennium.

The actors in international law were kings, who were regarded as the heads of households writ large; heavy reliance was placed on the metaphor of the family and household. Friendly states of equal standing called each other brother, and expected relations to be based on mutual love and friendship. Imperial powers (known as "great kings") controlled smaller states in a system of vassalage, whereby the vassal ruler would owe loyalty to the emperor and be obliged to pay annual tribute, provide military aid, and render other services, while maintaining a high degree of internal autonomy. The relationship, however, was characterized as that of master and slave.

The binding force of international law derived from the premise that all kings were answerable to the gods, who would punish infringements. At the least, a king (and therefore his kingdom collectively) would be punished by his own gods, although religious syncretism allowed for some role for external gods. In practice, this meant enforcement by self-help, but the real effect of belief in divine sanctions should not be underestimated.

A few rules of customary international law may be discerned. There were no resident ambassadors, but envoys might remain for long periods at a foreign court. They were the guests of the host monarch, who owed them the customary duties of hospitality; but by the same token they could not leave without his permission. There is no evidence of diplomatic immunity from prosecution, but envoys were certainly themselves inviolable, in that an attack on their person or dignity was regarded as an attack on the state they represented and could be a casus belli.

Kings were responsible for the safety not only of envoys but of foreign citizens of friendly states within their territory. Problems arose typically with regard to merchants, whose caravans were subject to robbery by bandits; the host ruler was obliged to pay compensation for murder victims and for stolen goods and to search for the culprits.

An independent ruler had discretion to grant asylum to fugitives and was not obliged to extradite them except under a treaty. Vassal kings, though, were probably obliged to extradite fugitives to their overlord as part of their overall duty of loyalty.

Treaties were a major and frequent instrument of international relations. They fall into two archetypes, parity and vassal, although there were many degrees in between, depending on the balance of power between the parties. In parity treaties, the terms were strictly reciprocal, while a vassal treaty in its purest form was a unilateral set of obligations owed by a vassal ruler to his overlord. All extant treaties are bilateral.

The juridical basis of a treaty was a solemn oath taken by the ruler to the gods in support of promises regarding future conduct. Where the treaty was not made face-to-face, the witnesses to the taking of the oath would in practice be a diplomatic delegation from the other contracting state. In theory, however, the essential witnesses were the gods, who adopted the role played by human witnesses in a domestic contract; in addition, they were guarantors of the treaty, since they would punish breach of the oath. A writing was not necessary for the validity of a treaty, but important treaties were committed to writing and in ceremonial form—on tablets of silver or gold, which might be deposited in a temple.

[*See also* Ancient Greek Law, *subentry on* Hellenistic Law, *and* Egypt, *subentries on* Hellenistic Period *and* Juristic Papyrology.]

BIBLIOGRAPHY

SOURCES IN TRANSLATION

Allam, Schafik. *Hieratische Ostraka und Papyri aus der Ramessidenzeit*. Tübingen, Germany: Selbstverlag des Herausgebers, 1973.

Donker van Heel, K., ed. *The Legal Manual of Hermopolis. [P. Mattha.] Text and Translation*. Leiden, Netherlands: Papyrologisch Instituut, 1990.

Joannès, Francis, ed. *Rendre la justice en Mésopotamie: Archives judiciaires du Proche-orient ancien*. Saint-Denis, France: Presses Universitaires de Vincennes, 2000.

Kraus, Fritz Rudolf. *Königliche Verfügungen in altbabylonischer Zeit*. Leiden, Netherlands: E. J. Brill, 1984.

Kruchten, Jean-Marie. *Le décret d'Horemheb*. Brussels: Editions de l'Université de Bruxelles, 1981.

Roth, Martha T. *Law Collections from Mesopotamia and Asia Minor*. 2d ed. Atlanta: Scholars Press, 1997.

REFERENCE WORKS

Dandamaev, Muhammad A. *Slavery in Babylonia from Nabopolassar to Alexander the Great (626–331 B.C.)*. Rev. ed. DeKalb: Northern Illinois University Press, 1984.

Westbrook, Raymond, ed. *A History of Ancient Near Eastern Law*. Handbuch der Orientalistik 72. Leiden, Netherlands: Brill, 2003.

Westbrook, Raymond, and Richard Jasnow, eds. *Security for Debt in Ancient Near Eastern Law*. Leiden, Netherlands: Brill, 2001.

Wilcke, Claus. *Early Ancient Near Eastern Law: A History of its Beginnings—The Early Dynastic and Sargonic Periods*. Winona Lake, Ind.: Eisenbrauns, 2007. Originally published in 2003.

RAYMOND WESTBROOK

ANDALUS, AL-. *See* Maghrib and al-Andalus (Muslim Spain).

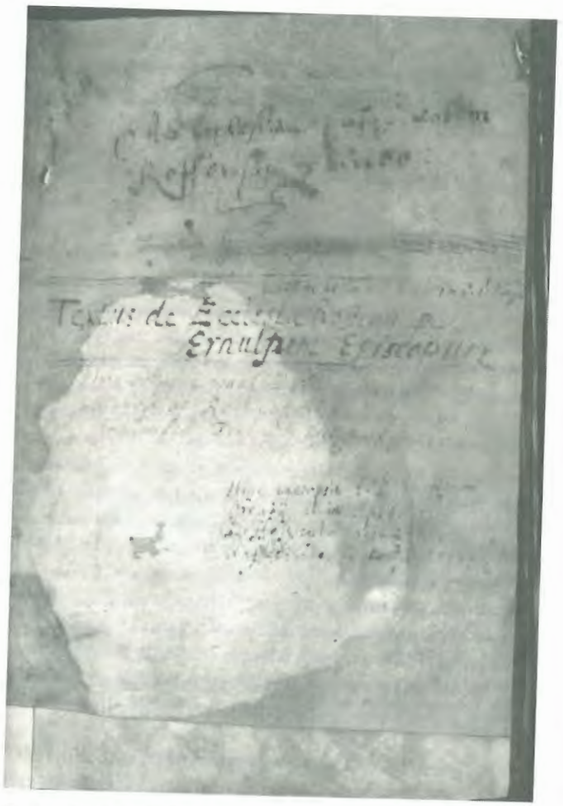
ANGLO-HINDU LAW. *See* Hindu Law, *subentry on* Anglo-Hindu Law.

ANGLO-ROMAN-DUTCH LAW. *See* African Law, Sub-Saharan, *subentries on* The Precolonial Period *and* The Colonial Period.

ANGLO-SAXON LAW. The law of the various Germanic peoples who conquered much of Britain in the fifth and sixth centuries laid the foundation for the medieval common law. Anglo-Saxon law's norms, institutions, and practices developed during a period of both political consolidation (seventh and eighth centuries) and foreign invasion by Scandinavians (ninth–eleventh centuries) and Normans (late eleventh and early twelfth centuries).

Sources. Anglo-Saxon law (c. 600–1066) survives in numerous sources but is not represented in its totality by all of these sources, let alone by any one source. The bias of the evidence is royal and ecclesiastical, and prescriptive rather than descriptive. Some twelve or thirteen kings of the various kingdoms left law codes. The earliest is by Æthelberht of Kent (r. 560–616), composed around 600, and was likely created as a result of the arrival of literate missionaries from the papacy familiar with legal codes. Æthelberht offered no explanation for why he issued his code in his own language, English, rather than in the Latin used by all other Germanic kings ruling what was formerly the Western Roman Empire, but this vernacular precedent was followed by all Anglo-Saxon kings until the Norman Conquest.

The frequency and size of royal edicts increases after Alfred (r. 871–899), whose own code was explicitly derived from earlier codes of Æthelberht, of Ine of the West Saxons (r. 688–726), and of Offa of the Mercians (r. 757–796).



Textus Roffensis. Title page of the *Textus Roffensis*, which contains a collection of Anglo-Saxon laws, c. 1300. THE DEAN & CHAPTER OF ROCHESTER AND THE DIRECTOR OF REGENERATION, COMMUNITY AND CULTURE/MEDWAY ARCHIVES AND LOCAL STUDIES CENTRE, DRC/R1

Particularly important tenth-century legislation came from Æthelstan (r. 924–939), repressing theft; Edmund (r. 939–946), regulating feud; and Edgar (r. 959–975), establishing the legal relationship between the English and the Danes settled in northern and eastern England and newly subject to him. Under Æthelred II (r. 978–1016) the royal codes mingle legal measures with homiletic language and trace the crisis created by a major invasion of Scandinavians from 991 until the king's death. The final statement of Anglo-Saxon law comes, ironically, from the Danish king of England, Canute (r. 1016–1035), whose code, conventionally divided into two parts, repeats and elaborates on much of the legislative work of Æthelred and Edgar. Canute was able to build on these Anglo-Saxon precedents because his code was drafted by Wulfstan (d. 1023), bishop of Worcester and archbishop of York, who had also written some of Æthelred's later codes.

The Anglo-Saxon royal codes are not often dated, nor, when several come from a single king, easily arranged chronologically. In some cases surviving texts have been clearly altered, betraying the work of later revisers. It is not always easy to tell if a code records an act of legislation or a series of adjudications of current cases (see, e.g., Ine's code). Nevertheless Anglo-Saxon royal laws probably represent all of the codes that actually existed rather than just the fortunate survivors of a larger body of legislation that has disappeared.

In addition to royal codes, there are almost thirty texts recording evidence of legislation the authority of which is unknown. Some appear to be incomplete versions of royal codes, others look like local arrangements or treaties done in response to royal commands, and some are records of customs that pretend to be royal codes. The most significant category may be the second, because they reveal the force or authority of royal law in action. For instance, three of these apocryphal codes—*Ordal*, *Be blaserum*, and *Dunsæte*—may come from the reign of Æthelstan and show the reach of that king's legislative agenda. *Ordal* (Ordeal) describes the actual process of the ordeal, perhaps as a supplement to ordeal regulations in the king's second code. *Be blaserum* (Concerning wounds) may show a borough's response to the king's decrees against killings and arson. The last, *Dunsæte* (Treaty between the Dunsaete and the English), may represent a local initiative to structure relations between the English and the Welsh—something needed after Æthelstan's fixing of the horder in about 930.

A final type of text representing legislation is official, if indirectly royal: the canons of church councils. Although these mostly treat ecclesiastical matters, they emanate from councils that at times included laymen and the king; like the royal codes, they demonstrate the king's authority in church affairs. One such text, a report by papal legates submitted to Offa, may be the heretofore lost code of that king that Alfred had claimed as one of the sources of his laws.

Legislative sources are not the only sources for Anglo-Saxon law. Almost fifteen hundred charters describing grants of land or privileges survive from all of England other than Northumbria. The earliest are from the seventh century, and most come from the tenth and eleventh centuries. A small collection of these offer narratives concerning disputes over land and rights. Among these charters are royal writs, brief documents used to convey royal commands to royal agents and ecclesiastics. These writs reveal both the parameters of royal involvement in justice and also the personnel used for its administration. A smaller number of wills, fifty-seven, provide valuable clues to property and testamentary rights, as well as customs relating to succession. Less regular, but often with greater context, are narrative sources' accounts of law. From Bede's eighth-century *Historia ecclesiastica gentis Anglorum* (Ecclesiastical history of the English people) and the ninth- to twelfth-century *Anglo-Saxon Chronicle* to tenth- and eleventh-century hagiography, these texts provide deeper entrée into select cases, in particular those involving treason and theft. Finally, archaeology is now contributing to our knowledge of capital punishment in the late Anglo-Saxon period. Execution sites have been identified and their grave pits excavated, revealing the social setting of one of the consequences of law enforcement.

Sources from the century after the Norman Conquest of 1066 reflect both continuity of Anglo-Saxon practices and changes in law and its administration. If read carefully, these sources can provide valuable insight into the workings of Anglo-Saxon justice. Of particular value here is the Domesday Book, produced sometime in or after 1086 following a kingdom-wide inquest ordered by William I at Christmas 1085. The inquest sought to record possessions but also included rights and privileges, some local customs, and royal law. Possessions that were in dispute are often listed as such, with brief reference to issue and to where the dispute was being aired. The whole survey can then be read as a legal document and as such provides the single best evidence of the state of Anglo-Saxon law on the eve of the Norman Conquest. In addition to the Domesday Book, there are several short royal edicts, writs, and apocryphal legal treatises that often provide a picture of the administration of justice as it must have been under Edward the Confessor (r. 1042–1066).

Although the Norman kings were essentially conservatives concerning justice, adding little, emending infrequently, nevertheless the law was changing, and sources reflecting that law—for instance, the *Laws of Henry I*, *Laws of Edward the Confessor*, and *Leis Willelme* (Laws of William)—must be used with caution if pre-Conquest practices are being investigated. Likewise, post-Conquest narrative sources in charters, chronicles, or administrative treatises that cover law or cases before the Conquest can be extremely valuable for fleshing out jejune pre-Conquest prescriptive texts, though anachronisms may distort their language and meaning.

Rights and Wrongs. The Anglo-Saxons did not organize their legal texts strictly by categories of offense or issue. There was no pre-Conquest Henry de Bracton. Even through inference, the sources shed only dim light on how the English divided up their law; modern attempts to fit that law into categories developed from the later common law will only distort it. Nevertheless some things can be said. The basic coronation promise from the late tenth century distinguishes between *riht* and *unriht*, right and wrong, as the fundamental divide. It is easier to see what kings thought these things were, and less easy if not impossible to understand what ordinary people believed.

The list of royal rights that could be granted to subjects is long and miscellaneous, and our knowledge of them is dependent on the few property and judicial rights that scribes record. The king's rights appear to have included a jurisdiction over wrongs, as well as some control of commerce and the church. The most common rights occur as a group—"sake and soke, toll and team, and infangenetheof"—and convey basic judicial and financial rights. Other royal rights convey almost exclusively the profits of justice rather than control of court or custom: *hamsocn* (housebreaking), *grithbryce* (breach of peace), and *foresteall* (assault or waylaying) are the most common. Rights appear in texts only as they drew royal attention. By the end of the period, rights begin to look less particularistic, more general, and their wider acceptance as the possession of all free persons is clearer. Canute's decree that "all men, both poor and rich, shall be regarded as entitled to the benefit of law" reveals a right of access to justice with no geographic or ethnic boundaries within the kingdom.

At times we can define the legal landscape. Land, for example, fell into one of four categories: folkland, bookland, loanland, and sokeland. Folkland appears to be land whose inheritance was defined by custom. Bookland means literally land described in a *landboc* (charter), whose terms described the holder's rights. Loanland (*lænland*) is land held for a number of life terms from a lord in return for service. "Thegnland" is sometime synonymous with loanland, though it appears to be more narrowly focused on royal agents (thegns, or thanes). Last is sokeland, which was a kind of land bound to a manor and is found in areas settled by Scandinavians, though its origin is uncertain. Answering basic questions about how such categories worked in reality can be difficult because there are very few legislative acts or cases to illustrate this. Some types of land, like bookland, were heritable; some, like loanland, were not intended to be. Some moved only within a kin group; others were easily alienable. Although types of land can be identified, tracing developments in land law during the period—other than the introduction and use of bookland—is near to impossible.

Wrongs (*unriht*, *iniuriae*) do not fit easily into the categories of felony and misdemeanor, nor into those of tort and crime, though later Anglo-Saxon kings distinguished wrongs based on both degree of seriousness (e.g., wounding versus homicide) and basic type. Some wrongs by the reign of Æthelred were able to be compensated by money payment or in kind—that is, *bot*; others were *botleas*, that is, unable to be compensated for with a payment of *bot*. Those convicted of a *botleas* crime were at the king's mercy. Before Æthelred, however, it is unclear whether there was any such distinction. The notion of *botleas* crimes may, under Æthelred, have originated as a development of the earlier "king's peace": a protection that kings could extend to subjects and strangers and that would make many if not all wrongs direct affronts to the king. Evidence for the actual blanket application of this king's peace is not clear until after the Norman Conquest. Wrongs were more often distinguished by seriousness and the status of the wrongdoer. Canute's code, for example, fines freemen who work on Sundays but whips slaves who do the same, unless they work at their lord's command, in which case the lord is fined in a different way than freemen are and the slave is freed. Other than kings and their advisers, it is likely that most of the English thought of wrongs as an undifferentiated concept, regardless of who the victim was and what the actual wrong was.

The wrongs found in the laws may proportionally reflect the problems that kings faced. Theft, for example, is almost always the leading subject of legislation and a principal element in all types of legal narratives. Personal injury is likewise ubiquitous in the codes and narratives. Alfred's list of tariffs for injuries breaks the human body down into knuckles, joints, and limbs in order to assign a financial penalty for each. In the later codes, kings forbid assault on a house, arson, open murder, homicides in churches, and treason against one's lord, all of which, with theft, were classified as *botleas*. In addition the codes offer penalties on—in no particular order—adultery, failure to pay church tithes, withholding of toll, assault, polygamy, desertion from the army, issues arising from intestacy, fighting, paganism, wounding, insubordination, insults, contempt of royal judgments, robbery, and neglect of the *trinoda necessitas* (repair of fortifications and bridges, and military service).

Whether wrongs such as these were undifferentiated or not, some concepts guided the legislation of kings and the judgments of courts. Intention, for instance, makes an appearance. Alfred's code distinguishes even unintentional injuries caused by a spear point held carelessly low from injuries caused by a spear point held responsibly higher.

If few laws take account of intention, that may be because the issue was expected to be aired orally in courts when the charges were examined. Related to intention is culpability, which could exist at differing levels and was measured in court not only by intention but also by status, age, gender, and level of participation. A slave's status might exonerate him of any wrongs that he might commit at the command of his master. A wife whose husband was a thief was guilty only if the stolen goods were found in areas of the household that she controlled. Although Æthelstan first ordered the execution of thieves who were twelve or older, he later moderated this by moving the age of adult culpability to fifteen. Complicity was measured in various ways: Æthelberht distinguished with decreasing monetary fines the first, second, and third persons forcibly to enter a home, and his and other kings' codes recognize a difference between those who commit a wrong and those who knowingly or unknowingly aided the wrong.

Redress: Feud and the Courts. Law enforcement was not solely or even principally the preserve of the king and his officials. Self-help in the form of feud was probably the more common remedy, especially in the early period. For the Anglo-Saxons, feud and the courts were alternatives on a spectrum of remedying wrongs, rather than antithetical forums for justice. Both need to be considered to understand redress.

Feud is endemic throughout the Anglo-Saxon period. The prevalence or availability of feud did not create disorder or lawlessness; on the contrary, feud drew authority from powerful norms of justice and followed precedents not just to even the score but to effect a more ideal and just relationship between parties than had existed before. In pursuit of this ideal, relatives and friends might be called upon to join the feud in support of a wronged kinsman or ally. Their support, however, was not a reflex. Both friends and relatives might repudiate a person's action. The possibility of this repudiation meant that a feud, once begun, was as likely to end in peacemaking as to lead to future violence. So rather than disrupt the social order, feud could create it, just as effectively as royal law.

Anglo-Saxon kings accepted feud and several made attempts to regulate it. None bans it outright. Ine, for example, ordered that slaves and freemen who were relatives were not mutually obligated to support one another in feuds. The tenth century saw greater regulation. King Edmund's second code lays out the circumstances in which feud may or may not be pursued, and tries in certain situations to limit feud to the individual who set it off by committing a wrong—generally a homicide. The treatise *Wer*, generally connected with Edmund's code, details the tariffs to be paid to compose such a homicide. Even in the final codes of Æthelred and Canute, feud remains strong. It was a chosen remedy between the English and Scandinavians, appearing without comment or censure in Æthelred's second code, which was a treaty drawn up in 994 between the king and the leaders of the invading Viking army. When kings begin to intrude into new areas of justice, they justify it by using the language of feud obligations. For instance, strangers by the late tenth century are considered the king's own kinsmen, and wrongs against them are wrongs against the king. Feud remains an option long after the Norman Conquest.

The courts that emerged alongside feud in the pre-Conquest period appear to have existed at several levels, though these are not necessarily to be equated with ascending jurisdictions. Clearest in the evidence is the king's court, where the king and his councillors heard cases on appeal that might not have been resolvable in smaller, regional courts. The shires or counties held court sessions—sometimes on their own, sometimes joined to neighboring shires when especially large cases that crossed county boundaries came up. The shire court was presided over by the local earl and bishop, as well as by the sheriff (*scirgerefa*), though the exact nature of their authority and function is not always clear. Royal writs directed to shire courts name these individuals; thus it implicitly fell to them to ensure that the king's will was done. In practice this probably meant that they determined the law-worthiness of claimants, which itself would decide which party offered proof of its claims.

The smaller units of the shire—called "hundreds" in the south, "wapentakes" in the north—also had regularly meeting courts. Hundred and wapentake courts would administer justice in the broadest sense: witnessing the swearing of oaths, the buying and selling of livestock and other property, and the giving of sureties; hearing disputes; conducting ordeals; and hanging thieves and others found guilty of serious wrongs. Control of hundreds varied a good deal, with some evidence that toward the end of the Anglo-Saxon period, hundreds were granted to privileged individuals to preside over or, at the very least, to receive the financial consequences—fines and forfeitures—of the justice administered there. In addition to these common types of court there were several kinds of court that were known in only a few areas of the kingdom: two counties were divided into thirds, called trithings or ridings, which had courts, and some northern wapentakes were divided into districts called "small hundreds," whose members acted as a tithing group at times. All towns appear to have possessed courts.

The origins of all of these courts is unclear, reflecting local circumstances arising in the Anglo-Saxon migration period (fifth–sixth centuries) or Scandinavian invasion and settlement (ninth–tenth centuries). For the most part their procedures and jurisdiction appear almost indistinguishable from one another. The principal differences between courts were in the size of the gathering and the status of those in charge; those litigants who wanted greater publicity for a verdict would seek out a larger court, where more people would hear the case and its results. Choosing a larger court was also a way to lessen the ability of the local elite to steer a court's decision, especially important when the elite themselves were parties to cases. Whether kings created any of these courts or merely shaped older institutions, they issued regulations on personnel, frequency of meetings, and the court's responsibilities in pursuing wrongdoers and hearing cases. Some kings tried to create an appeal structure, with the king's court as the court of last resort.

Several types of royal agent helped administer justice in the realm. Except for the earl, bishop, and sheriff of the shires, these lesser figures do not appear often enough in the sources for their regular duties to be described in detail. What does seem undeniable is their widespread existence. The royal agent with the narrowest scope of operation was the village reeve, present, according to pre- and post-Conquest evidence, in perhaps every village of the kingdom. The principal legal duty of these reeves was to represent the interests of the king and to offer testimony with other representatives of the village in hundred and shire courts. Reeves also presided over courts in towns, hundreds, and wapentakes. Operating in these courts were hundredmen and tithingmen, who presided over groups of men who might share some legal obligations maintaining public order. The court's knowledge of the law might come from men learned in local customs or, at times, from written records of law probably in the hands of the clergy and some lay nobles. Ordeals required clerical participation for blessing, invocation, and certain supervisory aspects crucial to the outcome of the proof. The bulk of the court was made up of "suitors," local men under obligation to attend court in order to administer justice, witness acts of various kinds, and hear the king's commands. Last, Anglo-Saxon kings, like their Carolingian contemporaries, might on occasion send *ministri* or emissaries out to courts when a case with royal interests was being heard.

Anglo-Saxon courts served justice in several ways, though all were expected by kings to operate in much the same way as one another. They were principally forums for airing disputes and deciding on a form of proof to resolve the dispute if it proceeded. They were also the place where the English would become law worthy—that is, where they would swear oaths to follow the law and would be entitled to justice in the courts as a result. These courts also appear to have administered penalties, though there is less evidence of their actions in this capacity.

Starting with oath, it is clear that the stability of Anglo-Saxon society depended on people keeping their word to one another—no surprise in a world where almost all transactions were oral and where self-help or vendetta was a possible reaction to the breaking of one's word. The first mention of an oath, in the Kentish code of Hlothere (r. 673–685) and Eadric (r. 685–686), is followed immediately by a title on perjury. Alfred strengthened oath and may also have transformed it, based on Carolingian practice, into an oath of loyalty to the king. The first title of his code, which enjoins "what is most necessary, that each man keep carefully his oath and his pledge," has often been interpreted as a broad oath of loyalty to Alfred rather than as a reminder that the multitude of oaths that marked affairs in the kingdom needed to be kept. The quality of oath was dependent on status and reputation. The strength of an oath was measured by the amount of the oath swearer's wergild. Those who were of ill repute or who had previously been convicted of some crime might find their oath valueless in court, or themselves forbidden to offer their oath in support of their own case or that of their friends or kin. Those convicted of perjury or whose oath had failed were restricted to the ordeal for proof.

Oath could be proof, or could lead to proof. The strength of an oath might be sufficient to clear an accused person of a charge or to determine which party would go to the ordeal as a way of proving a charge or denial. In a case of theft, for example, both the accuser and the accused would have to gather oath swearers in support of their rival claims. Some cases ended with oaths. Others moved from oaths to the principal form of proof used by the Anglo-Saxons, the ordeal.

The ordeal took many forms. Perhaps most common was the ordeal of hot iron. According to several manuals, an iron ball, weighing a set amount based on the seriousness of the crime, was heated by fire until red-hot and was then carried for a set distance by the person undergoing proof. The ball was tossed aside, the hand was bandaged by a priest, and the court adjourned for three days. On the third day the priest removed the bandage and judged whether the hand was infected or healing, with infection showing guilt and healing showing innocence. Similarly, the ordeal of boiling water required the person going to proof to submerge a fixed distance into boiling water a hand or arm, after which a bandage was applied.

The ubiquity of ordeal pits and the variety and number of extant ordeal manuals testify to the employment of similar procedures throughout the kingdom. Other ordeals involving submersion in cold water or eating hlessed bread appear to have been less common, though most actual instances of use would have left no sign in the written sources, so their frequency is unknown. Ordeals appear not to have fallen out of favor during the period but on the contrary to have remained popular, perhaps because the social context of the practice—where a local priest surrounded by neighbors made a fairly subjective decision—ensured that verdicts often followed popular opinion. So although ordeals are irrational proofs, they nevertheless

would have seemed fair and understandable to the majority of participants. Written proof is shown to courts mostly in cases of disputed land, but charters and writs do not appear to have automatically proven claims. Resort to oath in such cases was common.

From at least the late tenth century the Anglo-Saxons had juries, which appear to have functioned as both grand and petit juries. In Æthelred's Wantage code, the king orders twelve chief thegns to be impaneled in wapentakes, where they would swear both to not accuse the innocent or protect the guilty and also to arrest men of bad reputation (*tihtbysian men*) against whom the reeve of the wapentake has a case. Such men were not convicted by this presentment or arrest but were forced to the ordeal to clear themselves. This jury acted as the watchdog of the community, though it was also a way for kings to compel local notables in the Danelaw to participate in the extension of royal justice. Such juries of presentment may lie behind the Angevin juries described in the Assizes of Clarendon (1166).

Penalties exacted by these courts have much in common with those found in the laws of other Germanic peoples. Three fundamental types of penalty were wergild or *wer*, *bot*, and *wite*. These terms appear in the earliest records and remain prominent throughout the period and in the century after the Norman Conquest, though evidence for their actual application at any time during this period is slight. *Wer* was the price of a person and thus was the amount that an offending party would have to pay if he had killed that person and wanted to avoid a feud. *Bot* and *wite* are related. Neither is linked to the *wer* or status of either party; both are fixed amounts. *Bot* is a compensation for personal injuries, sometimes paid to the individual, sometimes to the lord. *Wite* is a fine payable to the king or holder of a court for disturbances of public order. Penalties were often monetary. *Wer*, *wite*, and *bot* are all measured in coinage. Other penalties included penal servitude, branding, mutilation, and amputation, including castration. Imprisonment appears infrequently in the laws of Alfred, Æthelstan, and Canute, but when it does it refers to some form of confinement on a royal estate or of detention elsewhere under the control of royal agents.

Because Anglo-Saxon justice was probably perceived in certain places and times as unreliable, capricious, and corrupt, many simply fled rather than face a court and proof. Those who chose flight were declared to be outlaws—literally outside the law. They were no longer protected by the law, and killing any of them would bring no penalties to the slayer, though it might well involve him in a feud with the kin of the slain outlaw. Flight and outlawry remained a common pattern in England throughout the medieval period.

Effects of the Norman Conquest. The Norman Conquest in 1066 and the subsequent settlement of the kingdom does not constitute a great caesura in English legal history. Courts, kings, and practices like feud continued much as before the Conquest, and Norman kings commanded as much in their occasional decrees. There had always been change in the law—it never was the static creature evoked by notions of immemorial custom and folkways—and change continued after 1066, following lines laid out in the late tenth and early eleventh centuries. There may even have been a conservative return after 1066 to earlier legal practices—for example, it may be that William I's notorious murder fine, levied against lords and districts in which an immigrant was found slain, was a revival of an older Anglo-Saxon procedure for protecting not only strangers but also soldiers of the conquering Danish army under Canute. In other ways the law developed according to the great host of changes that English society was undergoing as part of the eleventh-century commercial revolution, the rise of literacy, an explosion of urban growth, reform of the church, development of universities, the Crusades, and the development of chivalry—to name only a few.

Among these major transformations and movements the Norman Conquest was important, but it was not often a necessary cause—and was almost never a sufficient cause—of legal change. Oath and suretyship, both of which had been around and in contact in law during the tenth and eleventh centuries, melded together further to form what is known as the frankpledge system, a structuring of the peasantry into groups liable for the crimes of their members, a system upon which medieval justice for peasants rested. It is unclear, however, when, between Canute and Henry I (r. 1100–1135), these elements in Anglo-Saxon law actually coalesced. In the area of penalties there was some change that came directly from the new Norman kings. William I, for example, commuted the death penalty to castration and blinding; this is sometimes spoken of as an amelioration of the old law, though given what must have been the fatal result due to loss of blood and infection, would often amount to an even more horrific execution than hanging. William I also appears to have tried to somewhat disentangle ecclesiastical cases from other kinds of pleas, in line perhaps with the advice he was given by his Continentally minded, reform-savvy bishops. Henry I tried to make the courts more regular in their schedule and to restore trust in coinage through some severe measures against coin clippers and forgers. Evidence for the widespread recognition in English society of these legal changes, let alone for their efficacy, is lacking.

Three areas of change have better evidence. The first is the language of law. English law before the Conquest was recorded—by tradition or choice—in English or, in certain cases, in Latin, and both languages served as languages of legal documents used in courts to support claims. William I initially continued this practice, issuing English and Latin writs and charters from his writing office. His earliest legislative acts appear in English. After 1070, English ceased for the most part being used as a language of record by the king, though individual religious houses retained English for their records. The change looks like a policy decision and may be related to the rebellions of the English in 1068–1069 that had threatened William's rule. Then again, the change may simply reflect that, as royal and baronial patronage increasingly placed Francophone scribes into writing offices, Latin became the only language that both French and English scribes could understand. Thereafter, and through the twelfth and early thirteenth centuries, Latin remained the language of written law and legal records. In the fifty years after 1070, French-speaking writers in England created three separate Latin translations of almost all of the pre-Conquest Old English legal codes—at times emending texts to reflect current practice—and, somewhat later, individual monastic houses translated their own English writs and charters into Latin. Two writers composed Latin legal treatises—*Leges Henrici Primi* (c. 1114–1118) and *Leges Edwardi Confessoris* (after c. 1136)—derived from Old English texts or contemporary practice. Another writer experimented with French, composing *Leis Willelme* (mid twelfth century), a treatise on law attributed to William I, which described contemporary law and procedures and also included French translations of laws of Canute and other Anglo-Saxon kings. French, however, does not seem to have intruded much into legal records or to have dominated the pleadings in court until the Angevin period. Pleadings could be offered in any vernacular language and did not have to follow a strictly standardized form. Translators in courts must have been quite common for the first generation or two after the Conquest, after which probably most people attending any court would speak English as a first or second language.

Another area in which the law changed as a result of the Conquest was in the frequency and type of royal interventions in justice administered outside the king's court. Earlier kings had indeed implied that they could and would intervene in cases anywhere subject to them. Evidence for their having done this with any regularity is scarce. Under Henry I, however, the use of local justices to supervise shire and hundred courts is common enough to suggest a royal decision to expand the reach of the highest level of the king's agents, and to gain as a result greater control over lesser agents of justice—such as bishops, earls, and sheriffs—as well as over the outcome of cases. One reason driving this expansion was likely the growing profits that kings could extract from justice. In 1130 more than 12 percent of Henry I's total revenue derived from justice. Greater involvement and greater profits probably worked hand in hand throughout the twelfth century. As profits accrued, record-keeping practices grew, which then encouraged more accountability of those collecting the profits and thus greater profits for the king.

The third of the changes was that the law regarding land seems to have developed very quickly after the Conquest. One must, of course, speak with caution here because there is so much less evidence from before the Conquest with which to compare post-Conquest land law. The Anglo-Saxons, as described above, had customs regarding land and thought of land as an asset or property in various ways, but they did not set down in their records a systematic or comprehensive account of this. All derives from inference. Nevertheless, after 1066, and in particular during the reign of Henry I, the security of tenure, the descent of land, and its alienability all became subjects of critical importance to Norman kings and their barons and knights. One Norman import was the fee or fief (*feudum*), a type of tenure in land that was heritable and held in return for service. In the seventy years after the Conquest, land described as a fief became ever more secure for holders and was heritable, but it could also be freely alienated with less need than in France for the approval of relatives. The law regarding this type of tenure attracted the attention of the Normans because their power depended on the obligations created by lands held in fee. Below this military elite, its fiefs, and its land law, land tenure remained much as before 1066.

Records of Anglo-Saxon law continued to play a part in the development of English law in the century after the Norman Conquest. After the Thomas à Becket conflict, which stimulated a flurry of interest in these records, Anglo-Saxon legal texts assumed a historical role and were used by thirteenth- and fourteenth-century legal writers to illustrate the ancient roots of royal law, even though that law no longer had any legal force.

[*See also* Common Law, *subentry on* English Common Law; Courts, English; English Common Law, Historiography of; Feudal Law, *subentry on* English Common Law; Ordeal in English Common Law; Outlawry; *and* Sources of Law in English Common Law.]

BIBLIOGRAPHY

Attenborough, F. L., ed. and trans. *The Laws of the Earliest English Kings*. Cambridge, U.K.: Cambridge University Press, 1922. Editions and translations of Old English royal codes from Æthelberht to Æthelstan (d. 939).

Downer, L. J., ed. and trans. *Leges Henrici Primi*. Oxford: Oxford University Press, 1972. An edition and translation of the largest post-Conquest treatise (composed between 1114 and 1118), based on Anglo-Saxon legal texts as well as on contemporary practices.

Fleming, Robin. *Domesday Book and the Law: Society and Legal Custom in Early Medieval England*. Cambridge, U.K.: Cambridge University Press, 1998. An introduction with synopses of legal entries in the Domesday Book is accompanied by an invaluable index of all relevant legal issues.

Hyams, Paul R. *Rancor and Reconciliation in Medieval England*. Ithaca, N.Y.: Cornell University Press, 2003. Challenges the widespread belief that feud was replaced by royal law in the twelfth century.

Jurasinski, Stefan. "*Reddatur Parentibus*: The Vengeance of the Family in Cnut's Homicide Legislation." *Law and History Review* 20:1 (2002): 157–180.

Kelly, S. E., ed. "The Electronic Sawyer: An Online Version of the Revised Edition of Sawyer's *Anglo-Saxon Charters*." http://www.trin.cam.ac.uk/sdk13/chartwww/eSawyer.99/eSawyer2.html.The standard list of all Anglo-Saxon documents (charters and writs, wills, miscellaneous narratives); also identifies editions, translations, and commentary by modern scholars.

Kennedy, Alan J. "Law and Litigation in the *Libellus Æthelwoldi episcopi*." *Anglo-Saxon England* 24 (1995): 131–183. Dissects a post-Conquest translation of a pre-Conquest book describing cases.

Keynes, Simon. "Crime and Punishment in the Reign of King Æthelred the Unready." In *People and Places in Northern Europe, 500–1600: Essays in Honour of Peter Hayes Sawyer*, edited by Ian N. Wood and Niels Lund, pp. 67–81. Woodbridge, U.K., and Rochester, N.Y.: Boydell, 1991.

Keynes, Simon. "Royal Government and the Written Word in Late Anglo-Saxon England." In *The Uses of Literacy in Early Mediae-val Europe*, edited by Rosamond McKitterick, pp. 226–257. Cambridge, U.K.: Cambridge University Press, 1990. Argues that the Anglo-Saxons relied on written law more than has sometimes been thought.

Liebermann, Felix, ed. *Die Gesetze der Angelsachsen*. 3 vols. Halle, Germany: M. Niemeyer, 1903–1916. The standard edition of all of the codes, treatises, and manuals from the Anglo-Saxon and Anglo-Norman periods. The texts are in Old English, Latin, and Anglo-Norman French and are accompanied by a German translation.

O'Brien, Bruce R. *God's Peace and King's Peace: The Laws of Edward the Confessor*. Philadelphia: University of Pennsylvania Press, 1999. Surveys the impact of the Norman Conquest on Anglo-Saxon law and provides a new edition and first translation of the *Leges Edwardi Confessoris*.

Oliver, Lisi. *The Beginnings of English Law*. Toronto: University of Toronto Press, 2002. Provides new editions and translations of the Kentish codes as well as extensive commentary.

Richardson, H. G., and G. O. Sayles. *Law and Legislation from Æthelberht to Magna Carta*. Edinburgh: Edinburgh University Press, 1966.

Robertson, A. J., ed. and trans. *The Laws of the Kings of England from Edmund to Henry I*. Cambridge, U.K.: Cambridge University Press, 1925. Reliable translations of the Old English royal codes as well as of post-Conquest treatises and decrees.

Rubin, Stanley. "The *Bot*, or Composition in Anglo-Saxon Law: A Reassessment." *Journal of Legal History* 17:2 (1996): 144–154.

Stenton, Doris M. *English Justice between the Norman Conquest and the Great Charter, 1066–1215*. Philadelphia: American Philosophical Society, 1964.

Wormald, Patrick. *Legal Culture in the Early Medieval West: Law as Text, Image, and Experience*. London: Hambledon Press, 1999. Collects Wormald's many important articles.

Wormald, Patrick. *The Making of English Law: King Alfred to the Twelfth Century*. Vol. 1: *Legislation and Its Limits*. Oxford: Blackwell, 1999. A fundamental new study of all of the Anglo-Saxon source material. Wormald argues for powerful and ambitious kings administering a law that looks like the twelfth-century common law.

BRUCE R. O'BRIEN

ANGOLA. *See* African Law, Sub-Saharan, *subentries on* The Precolonial Period *and* The Colonial Period.

ANIMALS IN CHINESE LAW. *See* Damage to Property in Chinese Law.

ANSARI, MURTADA IBN MUHAMMAD AMIN AL- (d. A.H. 1281/1864 C.E.). Murtada ibn Muhammad Amin al-Ansari was an Imami legal scholar and Imami *marja'*. Al-Ansari was born in Iran, but moved to Iraq at the age of thirty-four. There, he studied with the leading scholars of the day, in particular the great Muhammad Hasan al-Najafi (d. 1266/1850). After completion of his studies, he began to teach in Najaf, and his success in both teaching and writing was such that al-Najafi supposedly made a deathbed request for al-Ansari assume the role of *marja'*, the "source of emulation" for all Shi'i believers, both jurists and non-jurists. Al-Ansari remained aloof from political concerns for most of his academic career, concerning himself with the affairs of Najaf, a busy seminary city. As *marja'*, his prime concern was with teaching and writing.

His two principal works were *Fara'id al-usul* (a series of extended discussions on matters of legal theory) and *Kitab al-makasib* (a lengthy treatise on trade law). In an innovative presentation, al-Ansari structures his discussions in the *Fara'id* around the epistemological categories of certainty (*qaṭ'*), opinion (*ẓann*), doubt (*shakk*), and unjustified conjecture (*wahm*). Each forms the subject of a discrete chapter, as al-Ansari demands the scholar follow the former two alone in matter of legal theory. His *Kitab al-makasib* is also an original work, which concerns more than merely trade. His vision of the whole public ethic of Islam is described, as trade in particular items is assessed through a discussion of their legality. Hence, for example, a discussion of trade in musical instruments turns into a discussion of the moral status of music in Islam. In using a study of trade law as a commentary on public ethics, al-Ansari was followed by subsequent Shi'i scholars, most notably Ayatollah Khomeini, whose *Kitab al-bay'* was formally a work on trade, but was, in fact, a demand for proper Islamic society and government.

BIBLIOGRAPHY

Cole, Juan. "Imami Jurisprudence and the Role of the Ulama: Mortaza Ansari on Emulating the Supreme Exemplar." In *Religion and Politics in Iran*, edited by Nikki R. Keddie, pp. 33–46. New Haven, Conn.: Yale University Press, 1983. An excellent study of Ansari's theory of juristic authority.

ROBERT GLEAVE

ANTHROPOLOGY AND ANCIENT GREEK LAW. Scholars of Greek law have generally not been receptive to the use of anthropological ideas and methods in their studies. Mainstream scholars, often under the influence of Roman legal studies, have if anything tried

to remove or ignore the less formal elements in Greek law that might bring Greece closer to the legal cultures studied by anthropologists and have favored instead positivist approaches that seem to them more respectable. Nonetheless, legal anthropology, and before it comparative legal studies, have long influenced the study of Greek law.

History. The study of Greek law from the perspective of what we today call anthropology began in 1861 with the publication of two groundbreaking works of comparative law, both with important implications for Greek law, Sir Henry Sumner Maine's *Ancient Law*, and J. J. Bachofen's *Das Mutterrecht* (Mother-Right). Maine, for many years an administrative judge in India, based his theories about law in society on his knowledge of native Hindu law together with Greek and Roman law. On the basis of these three legal systems he proposed an evolutionary view of law as emerging out of an unidentified mass of rules, including religious rules, and gradually separating itself as an autonomous institution. Although many of the ideas he proposed in *Ancient Law* and in the later *Dissertations on Early Law and Custom* have now been abandoned, some of his formulations have remained classic and still enter into scholarly controversies (e.g., "from status to contract," and "substantive law . . . being gradually secreted in the interstices of procedure").

Bachofen's work drew more broadly on studies of early or "primitive" societies and focused especially on the role of women in society. His thesis that women generally held power in early families and communities (*Mutterrecht*, often characterized as a theory of "primitive matriarchy") drew most of its support from Greek myths, which told of earlier times when powerful women, like the Amazons and the women of Lemnos (who all murdered their husbands) ruled their communities. Although most nineteenth-century comparative anthropologists continued to follow Maine in arguing for primitive patriarchy (which characterizes the earliest observable states of the legal systems he studied), Bachofen's theory was taken up most notably by Friedrich Engels, under whose influence it became Marxist orthodoxy. Outside Marxism, however, theories of early matriarchy were generally abandoned until the last several decades of the twentieth century, when they were taken up again by a few feminist scholars of religion, myth, and antiquity.

Independently of both Maine and Bachofen, a third scholar, Numa Denis Fustel de Coulanges, published another groundbreaking work, *La Cité Antique* (The Ancient City), in 1864. The main thesis of this book was that religious concerns dominated early Greek and Roman culture and continued to influence them in later periods far more thoroughly than was previously recognized. Although the work has had a larger influence on the study of Rome than Greece, and probably influenced views of Greek literature more than those of Greek law, it did affect the views of later French scholars and had some influence on both Glotz and Gernet (see below).

The results of these nineteenth-century studies of comparative law were most fully applied to Greek law by Sir Paul Vinogradoff in the second volume of *Outlines of Historical Jurisprudence* (1922), the first volume of which was devoted to tribal law. The results of this highly theoretical work are disappointing, as Vinogradoff draws his evidence for Greek law more heavily from Aristotle's views than from direct evidence from Greek society. Vinogradoff's work marks the end of the first great era of anthropological influence on the study of Greek law, at about the same time as anthropological influence on the study of Greek literature, which had flourished with the "Cambridge ritualists" around the turn of the century, also came to an end. Greek legal historians in the first half of the twentieth century, who were primarily working in continental Europe, were now occupied largely with studying the papyrological and epigraphical material that had been (and still was being) discovered, and for the most part they lost interest in anthropology or comparative study. Even the "Chicago school" of Robert J. Bonner and his students, whose approach is generally more historical than that of continental scholarship, drew nothing substantial from the groundbreaking anthropological studies of Malinowski and others in the 1920s and succeeding decades.

The great exception during this period was the French scholar Louis Gernet. Trained in sociology in the tradition of Émile Durkheim, he published a thesis in 1917 on moral and legal thinking in Greece from an evolutionary perspective, tracing how the large family groups which exercised authority at first were gradually superseded by the authority of the polis. In this study Gernet was also influenced by (though not uncritical of) the work of another French scholar, Gustave Glotz, who in *La solidarité de la famille dans le droit criminel en Grèce* (The Solidarity of the Family in Criminal Law in Greece, 1904) similarly traced the rise of the state and the individual and the corresponding decline of the family. Perhaps because it was published during World War I, Gernet's work was largely neglected at the time, though recently it has drawn new interest and was republished in 2001. After the war Gernet went to Algeria, where he taught and wrote largely in obscurity for thirty years, and though he finally returned to Paris in 1948, his work still remained little known until the general revival of interest in anthropology among French classical scholars led by Jean-Pierre Vernant beginning in the late 1950s. This period saw the publication of two collections of Gernet's essays (1955, 1968), the second with a preface by Vernant. Gernet's anthropological approach was generally ignored, however, by legal historians, even in France, where most of the interest in Gernet's