The Medieval Academy of America

THE UNIVERSITY OF CHICAGO PRESS JOURNALS

Review
Reviewed Work(s): The Making of English Law: King Alfred to the Twelfth Century, 1: Legislation and Its Limits by Patrick Wormald
Review by: Bruce R. O'Brien
Source: *Speculum*, Vol. 77, No. 2 (Apr., 2002), pp. 657-659
Published by: The University of Chicago Press on behalf of the Medieval Academy of America
Stable URL: http://www.jstor.org/stable/3301434
Accessed: 21-04-2018 03:33 UTC

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at http://about.jstor.org/terms

JSTOR

Medieval Academy of America, The University of Chicago Press are collaborating with JSTOR to digitize, preserve and extend access to *Speculum*

This content downloaded from 199.111.91.13 on Sat, 21 Apr 2018 03:33:03 UTC
All use subject to http://about.jstor.org/terms

belief in the existence of lost pictorial models depends as much on faith as on demonstrative logic. The same, however, could be said of notions like "originality" or "creativity," overused and underexamined in our culture, which are made in these essays to stand in opposition to mere copying. One must be grateful to Williams for having raised this critical issue in such an exemplary fashion.

WALTER CAHN, Yale University

PATRICK WORMALD, *The Making of English Law: King Alfred to the Twelfth Century,* 1: *Legislation and Its Limits.* Oxford and Malden, Mass.: Blackwell, 1999. Pp. xviii, 574; 1 map and tables. $99.95.

In 1902 the eminent Charles Plummer confessed that "the study of the Anglo-Saxon laws often reduces me to a state of mental chaos." Patrick Wormald, who begins his rich study by quoting Plummer's lament, has begun to produce the cure. In the last twenty years Wormald has been the most assiduous explorer in the area, his brilliant essays constituting individual expeditions into the territory. *The Making of English Law* represents the atlas; but more than just a map of legislation, it explains plate tectonics, global warming, the whole lot. Its breadth is astonishing: one moment describing the western European context of post-Roman law, the next subjecting nib widths to microscopic examination to identify the scribe who wrote quire signatures in English law's oldest manuscript (p. 166, n. 9). The results, great and small, change how we interpret preconquest law. Readers will find new codes, the ghosts of old codes banished (e.g., *Excerptiones Ecgberhti*), new chronologies for legislative acts, new identifications of authorship and drafting, and a more complete description of a reception than any yet imagined. The thesis is deceptively simple. Wormald argues that English kings did not promulgate legislation out of concern about crime waves, lawlessness, and the like, however much those immediate social problems may have prompted their administering of justice. Instead, English kings made written law because of ideology. As Wormald writes, "the legislative impulse of the Old English kingdom waxed and waned with its imperial consciousness" (p. 444).

Wormald begins like Thucydides with an archaeology (chap. 1), though here of early-modern and modern thought. He guides us from the treatises of Hale, Brady, and Blackstone, through the suppositions of the nineteenth-century *Rechtsschule,* Pollock and Maitland's *History,* and Liebermann's monumental edition, before allowing us to emerge into what little research has been done in the twentieth century. In chapter 2 Wormald sets the great contrast between south and north that dominates his analysis, recalling for me an image from Peter Brown's *World of Late Antiquity* of Roman culture as a tide, rising under the empire and then receding to its original Mediterranean coastline with the decline and transformation of Rome and the emergence of the Germanic kingdoms. Chapter 3 asks, "What would be known of written law-making in England before Henry II had no law-codes survived?"—the sum total of indirect witness from Asser's account of Alfred (and what it does not say about his laws) to William of Malmesbury's much-disputed claims in the twelfth century. Next (chap. 4) Wormald turns to the legislative amber in which the actual texts are preserved—twenty manuscripts, a few of which no longer survive—and categorizes them according to the company their legal texts keep (e.g., accompanying historical narratives or homilies). The "extant legislative texts" themselves are then viewed in the longest and crucial chapter of the book (chap. 5) as "a contextual stratum" and ordered within their contexts—from Alfred's *domboc,* through the anonymous codes, and into the early-twelfth-century treatises, translations, and apocrypha. Next, chapter 6 considers law-making and law codes as acts of ideology, especially imperial ideology of English kings, pondering whether "it is possible to explain the behaviour of English codes, perhaps even

This content downloaded from 199.111.91.13 on Sat, 21 Apr 2018 03:33:03 UTC
All use subject to http://about.jstor.org/terms

their very existence, in literary and ideological terms" (p. 417). Much here is a consideration of Alfred's Mosaic model and Wulfstan's homiletic bent. Lastly (chap. 7), Wormald finishes with a wonderfully compact and provocative conclusion on legislative mentalities. It is only seven pages long; but like final punctuation, although it supplies the least ink, it makes all the difference for interpretation of the entire book. Wormald here asserts that "in the tenth century, the law of the English kings intruded into their subjects' lives to an extent that had no Anglo-Saxon precedent. It also had no European parallel. . . . On the continent, the gulf between the age of the *Volksrechte* and that of the Learned Laws was opening. English law was meanwhile moving to the position where, metaphorically if not literally, the king's writ would run throughout his realm" (p. 483).

Readers may come away from *Making* thinking that Wormald, by approaching each layer of the evidence on its own, has fragmented the picture of English law into a thousand pieces. Information here is sectioned and divided into numerous parts—manuscript by manuscript, text by text, king by king. Chapters represent runs through much the same material with, however, new questions in mind; minor and major conclusions are scattered throughout and sometimes have to be hunted for; the notes carry an entire subtextual culture filled with surprises; plots and characters are many, and the action is always happening at two or three levels at once. This fragmentation, these reiterations, and the multiple denouements are, however, intentional and wise. Wormald knows he cannot allow readers to race through the complex world of Anglo-Saxon law, as one in a sense could read through most of the faux narrative in volume 1 of Pollock and Maitland's *History*. Anglo-Saxon law has no single narrative; instead, it has multiple stories with hazily visible plots and witnesses of uncertain trustworthiness. Wormald situates his reader at all times in what has preceded in earlier chapters and what will follow; parenthetical cross-references in the text are constant reminders of the multiple layers of the subject, the intractability of the sources, the nuances gained from other perspectives. In order for the reader to absorb the insights Wormald has to offer, the book should be read as the author intends: forward and backward at the same time.

The range of insights on the subject is astonishing, covering everything from the measures of the receding *Romanitas* of northern Europe to the exceptional work of King Alfred and the quality of William of Malmesbury's reports. What follows here is merely suggestive of what *Making* contains. First, banish all thought of lost codes—we have most or all there ever were (pp. 414–15), and what this tells us when comparing everything from Æthelberht to the *Leis Willelme* is that "the only unquestionable change in twelfth-century English law was in the nature of the evidence for it" (p. 142). Second, the developing form of those texts we do have is conveyed with exceptionally apt images, reminiscent of Maitland at his best: "Alfred's law-book picked up appendages like burrs as it passed down the years . . ." (p. 266) explains the shape of Alfred's *domboc* in later editions. There have in fact been few since Maitland so comfortable and successful as Wormald with using metaphor and simile to explain the law. Third, royal codes adopt new guises: for example, III Atr, King Æthelred's Wantage code, famous for its "jury" and as a Danelaw code, now shows the king's desire, not to preserve and authorize Danish customs per se, but only to let local folk work out their own details, whatever those details might be, just as English kings typically had done from Æthelstan on. Fourth, the turgid sea of anonymous codes that Liebermann inserted between Æthelred and Cnut in his edition now lose much of their anonymity and cohesiveness as an outcast group and begin to assume orbits around the planetary bodies of the other codes and their legislating kings. This was for me one of the most spectacular sections of *Making*. Take Æthelstan for instance. Traditionally Æthelstan has been assigned six codes (numbered I–VI in Liebermann's edition). Leaving aside the new context Wormald lays out for these codes, he is also able to link to them an additional three anonymous codes. These three (*Ordal, Be Blaserum,* and *Dunsæte*) may represent

This content downloaded from 199.111.91.13 on Sat, 21 Apr 2018 03:33:03 UTC
All use subject to http://about.jstor.org/terms

local responses to the king's legislation. *Ordal,* for example, describes in Æthelstanian language the actual process of the ordeal and would have formed a useful supplement to the lengthy regulations on the subject in Æthelstan's Grately code (II As). *Be Blaserum,* which deals with killings and arson, shares language with the king's authentic codes, and Wormald concludes that borough folk responsible in the Grately code for handling the lawless "were here reformulating its commands at ground level" (p. 368). The treaty called *Dunsæte,* covering relations between the English and the Welsh, probably represents some local initiative resulting from Æthelstan's fixing of the River Wye as the border between the English and the Welsh c. 930. On a broader issue, Wormald's variegated approach eliminates any dichotomy between practical and ideological or cultural motivations behind lawmaking. All motives, sources, and mentalities play a part. Lastly, Wormald makes great and persuasive claims about the purpose and significance of preconquest law. As such, he can say that the story of the birth of the common law as we now have it, where preconquest lawmaking is labeled an evolutionary dead end and ignored, "is probably—not certainly but probably—wrong" (p. xi).

This is a bold book and assimilates Wormald's well-known opinions to the fuller study of manuscripts and texts required of a comprehensive treatment. There are points on which we can disagree with Wormald, though we may often find that, as with Maitland, Wormald has already raised the doubt himself (e.g., p. 263). Some of the disagreements will undoubtedly disappear with the appearance of volume 2 of *Making* on the doctrines of early English law. For instance, some may doubt that Wormald is right to separate lawmaking from its enforcement; but even though he may be right (and my Hibernian logic says he is), judgment will have to wait for the next volume. I have only one complaint. Historians have been using a system for citing English laws that is now no longer accurate or useful—a conclusion flowing from Wormald's earlier work and extended here (see, e.g., p. 290, n. 129)—yet these numbers, sigla, and chapters (e.g., VI As 12 for the twelfth chapter of Æthelstan's sixth code) are still the norm (even though the code is not Æthelstan's, let alone his sixth, and the twelfth chapter "relates to another set of proceedings altogether" [p. 298] than the assembly that produced the bulk of the code). We need a sensible system of citation, and Wormald is the person best placed to play Adam for these strange plants and beasts. Any confusion caused calibrating these new names and numbers to the old system is outweighed by the improvement to understanding from a new and rational nomenclature. The book is well produced with useful tables. There are very few typographical errors.

This is an important book for many people. Certainly English medievalists of all sorts will need to read it and will want to consult it frequently. Its conclusions will also be of interest to comparativists of various sorts, to medieval political historians, to Carolingian scholars, and to specialists in language and literature, early-modern intellectual history, paleography, diplomatic, and even in places to historians of spirituality and gender. For historians of medieval law, but most especially of English law, it is of course of fundamental importance. Too often legal historians have failed to consider the preconquest traditions and mentalities in their analyses of the formation of the common law and so produce a history of English law with no real antecedents, no surviving roots. With the publication of Wormald's *Making of English Law,* however, these antecedents and roots at all levels are made visible and traced to developments in English lawmaking far into the twelfth century and its well-studied Angevin revolution. Wormald's massive and brilliant study truly for the first time puts us in a position to know the history of the origins and early development of English law.

Bruce R. O'Brien, Mary Washington College

This content downloaded from 199.111.91.13 on Sat, 21 Apr 2018 03:33:03 UTC
All use subject to http://about.jstor.org/terms