Anglo-Norman Studies 25 (2003)

THE *INSTITUTA CNUTI* AND THE TRANSLATION OF ENGLISH LAW

Bruce O'Brien

In 1893, the same year that he published his slim edition of the *Consiliatio Cnuti*, Felix Liebermann turned his attention, in a paper published by the Royal Historical Society, to another overlooked Latin translation of Old English law. The object of his interest was one of the three Latin translations of Old English legal texts made after 1066. It went under many titles – Liebermann proposed replacing these with his own, drawn in part from two of the earliest witnesses, but crafted to reflect better, he thought, the actual contents of the translation: the *Instituta Cnuti aliorumque regum Anglorum*.[1] And so it has been known ever since. At first glance it is not for its time a remarkable text. Like three of its contemporaries, it chose the codes of Cnut as its principal source.[2] And like two of its contemporaries, it included laws issued under other kings' names.[3] It is not the longest or most comprehensive collection of English law: *Quadripartitus* is.[4] Nor is it the most idiosyncratic: the *Consiliatio Cnuti* charts a course very separate from its fellow translations.[5] It was, however, the most popular in the twelfth century. Half of the *Instituta*'s witnesses – seven manuscripts – come from the twelfth century or the turn of the thirteenth century. *Quadripartitus* has five that are that old; the *Consiliatio Cnuti* (in fragmentary form) has two; the *Leges Henrici Primi*, none.[6]

The *Instituta* consists of translations of selected chapters from Cnut's code (conventionally known as I and II Cnut) mingled with selections translated from Edgar's second code and Alfred. After that come more selections from Ine, Alfred, and a collection of treatises on status by Bishop Wulfstan of Worcester (1002–16; archbishop of York, 1002–23) called the '*Geþyncðu* Group': *Geþyncðu*, *Norðleoda laga*, *Mircna Laga*, *Að*, and *Hadbot*, and another of Wulfstan's treatises, *Grið*, as well as one or several unidentified sources.[7] It appears to have been divided into two

1 F. Liebermann, 'On the Instituta Cnuti aliorumque regum Anglie', *TRHS* ns 7, 1893, 79 and n. 1.

2 These are *Quadripartitus* (Quadr), *Consiliatio Cnuti* (Cons Cn) and *Leis Willelme* (Leis Wl). All codes, treatises, and translations will be referred to using Liebermann's titles and abbreviations (Liebermann i, ix–x). The second book by the translator of Quadr, the *Leges Henrici Primi* (Hn), is built on a foundation of translated passages from Cnut: see L. J. Downer, ed., *Leges Henrici Primi*, Oxford 1972, 'Commentary'.

3 It is noteworthy that the *Instituta Cnuti* (In Cn) does not name these other kings; all translated passages travel as if parts of Cnut's laws.

4 P. Wormald, '*Quadripartitus*', in *Law and Government in Medieval England: Essays in Honour of Sir James Holt*, ed. G. Garnett and J. Hudson, Cambridge 1994, 111–47.

5 F. Liebermann, *Consiliatio Cnuti, ein Übertragung angelsächsischer Gesetze aus dem zwölften Jahrhundert*, Halle 1893, vi–ix; P. Wormald, *The Making of English Law: King Alfred to the Twelfth Century*, vol. i, *Legislation and its Limits*, Oxford 1999, 405–6.

6 Liebermann's dates have been amended by subsequent scholarship: see Wormald, *Making*, 237–8; B. R. O'Brien, *God's Peace and King's Peace: the Laws of Edward the Confessor*, Philadelphia 1999, 137–46.

7 On the origins of this group and of *Grið*, see Wormald, *Making*, 391–5.

or three books in its earliest manuscript copy (MS H: *Textus Roffensis*); I and II Cnut are run together with only a larger initial to signal the change, while a break is present after II Cnut and before the sections from Alfred-Ine. The whole fills thirty-five pages double-spaced in US paper size or thirty-three in A4.

Before Liebermann's work, it was relatively unknown and only edited by default or in its most eccentric form. In 1720, Thomas Hearne published an edition of *Textus Roffensis* based on a transcript in Harley 6323, which included a copy of the *Instituta*'s earliest text.[8] 106 years later it again surfaced. In the early nineteenth century, J. L. A. Kolderup-Rosenvinge, a Danish lawyer, published the version of the *Instituta* found in a Colbertine manuscript then in Paris, now BN MS latine 4771 (Cb).[9] The text of the *Instituta* here has been interwoven at start and finish with sections from another contemporary translation of Cnut – the *Consiliatio Cnuti*. While this edition made the *Instituta* available to a wider range of scholars, it unfortunately reproduced its most corrupt version.[10] The *Instituta* in this guise was a postconquest antiquarian eccentricity rather than a reflection of the *Volksrechte*, and so it captured no scholar's imagination. In the nineteenth century, the *Instituta* stayed firmly in appendices and notes as a supplement, a guide, a distorted clue to understanding the meaning of Cnut's laws, not as a guide to English law after the conquest.[11] Until Liebermann, that is.

Liebermann's work on the *Instituta* was part of a grand scheme to collect and edit all of the Anglo-Saxon laws in all versions, carried beyond this 1893 article and other shorter editions and into three massive volumes published between 1903 and 1916. Liebermann included in this scheme the postconquest Latin translations of Old English preconquest codes, and some of the Anglo-Norman French translations of preconquest English and postconquest Latin codes. He generally printed the Latin translations on facing pages or adjacent columns to the Old English witnesses. Since such a system for displaying the text of these translations did not convey a picture of the whole translation on its own, Liebermann included abbreviated lists of the contents of each translation as well as full texts for original material not derived from the sources. Liebermann always imagined these translations as subservient to their sources. They were, after all, derivative, and the collection was entitled *Die Gesetze der Angelsachsen*, which, technically speaking, should not necessarily include postconquest sources. This implied hierarchy was not lost on those who used Liebermann's *Gesetze*. Julius Goebel, in his 1937 *Felony and Misdemeanor*, wrote that texts like the *Instituta* were 'largely mere translations of earlier Anglo-Saxon dooms' and were of principal value only to scholars interested in the poorer specimens of Anglo-Latin.[12] For Frederic William Maitland, the translations were only useful for an occasional footnote on French misunderstandings of English law. Rarely were they entrusted with more.[13] Maitland does not name the *Instituta* in the text of his and Frederick Pollock's *History of English Law* where he discusses the law books of the Anglo-Norman period, although he alludes to its existence and says that the translator tried to be more than a translator.

8 T. Hearne, ed., *Textus Roffensis*, Oxford 1720; Liebermann, 'On the Instituta', 78.
9 J. L. A. Kolderup-Rosenvinge, ed., *Legum Regis Canuti Magni*, Copenhagen 1826; this is Liebermann's MS Cb.
10 See below, 184.
11 R. Schmid, ed., *Die Gesetze der Angelsachsen*, 2nd edn, Leipzig 1858, appendix.
12 J. Goebel Jr, *Felony and Misdemeanor: a Study in the History of the Criminal Law*, New York 1937, 380 and n. 151. Goebel did, however, think that further study of all the translations would show 'the mechanics of legal transfiguration': *ibid.*, 413 n. 260, 414 n. 266.
13 F. W. Maitland and F. Pollock, *The History of English Law*, 2 vols, 2nd edn, Cambridge 1898, i, 101.

Nevertheless, Liebermann's achievement was monumental and has endured rather well to this day. Volume 1 of his *Gesetze* offered scholars accessible transcriptions or editions of the laws, and presented a scheme for organizing and assigning the individual texts to this or that king – much here based on earlier work of antiquaries and historians like Reinhold Schmid.[14] Volume 2 provided a vocabulary and theme/subject glossary combined as a way of navigating the shoals and finding the channels. Lastly, in the third volume, Liebermann presented introductions to the editions and notes on the texts and the meaning of select passages. In addition, for the *Instituta*, Liebermann's 1893 article provided a meticulous sifting of the translation for matters of legal significance, as well as a collection of observations on the qualities of the translation and the identity of the author.

Liebermann's principal achievement, of course, was to provide what are considered to be trustworthy editions of texts for scholars interested in Anglo-Saxon law and the effects of the Norman conquest on that law. The foundation of an edition is the accuracy of the transcriptions of the witnesses. Without an accurate record of the variants in individual manuscripts, no firm relationship between witnesses can be established, and without that, there is no trustworthy way to identify what is likely to have been the author's text. Liebermann, as almost all the editors of Latin texts of his generation, knew this and practiced the art of *recensio* and *emendatio*: a survey of the witnesses and the establishment of the text from that survey, guided by scholarly judgment. When I worked with the *Leges Edwardi Confessoris*, I discovered that Liebermann's readings were not always reliable.[15] I have discovered the same to be the case with the *Instituta*, but to an even greater degree. A comparison of the readings in the seven earliest or most important witnesses to Liebermann's text and apparatus for the title, prologue, and first three chapters of the *Instituta* revealed 54 errors of transcription.[16] This small part of the *Instituta* constitutes 3.7% of the entire translation, but if I extrapolate from this evidence, there would be over 1400 errors in total. If I add the other seven manuscripts of original witnesses, the number of errors I feel would only rise.

Let me offer a few observations. First, Liebermann's errors occur most frequently in his readings from the class of manuscripts whose text of the *Instituta* ends at book III, chapter 44, rather than chapter 64: thirty-three of the fifty-four errors occur in readings from Lambeth Palace MS 118 (La), the earliest copy of the fifth edition, version B, of Henry of Huntingdon's *Historia Anglorum*, and BL MS Harley 746 (S), a late thirteenth-century statute and legal treatise collection. Thus, Liebermann's understanding of the basic text, of which the short form may be the earliest witness, rests on fundamentally unsound ground. Second, for the long form, his appraisal of the value of individual witnesses is unlikely – also because of his transcription errors

14 See W. Lambarde, ed., *Archaionomia sive de priscis Anglorum legibus libri*, London 1568; P. Wormald, 'The Lambarde Problem: Eighty Years On', in *Alfred the Wise: Studies in Honour of Janet Bately on the Occasion of her Sixty-Fifth Birthday*, Cambridge 1997, 237–75; B. Thorpe, ed., *Ancient Laws and Institutes of England*, 2 vols, London 1840; Schmid, *Gesetze*; Wormald, *Making*, 21–2.

15 O'Brien, *God's Peace*, 222, n. 34.

16 The manuscripts used for this comparison are Cb (BN MS lat. 4771), H (*Textus Roffensis*), Rl (Oxford, Bodleian Library MS Rawlinson C. 641), Di (Oxford, Bodleian Library MS Digby 13), T (BL MS Cotton Titus A. xxvii), La (London, Lambeth Palace MS 118 [Liebermann's Lb]), and S (BL MS Harley 746). In his readings from La, e.g, here are his errors: Inscr. (La reads *Anglie*, not *Anglice*, and *Norag-*, not *Norwag-*), n. 4 (*Kannuto*, not *Canuto*), 2.2 (La omits *scilicet*), 2.3, n. 12 (*e. a. D.*, not *D. e. a.*; Cb in note should probably be Lb), 2.5, n. 2 (La does not add *plenam*), 2.5, n. 8 (La reads *mundbreche*, not *mundbrece*; *reconciliatione*, not *reconciliationem*), 3, n. 21 (La omits *per*), 3.1 (*omnes sunt*, not *sunt omnes*), n. 27 (La reads *et eiusdem*, not *eiusdemque*).

– to be trustworthy. Liebermann, for instance, treats Rl (Oxford, Bodleian Library MS Rawlinson C. 641) as independent from *Textus Roffensis* and therefore confirming that *Textus Roffensis* was copied from a now lost exemplar. His apparatus, however, offers no variants for Rl other than – in the section under comparison – the spelling of a proper name in the prologue. While in this section there is no support for the independence of Rl from *Textus Roffensis*, a review of all shared errors in Rl and H suggests that Rl is merely a rather faithful copy of *Textus Roffensis*.[17] Again, with the relationship of T (BL MS Cotton Titus A.xxvii) and Cb, the other two witnesses to the long form, Liebermann suspected a link of some kind between them – which there is – but his apparatus misses most of the textual proof of just what the relationship is. Lastly, and this is important especially for dialectologists and historical sociolinguists, Liebermann's variants for Old English terms and expressions preserved in the Latin translation are only incompletely recorded and sometimes wrong.[18] This pattern of error is also present in his edition of the *Leges Edwardi*.

The stemma Liebermann presents, then, does not in all respects reliably represent the relationship of the witnesses. It is in many ways right in outline, but clear where it might have wanted to be cautious, and cautious where it could have been clear. My own stemma (see below, 183) offers a tentative adjustment, the most significant part of which is the relegation of Rl to derivative status. I have also discovered new independent witnesses of the *Instituta* – College of Arms MS Vincent 98 and BL MS Harley 785, both sixteenth-century transcripts of probably the same lost manuscript.[19] Similarly, our understanding of the texts that travel with Henry of Huntingdon's *Historia* has changed, thanks in large part to the magnificent edition by Diana Greenway, from Liebermann's flat line of texts to a more varied landscape, with nine witnesses reconstructing four hypearchetypes as well as the archetype of this extended family.[20]

Because Liebermann did not sort out the relationships as well as he could have, he found himself unable or unwilling to choose his text. Parenthetical clauses, phrases, and words abound in what is presented as the translator's text, at times creating redundancies and generally sowing confusion and discord for the user of the edition.

17 Patrick Wormald has recently noted our disagreement on this point (*Making*, 402 n. 635). I want to take the opportunity to explain my case. The key is the interlinear glosses shared for the most part by *Textus Roffensis* (H) and the Rawlinson manuscript (Rl). Wormald, '*Laga Edwardi*', 260–2, n. 29, cites as evidence of Rl's independence the placement of *fieri* (In Cn II 69) in different places in H and Rl. Closer examination of the manuscripts, however, shows that *fieri* is placed in both H and Rl in essentially the same place: in H above the line with an insertion mark after *uolo*, and in Rl in the text after *uolo*. Titus A. xxvii places it in the text after *uolo* and Cb inverts *fieri omni populo* to *omini populo fieri*. A general comparison of readings reveals no errors that would prove either that Rl is independent of H or that Rl is a copy of H, except perhaps at II 49, where H's triple insertion of *patientis* (reduced to two by erasures) is repeated in Rl, where it is also nonsensical. What makes it likely that Rl is a copy of H is the lack of evidence of independence and the almost identical pattern of capitals, initials, and rubrics: of the 123 capitals that begin chapters in H, Rl lacks only one, at I 6.3; of those initials which extend beyond a single line, Rl's are almost always the same size as those in H. Out of the hundreds of smaller capitals that mark the beginnings of clauses in the text, in only seven instances do H and Rl make different choices on what to capitalize. Thus, to have Rl and H remain independent would require the belief that two teams of scribes and rubricators were exceedingly careful to copy their shared exemplar in exactly the same way. It is much simpler to conclude that Rl is a faithful copy of H.

18 E.g. at I 2.5, Liebermann prints *mundbrece* as his text, and cites *mundbrice* in Di and *mundbreche* in Cb as his only variants; he missed T's *mudbrece*, and the agreement of La and S with Cb. At I 3.2, he missed S's *montam* and *feldchirche* for his text's *mundam* and *feldcirice*.

19 For these discoveries, see O'Brien, *God's Peace*, 138–9 (for Vincent 98) and 141 (for Harley 785).

20 *Huntingdon*, cliii–clv. Liebermann set out all of these manuscripts – except Pl and S – as similarly direct descendants from the archetype of this edition of the *Historia*: Liebermann iii, 330.

Much of the problem can be traced to Liebermann's transcriptions and the elevated place he assigned to MS Cb.

My last quarrel with Liebermann's edition concerns his editorial use of bold-face type to show how the translator has changed the original. Here Liebermann's identification of what is new misleads readers. He appears to have been excessively tolerant of changes made by the translator and so only the longest or most obvious changes trigger the employment of this printing device. Only rarely, then, will the reader be warned that something is afoot in the translation. Nor are omissions signaled in any way in the notes. This lack of editorial signal means the reader is focused on additions as being more valuable than the omissions, and is only alerted when the addition is, in Liebermann's judgement, significant. In a typical instance, at I Cnut 5 the translator has added to his translation of robbery and witchcraft a catch-all – 'or any similar thing' – which is not put into bold type face by Liebermann, but is an addition and one that may suggest the translator's lack of confidence that his renderings had captured the two named offenses in the Old English, or his own broader interpretation (perhaps anachronistic) of the intention of the original to do more than cover those two cases alone.[21] At I Cnut 5.2d, Liebermann signals an important addition by the translator – a clause specifying that compensation for homicide, while not allowed to monks, 'is allowed for the kin of the killers and of the victim' – but he does not signal the omission of the final clause in the original – '[the monk] leaves his kindred's law behind when he accepts the law of monastic rule'.[22]

Considering the focus of the whole project on Anglo-Saxon law, the presentation of the text of the *Instituta*, and the limited editorial guidance to its peculiarities, it is not surprising that the *Instituta* has been passed over by students of postconquest law except as a distorted mirror of Cnut's law.[23]

So far all that the evidence suggests is that Liebermann did not do a very good job editing the *Instituta*, and that the format he used to present it makes it difficult to appraise. It is a separate issue to determine whether the *Instituta*, as a translation, merits a reappraisal. Given the controversies surrounding 1066, any source from the period before or after the Norman conquest is important and deserves attention for what it can tell us about the consequences of conquest. Translated law, however, is important in different and special ways. Language contact in conquered lands, in lands where new populations speaking different languages have settled, has been and continues to be an area of intense study by sociolinguists and linguistic anthropologists.[24] In those circumstances, the act of translation – although performed before by the cultures involved – takes on new significance, is altered. It can become the linguistic adjustment between cultures; it can trace borders dividing peoples and cultures and bridges crossing those borders; it marks contact between peoples as well as between cultures.[25] Translation, and translated texts, have the quality of being liminal and mural at the same time.

[21] Liebermann i, 284–5.
[22] Liebermann i, 286–7.
[23] H. G. Richardson and G. O. Sayles told their readers 'We need spare them [In Cn and Cons Cn] but few words': *Law and Legislation from Æthelberht to Magna Carta*, Edinburgh 1966, 45. Anglo-Norman historians, as opposed to legal historians, have been more comfortable using it; see the sensible comments of J. A. Green, *The Government of England under Henry I*, Cambridge 1986, 96–9.
[24] Good places to begin are S. Romaine, *Language in Society: an Introduction to Sociolinguistics*, 2nd edn, Oxford 2000; U. Weinreich, *Languages in Contact*, New York 1953; A. Duranti, *Linguistic Anthropology*, Cambridge 1997; and P. Sture Ureland and G. Broderick, eds, *Language Contact in the British Isles*, Tübingen 1991.
[25] One of the Old English words for translation, *geþeodnes*, also means 'juncture'. In general, see S. Bassnett-McGuire, *Translation Studies*, rev. edn, London 1991, xi–xii, xvi, and *passim*.

In 1066, the English already had much more experience than their conquerors with translation.[26] They understood it, devised theories of translation, developed interesting uses for vernacular texts translated from Latin and Greek, and had moved texts in both directions.[27] 1066 complicated translation by adding a few more vernaculars, one of which, French, soon (unlike the Scandinavian of the last round of conquerors) developed a thriving written form.[28] The conquest also coincided with and was partly responsible for the introduction of scholarly languages like Arabic, and the settlement of a people who had multiple new languages and could translate still more – the Jews.[29]

In such a complicated postconquest world, law is a particularly critical point of contact since, unlike knowledge of Arabic or Arabic texts, law has the potential to affect more people directly. Since the conquerors spoke their own languages (several dialects of French, but also Flemish and Breton), and the conquered spoke about or recorded their laws in their languages (English, Scandinavian, and Welsh), translation was necessary for rule, stability, and coexistence. Translations of legal texts offer us one important measure of continuity or change. The preservation of law through translation reveals attitudes toward the past and toward English culture.[30] It can tell us perhaps a good deal about royal power. It goes to the heart of Norman rule in general.

The rest of this paper will concentrate on two of the issues raised so far. First, I will try to clear up some of the issues of the text. Second, I will discuss the translator's method and its implications for our understanding of what the *Instituta* can tell us about English law and legal treatises under the Norman kings.

There are thirteen witnesses to the text. Three witness the full version: *Textus Roffensis* (H) from 1123–4, BN MS lat. 4771 (Cb) from c.1175, and BL MS Cotton Titus A. xxvii (T), dated to the end of the twelfth or beginning of the thirteenth century.[31] The shorter text is witnessed by Bodleian Library MS Digby 13, which is from the middle of the twelfth century, and a host of other manuscripts holding texts

26 R. Stanton, *The Culture of Translation in Anglo-Saxon England*, Cambridge 2002.

27 The bibliography here is immense; see R. Hogg, ed., *The Cambridge History of the English Language*, vol. 1: *The Beginning to 1066*, Cambridge 1992, 514–26, and Stanton, *Culture of Translation*; M. Irvine, *The Making of Textual Culture: Grammatica and Literary Theory, 350–1100*, Cambridge 1994, 405–60; M. Gretsch, *The Intellectual Foundations of the English Benedictine Reform*, Cambridge 1999; and M. C. Bodden, 'Anglo-Saxon Self-Consciousness in Language', *English Studies* 68, 1987, 24–39.

28 M. D. Legge, *Anglo-Norman Literature and its Background*, Oxford 1963; R. Dean and M. B. M. Boulton, *Anglo-Norman Literature: a Guide to Texts and Manuscripts*, London 1999. Working out the linguisitic complications moves commmunity by community; see e.g. C. Clark, 'People and Languages in Post-Conquest Canterbury', *JMH* 2, 1976, 1–34, with further complications supplied by John Frankis, 'Sidelights on Post-Conquest Canterbury: Towards a Context for an Old Norse Runic Charm (DR 419)', *Nottingham Medieval Studies* 44, 2000, 1–27. The best broad survey of the English scene after 1066 is M. Richter, *Sprache und Gesellschaft im Mittelalter*, Stuttgart 1979, 35–104.

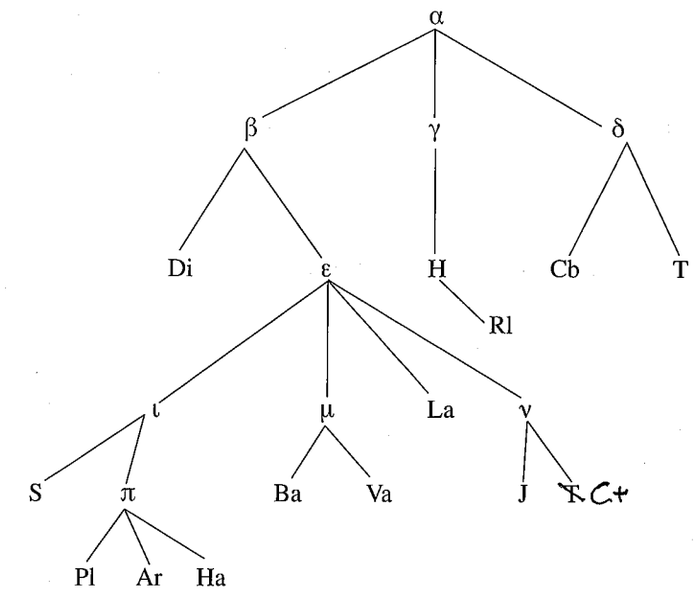
29 P. Hyams, 'The Jews in Medieval England, 1066–1290', in *England and Germany in the High Middle Ages*, ed. A. Haverkamp and H. Vollrath, Oxford 1996, 173–92; C. Burnett, *The Introduction of Arabic Learning into England*, The Panizzi Lectures, The British Library, London 1996, 46–60; N. Golb, *The Jews of Medieval Normandy: a Social and Intellectual History*, Cambridge 1998, 112–14; M. Beit-Arié, *Hebrew Manuscripts of East and West: Towards a Comparitive Codicology*, The Panizzi Lectures 1992, London 1993; *idem*, *The Only Dated Hebrew Manuscript Written in England (1189 CE) and the Problem of Pre-Expulsion Anglo-Hebrew Manuscripts*, London 1985.

30 O'Brien, *God's Peace*, 131–4.

31 Julia Crick dates this manuscript to s. xii/xiii, in *The Historia Regum Britannie of Geoffrey of Monmouth*, vol. 3, *A Summary Catalogue of the Manuscripts*, Cambridge 1989, 156–8 (no. 95); M. Gullick places it slightly earlier in s. xii4/4, in Wormald, '*Quadripartitus*', 117 n. 18; Liebermann dated it c.1225 in Liebermann i, xl.

derived from the one interpolated into the fifth edition, version B, of Henry of Huntingdon's *Historia Anglorum*, whose hypearchetype probably was written in 1149, and into which the *Instituta* was interpolated by c.1190.[32] I have finished collating nine of thirteen manuscripts, so my conclusions here are tentative. I have relied on Diana Greenway's stemma for Henry of Huntingdon's fifth edition to reflect the relationship between its texts of the *Instituta* – which, according to my work with some of those manuscripts, is right.[33] Eight hypearchetypes can be posited, one of which, gamma, has one descendant, one, delta, has two descendents, and another, beta, is reconstructed from ten witnesses and five hypearchetypes.

The Stemma is as follows:



First: how many authorial versions of the *Instituta* do we have? It is a trick of fate that there appear to be two versions – one long, one short. The shorter one ends at book III, chapter 44, while the longer one runs on for an additional twenty chapters, which include all of the texts whose sources have not been identified.[34] Rather than representing a later or revised version, by the original translator or by others, the longer version merely reflects the full translation, while the shorter version, ending as it does imperfectly in the middle of the *Instituta*'s translation of the short treatise called *Að*, reflects a faulty hypearchetype caused by the loss of leaves or by the premature and incomplete copying of the archetype. Liebermann recognized this and

32 For MS Digby 13, see B. R. O'Brien, 'The Becket Conflict and the Invention of the Myth of *Lex Non Scripta*', in *Learning the Law: Teaching and the Transmission of Law in England, 1150–1900*, ed. J. A. Bush and A. Wijffels, London 1999, 6 n. 25; Richards, *Texts*, 48; W. D. Macray, *Catalogi Manuscriptorum Bibliothecae Bodleianae Pars Nona*, Oxford 1883, 10; for dates of copies traveling with Henry of Huntingdon's *Historia*, see *Huntingdon*, cxix–cxliv and cxviii.

33 *Huntingdon*, cxviii for the stemma.

34 The chapters without identified sources are III 45.4–55, 57–9.

offered various explanations for how it had happened, all of which are, strictly speaking, irrelevant.[35] What matters to us is that all non-derivative texts are witnesses to the same version and thus must all be used to reconstruct the archetype (α).

One of the manuscripts in which Liebermann placed greater trust for this reconstruction was his Cb, which he assigned to c.1160, making it one of the oldest witnesses to the *Instituta Cnuti* and the third version of the *Leges Edwardi Confessoris*, which together form the contents of the book.[36] Liebermann perceived in Cb's text archaic elements which he thought must go back to the archetype. Cb, however, is an eccentric witness. Its compiler, or at least the compiler behind its version of the *Instituta*, grafted the prologue and a few select chapters from the *Consiliatio Cnuti* onto his long version of the *Instituta*.[37] In addition, Cb is filled with unique readings, which suggests, in conjunction with the larger cut and paste, the work of a reviser rather than the work of the original translator of the *Instituta*, or of a scribe more faithful to the archetype than any of the other copyists. The reviser took pains to spell out the amounts of fines in both pounds and shillings and more accurately number the compurgators needed in certain cases.[38] In I Cnut 5.2, for example, he has added a long gloss which repeats for priests what was described as the appropriate number of compurgators for deacons.[39] This was not a reviser afraid to amend his text. This tendency makes Cb interesting evidence for how Cnut's law was understood in c.1175, its likely date, but of very limited use for reconstructing delta, the hypearchetype of its family, let alone the archetype of the *Instituta*.[40]

It is difficult to say with specificity when the *Instituta* was composed. The contents do not settle this issue. The translator's additions are often slight adjustments to his source; it is difficult to find a trustworthy measure outside the translation by which to judge the accuracy of these changes, let alone the date to which they correspond. The chapters in book three which cannot be traced to any known source (but appear nonetheless to be translations) contain a list of royal rights more extensive than Cnut's and less fulsome than Henry I's.[41] These rights, in fact, resemble the collection of rights and obligations found in some of the lists of local customs in Domesday Book – most notably those of Taunton, the bishop of Winchester's borough in Somerset.[42] However, even if such a document were the source, these chapters would be describing a late eleventh-century arrangement that would not

35 Liebermann, 'On the Instituta', 79–80.

36 In 1893, he said it 'was written about A.D. 1150, and certainly before 1172': 'On the Instituta', 103. By 1903, the core had aged to 'um 1160', and the accompanying genealogy was updated after 1170 and again after 1189.

37 In general, see Liebermann, *Consiliatio Cnuti*, xv–xviii, though for dating see O'Brien, *God's Peace*, 109.

38 E.g. I 3.2, where he is mixing In Cn and Cons Cn.

39 The source reads (in Liebermann's manuscript G, BL Cotton Nero A. i): 'Gif man folciscne mæssepreost mid tihtlan belecge, ðe regollif næbbe, ladige hine swa diacon þe regollife libbe.' H (*Textus Roffensis*, fol. 59v): 'Si popularis presbyter calumniatur qui non regulariter uiuit de supradictis . purget se sicut diaconus qui regulariter uiuit.' The reviser behind Cb (pp. 4–5) has the following: 'De uulgari sacerdote non casto. Si uulgaris presbyter qui non regulariter uiuit calumpniatur simpla appellatione; purget se sicut diaconus regulariter uiuens . scilicet assumens duos et ipse sit tertius . Et si de triplici appellatione; sumat sex . et ipse sit septimus.'

40 It is of course possible that this particular melange of In Cn and Cons Cn was created long before its first extant witness; however, there is nothing in the contents, such as a datable amendment of the Latin, to place it earlier.

41 Liebermann, 'On the Instituta', 97; In Cn adds hospitality and charter rights to Cnut, but lacks the arson and rape of Hn.

42 *Domesday Book* i, 87v (R. Fleming, *Domesday Book and the Law: Society and Legal Custom in Early Medieval England*, Cambridge 1998, no. 1354).

help date the translation – especially if one trusts in the existence of something resembling Domesday Book returns from before the conquest.[43]

It might be hoped that indirect witness could at least push the *terminus ante quem* earlier than 1123–4, the date of the *Instituta*'s earliest manuscript, *Textus Roffensis*. Two sources are said to have used the *Instituta*: the *Ten Articles* of William I and the *Leis Willelme*.[44] Let me take them briefly in turn. It is clear that the *Articles* drew five of its chapters from the *Instituta*.[45] The *Articles* is, in fact, a pastiche of other texts; only three of what Liebermann thought were its ten chapters are not drawn in some fashion from either William's ordinance on modes of proof or from the *Instituta Cnuti*.[46] The compiler abridged and adjusted his sources to accommodate a new king and new conquerors. Identifying this dependence, however, does not help much in dating the *Instituta*. The three original chapters in the *Articles* are the famous Gloucester decree ordering the murder fine and placing Normans in England before 1066 under English law, and the requirement for all to abide by the *laga Edwardi*. All of these promises or issues are mirrored in Henry I's coronation charter, but not as often after that date.[47] The *Articles* have been placed before 1100, in the reign of William II – most recently Patrick Wormald has offered with caution a hypothetical date of origin 'late in the Conqueror's own reign' for both *Instituta* and *Articles* of William.[48] But as with the *Instituta*, the only firm evidence of its *terminus ante quem* is the date of *Textus Roffensis*.

What of the other indirect witness – the Anglo-Norman French *Leis Willelme*? It has been argued that the *Instituta* rather than the Old English text was the source for those chapters of the *Leis Willelme* that come from Cnut's laws (chapters 39–45, 47–52).[49] If the *Leis Willelme* was composed earlier than its earliest manuscript – BL MS Additional 49366 from the third quarter of the twelfth century – we might narrow the date of the *Instituta*.[50] This dependence of the *Leis Willelme* on the *Instituta* rather than on the Old English original, however, cannot be. The minor agreements between the Old English text and the Anglo-Norman translation, and disagreements with the text of the *Instituta*, are many, but the case is easily and briefly settled by a phrase in II Cnut 24.2 stating that the possessor of property on which there is a claim shall vouch to warranty three times – 'þonne tyme hit man þriwa' ('then one shall vouch it to warranty three times'). The *Instituta*'s translator performs his usual service of replacing this compact phrase with a more detailed one – the possessor

[43] E.g. H. R. Loyn, 'The Beyond of Domesday Book', in *Domesday Studies*, ed. J. C. Holt, Woodbridge 1987, 2–3.

[44] Liebermann, 'On the Instituta', 101; revised in Liebermann i, 486–8, and iii, 277–8; Wormald, *Making*, 404–5.

[45] The *Articles* has been variously labeled as *Hic intimatur*, its incipit, or Liebermann's *Articuli decem Willelmi I*. The original title may have been something closer to *Decreta Willelmi*, which appears in a number of the witnesses.

[46] Wl art. 6–6.3 are made up of Wl lad 1–3.1; Wl art. 1, 5, 8–8.3, 9 and 10 are derived from In Cn I 1, II 2.1, 3, 17, 20, 24, 25.1 and 31.1. Liebermann links Wl art. 2 with III Em 1. The only chapters of Wl art. not so linked to other texts are chapters 3, 4 and 7. Liebermann's division of the text into ten chapters is of course a convenience, but does not receive support from the manuscript witnesses.

[47] See O'Brien, *God's Peace*, 46–8.

[48] Wormald, *Making*, 405, though in his chart at 116 he puts them between 1090 and 1095.

[49] Richardson and Sayles, *Law and Legislation*, 124, 173–4; Wormald, *Making*, 409; J. P. Collas's well-known discussion of the terminology of the *Leis Willelme* makes no comment on this issue since Collas ignores the nature of some of the cited passages as translations and misunderstands the survival of Old English legal terms in the French text as evidence of their untranslatability. Therefore much of his discussion of the language of the *Leis Willelme* is useless: *Year Books of Edward II, vol. 25, 12 Edward II, Part of Easter and Trinity, 1319*, ed. J. P. Collas, Selden Society vol. 81, London 1964, xx and *passim*.

[50] On BL MS Additional 49366, see O'Brien, *God's Peace*, 45–6, 141–2.

shall call his warrantor, and that one shall call the other if he can, and so on. *Tieman* becomes *uocere warrantem*, and the three times, *þriwa*, becomes a sequence where each warrantor calls the next to warranty. The *Leis Willelme* has none of this replacement text, but is almost identical in syntax and language to the Old English.[51] It is not beyond reason to imagine the Anglo-Norman translator having access to both the original and the Latin translation of the *Instituta*, but there is little evidence other than a few coincidental cognates to support this picture and much to show him working solely from the Old English.[52]

It seems that the best we can do at present is say that the translation was done between the Norman conquest and 1123–4. Where it was composed must also for now remain uncertain. The most compelling case can be made for Worcester – a case acknowledged and explained by Liebermann in 1893, though he preferred to push the translator over the border of the Danelaw because of the text's preservation and clarification of penalties in the Danelaw.[53] The case for Worcester rests on several facts, but especially on the intersection of two things: the presence at Worcester of texts of all the Old English laws translated in the *Instituta*, and the existence in the region, and nowhere else, of people labeled *radcnihtas*. *Grið*, one of the shorter Wulfstan texts translated in the *Instituta*, only survives now in a Worcester (or York) manuscript (BL MS Cotton Nero A.i [B]), a manuscript which shows evidence of Wulfstan's own hand. The other texts used are either found in manuscripts at Worcester, or in ones with Worcester-York associations (Cambridge, Corpus Christi College MS 201 [B]; BL MS Harley 55 [A]). Of course, the texts also occur in manuscripts less surely tied to Worcester or York, and some manuscripts that may have held them have probably disappeared, leaving their associations now unknowable.[54] What makes Worcester more likely, however, is the translator's addition of the label *radcniht* to Alfred's *sexhyndum man* (39.2) – implying that they are equivalent. Men labeled *radcnihtas* are not in Alfred: Alfred's law states that 'Gif syxhyndum men ðissa hwæðer gelimpe, ðrifealdlice arise be ðære cierliscan bote.' The *Instituta* has changed this to read 'Si autem hoc fit in domo hominis quem Angli nominant radcniht . alii uero sexhændeman . ter carius ei emendetur id est duodeuiginti solidis

51 The source (in Liebermann's MS B, Cambridge, Corpus Christi College MS 383) reads '[24.1] 7 gyf hit mon ðonne gefo, 7 he ðyllice gewitnysse næbbe, ne beo ðær nan team, ac gyfe man ðam agenfrigean his agen 7 þæt æftergyld, 7 þæt wite ðam ðe hit age. [24.2] 7 gyf he witnysse habbe, swa we ær cwædon, ðonne tyma hit man ðriwa; æt ðam feorðam cyrre ahnige hit oððe agyfe ðam ðe hit age'. Leis Wl 45.1–2 reads 'E se hum le chalange e il n'en ait testimonie, si n'ad nul warant, rende l'um a l'hum soun chatel, e le forfait ait qui auer le deit. [45.2] E si testimonie ad, si cum nous einz desimes, voeste les treis feiz e a la quarte feiz le dereinet u il le rende' (A. J. Robertson, ed. and trans., *The Laws of the Kings of England from Edmund to Henry I*, Cambridge 1925, 272). In Cn (MS H) reads 'Et si non tot nec tales testes habuerit . et aliquid tale in manu uel in potestate eius inuentum fuerit . et ipse uuarantem uoluerit uocare; non ei ualeat neque liceat . sed reddatur calumnianti quod suum est aut ualens . et insuper iterum tantum ualens . et forisfacturam qui eam iuste habere debet . [24.2] Quodsi tales testes habuerit quales supradiximus; uuarantem uocet . et ille uocatus uocet alium si potest . et tertius adhuc tertium uocet si potest . et tertius suum faciet si ualet . quodsi non ualet . reddatur ei qui iuste habere debet.'

52 Cf. e.g. Leis Wl 39.1 and In Cn II 15.1ff.

53 Liebermann, 'On the Instituta', 85–7.

54 Among other possible locales, Canterbury and Rochester stand out, given the evidence for legal collection at Rochester, translation work at Canterbury, and an attempt to preserve and present the Anglo-Saxon past at both: see M. P. Richards, *Texts and their Traditions in the Medieval Library of Rochester Cathedral Priory*, Transactions of the American Philosophical Society ns 78, part 3, 1988, and D. N. Dumville, 'Some Aspects of Annalistic Writing at Canterbury in the Eleventh and Early Twelfth Centuries', *Peritia* 2, 1983, 23–57. Liebermann specifically excluded Canterbury, Rochester and Winchester, but not for persuasive reasons: 'On the Instituta', 87 n. 1.

quam illi quem supra nominauimus ceorlman.'[55] The translator appears then to have chosen to add this label as a synonym for, or representing status equivalent to, Alfred's *sexhyndum man*. The second important fact about *radcnihtas* is that the title is not found everywhere in England. Liebermann knew that men called *radcnihtas* were found only in the counties of Berkshire, Hampshire, Gloucestershire, Worcestershire, and Herefordshire.[56] The addition of *radcniht* seems the kind of alteration that would be made only by someone located in that region, where the texts and *radcnihtas* were plentiful.

What Liebermann did not cite, but ought not to be passed over now, is the amount of translation of all sorts being performed in the Worcester region. It was the place where translations of passages in the *Anglo-Saxon Chronicle* formed the base for John of Worcester's Latin chronicle.[57] The Old English *Life of Wulfstan* by Colman was translated into Latin by William of Malmesbury for Warin, the prior, and the monks at Worcester.[58] An Old English account, composed in the late eleventh century by Prior Thomas of Worcester, of how Wulfstan became bishop and acquired certain lands, was translated and expanded, and both texts, Old English and Latin, appear together in Hemming's Cartulary.[59] It was the region where Adelard of Bath and Walcher, prior of the church of Great Malvern, were assisted by, it appears, the Spanish Jew, Petrus Alphonsi, in the work of translating Arabic texts into Latin.[60] Worcester cathedral possessed a copy of at least one of their translations, a matter of note for John of Worcester himself.[61] Worcester was an important center of translation in the century after the conquest, perhaps second only to Canterbury.

Translation in fact is the key to the *Instituta*. The only purchase on the *Instituta*'s purpose is the translator's method. Unlike Alfred, Ælfric, or even the translator of *Quadripartitus*, the translator of the *Instituta* offers no statement of purpose in his prologue. We may lament this – the long introduction before *Quadripartitus* certainly offers help (however confusing it has proved) in understanding the goal of the translator. When a translator tells us why he is translating, it tells us about his ideas of translation, but without a comparison of the source to the target as a measure of the product, there is little content that we can safely infer from this explanation of why the task was undertaken. Perhaps he wrote, like the person responsible for the *Consiliatio*, whose implied goal was to reflect the unity of a kingdom's law

55 In Cn II 59i (MS H, fol. 72r).

56 There were men similarly obligated thoughout England; the status is not special to the western shires, but the title is.

57 *John of Worcester* ii, xix and *passim*; R. R. Darlington and P. M. McGurk, 'The "Chronicon ex Chronicis" of "Florence" of Worcester and its Use of Sources for English History before 1066', *ANS* 5, 1982 (1983), 185–96.

58 *The Vita Wulfstani of William of Malmesbury*, ed. R. R. Darlington, Camden Society 3rd ser. 40, London 1928, 1 (dedicatory epistle); see the translation in William of Malmesbury, *Saints Lives*, ed. and trans. R. M. Thomson and M. Winterbottom, Oxford 2002.

59 D. A. E. Pelteret, *Catalogue of English Post-Conquest Vernacular Documents*, Woodbridge 1990, 121–2 (no. 147); N. Ker, *Catalogue of Manuscripts Containing Anglo-Saxon*, 2nd edn, Oxford 1990, 251 (no. 190 B).

60 Burnett, *Introduction*, 38–40; C. Burnett, 'The Works of Petrus Alfonsi: Questions of Authenticity', *Medium Ævum* 66, 1997, 42–79. Great Malvern established confraternity with Worcester long before 1125; relations would have been close: R. R. Darlington, ed., *The Cartulary of Worcester Cathedral Priory*, Pipe Roll Society 76 for 1962–3, London 1968, 158 (no. 300 and note).

61 *John of Worcester* iii, 258–61 (*s.a.* 1138); Burnett, *Introduction*, 39–40. The continuing copying of Old English texts, bilingual Old English-Latin texts, and of earlier translations (explicitly recognizable as such) can be seen in the late eleventh-century books identified as Worcester productions: see R. Gameson, 'Book Production and Decoration at Worcester in the Tenth and Eleventh Centuries', in *St Oswald of Worcester: Life and Influence*, ed. N. Brooks and C. Cubitt, London 1996, 236–42.

supporting the unity of its kingship. Perhaps, like William of Malmesbury's claim in the dedicatory epistle to his translation of Colman's *Life of Wulfstan*, the *Instituta* translator or his patrons simply thought English barbaric. With no statement of purpose, however, we must infer purpose from method.

What method, if any, did one use to translate law? No matter the interest or goal, translators of texts, legal or otherwise, began with choices on all levels.[62] First, the choice of texts: the *Instituta*'s original title was something more like *Instituta de legibus regum Anglorum* – or more narrowly *Instituta de legibus secundum Cnut regem Anglorum*; but the only king named in the text is Cnut. The fact that the *Instituta* is principally a translation of Cnut's code is not surprising. Cnut's laws were the most authoritative statements of the *laga Edwardi* available after the conquest.[63] As the *Quadripartitus* translator wrote in his Argumentum, 'the laws that go by King Edward's name [are] derived from the institutes of Cnut in the first place'.[64] But perhaps there is more to this choice than mere availability and age. The Normans were fascinated by the previous conqueror, and his authority – in the *Consiliatio Cnuti*, the translator wrote a new prologue in which he makes Cnut say that 'as the entire kingdom of England is ruled by one king, so also should it be by one law'.[65] Which version of Cnut's laws was used by the *Instituta*'s translator is difficult to say. At times the translation agrees with one, then another, of the surviving Old English texts. It would not be all that surprising if the translator had access to more than one version of Cnut – the English translators of the Psalms sometimes mixed all three of Jerome's Latin translations as sources for their Old English versions.[66]

Another important choice for the translator – one intimately tied to choice of text – was choice of audience, and with that, the choice of language. The existence of laymen and lay courts literate in Latin, and the comfort semi-literate clerics may have found in Anglo-Norman French, precludes an easy equation of the *Instituta* translator's choice of Latin with a clerical audience.[67] The translator's selection of texts betrays no greater interest in the role of the clergy than in the concerns of royal agents of justice. He edits and amends ecclesiastical and secular law equally, and usually with the same end, to provide more specific answers to questions of penalty.[68] The translator, in fact, has added much specificity on legal matters, and omitted much of the homiletic prose Wulfstan had written into the original.[69] But this observation leads to no conclusion on audience. Anyone can dislike sermonizing. We can say that the translator chose to write for a Latin literate audience unfamiliar with English. It is good to recognize – from the evidence of the quality of the *Leis Willelme* and the fact

62 For the wider medieval European context, see the papers in *Traduction et traducteurs au moyen âge*, ed. G. Contamine, Paris 1989.

63 In Cn and Cons Cn are principally translations of Cnut, onto which other codes have been grafted; Leis Wl translates and appends some chapters of Cnut, but not the laws of any other king; Quadr begins with Cnut, but follows it with an extensive collection of laws; these laws appear not under Cnut's name, but under that of the issuing king (in cases of royal law). The translator of Quadr also employs Cnut more extensively than other preconquest codes in Hn, which claims to state current law.

64 Quadr arg., c. 1; translated in R. Sharpe, 'The Prefaces of "Quadripartitus" ', in *Law and Government*, 162.

65 'Quatinus sicut uno rege ita et una lege uniuersum Anglie regnum regeretur': Cons Cn Proem 1, Liebermann, *Consiliatio Cnuti*, 1.

66 See P. P. O'Neill, ed., *King Alfred's Old English Prose Translation of the First Fifty Psalms*, Cambridge, Mass., 2001, 32–4.

67 N. Orme, 'Lay Literacy in England, 1100–1300', in *England and Germany*, 35–56; R. Bartlett, *England under the Norman and Angevin Kings, 1075–1225*, Oxford 2000, 482–506.

68 E.g. II 37 and 45.3.

69 E.g. I Cn 18–21; II Cn 4.1 and *passim*.

that the *Comput* of Philippe de Thaon was written in 1113 for a royal chaplain – that the translator could very well have made a different choice of language here.[70] And unlike the translator of the *Quadripartitus*, the translator of the *Instituta* almost always included translations for transliterated Old English words included in his text.[71] He could count on little Old English from his readers.

Next, come some choices in presentation. There were many ways to display a translation, all evidenced in contemporary work. A translator could put the source text first and then follow it with the translation (either the whole text, like BL MS Cotton Claudius A. iii's Latin and Old English versions of VI Æthelred, or chapter-by-chapter, like BL MS Cotton Titus A.iv's mid eleventh-century *Rule of Benedict*). A translator could also choose to present the translation as an interlinear gloss: BL MS Faustina A.x's Old English *Rule of Benedict* has a Latin text dismembered and turned into an interlinear gloss. It may be that such texts were principally educational, and the *Instituta* was not. Then there is the word-by-word or phrase-by-phrase translation, where a word in the source text is followed by a translation in the target language. Poetic it is not: Harley 3271 from the early eleventh century holds a copy of Abbo of St Germain's *Bella Parisiacae urbis*, which reads like this: 'O clerice . eala ðu cleric . ne dempseris . ne wana ðu . umquam . æfre . diplicas . wexbreda . lateri . fram sidam', and so on.[72] Last – and this is what the translator of the *Instituta* chose to do – a translation can provide a replacement for the source. Even in *Textus Roffensis*, the largest of the legal encyclopedias and the one with the greatest inclination to record the Old English originals, the *Instituta* has replaced the Old English Cnut, which is not included. No surviving manuscript copy of the *Instituta* combines both Old English source texts and Latin translation.

While the *Instituta* can be called a replacement text, it is one that is tied into its source through its inclusion of Old English terms and phrases throughout. There is no mistaking this as anything but a translation of an Old English source. The practice of including the Old English has been taken – by me as well as by others – to signify the translator's concern to ensure that the law was accurately represented in his translation.[73] Is this really so? At first glance, it looks like this is the case. Many of the usual terms of art are here in Old English: *mund*, *griðbryce*, *hamsocn*, *fyrdwite*, *sac and socn*, *were*, *lahslit*, *halsfang*, *hergeat*, as well as less commonly found ones like *ceapgeld*, *atheswurþe*, and *friðleasne man*. What causes me to doubt the practical purpose of these inclusions is what is not here, as well as the way the translator repeats and translates far more often than he needs to such well understood labels as *thegen* (twelve times).[74] The overall pattern does not appear to be following any legal

70 J. Wüest, ed., *Die Leis Willelme*, Bern 1969; Dean and Boulton, *Anglo-Norman Literature*, 190–1 (no. 346). I. Short, 'Patrons and Polyglots: French Literature in Twelfth-Century England', *ANS* 14, 1991 (1992), 229–49.

71 E.g. II 12.

72 BL MS Harley 3271, fols 115v–118; Ker, *Catalogue*, 311 (no. 239 [17]); P. Lendinara, 'The Third Book of the *Bella Parisiacae Urbis* by Abbo of Saint-Germain-des-Prés and its Old English Gloss', *ASE* 15, 1986, 73–89.

73 O'Brien, *God's Peace*, 27.

74 Striking omissions from the beginning of I Cnut include *cininges handgrið* (I Cn 2.2), *griðbryce* (I Cn 3.2), and *þryfealde spæce* (I Cn 5a). On the first example, the hand-given peace of the king, it was considered important enough as a vernacular term to be employed in the *Leges Edwardi Confessoris* (ECf 12). On the second, Quadr, which is slightly less inclined than In Cn to include Old English terms, uses it, as does Domesday Book in the account of the customs in Dover, *Domesday Book* i, 1r (Fleming, *Domesday Book*, no. 882). On the last, the 'threefold claim or purgation', the translator incorporates in the Latin the phrase *anfealde spæce* 'single claim or purgation', which occurs just before it (I Cn 5), but not this parallel phrase. *Thegen* appears twelve times, sometimes in places where it does not occur in the source (e.g. I 5.3;

logic – at least not consistently – or reflect the strength of particular terms as technical and authoritative. It may be that the translator was as much interested in the flavor of his source as in capturing its specific English meaning – just as some contemporary translators of Arabic texts include – but not always or consistently – Arabic terms in their translations.[75] The inclusion of some Old English terms, then, may reflect the translator's belief that a legal text needed to be grounded in its source language, just as other translators were grounding the authority of their texts.

The last choices take us down to the level of passages and individual words: with what tools did the translator work, and with what training? Tools cover everything from the availability of grammars and glossaries to the use of wax tablets for the draft. On the last issue, for example, did the translator of the *Instituta* work on wax tablets, which may have been the universal practice? Here we know of Anselm's composition of his *Proslogion* on wax tablets, and William of Newburgh's draft of his commentary on the Song of Songs.[76] Or did he work directly on parchment and then rework the translation, ending up, like William of Malmesbury's drafts of the *Gesta regum*, with scribal chaos?[77] Liebermann posited a messy parchment draft to explain textual contamination between families of texts.[78] With better transcriptions, the contamination and its messy manuscript source disappear, but we still cannot say how, physically, the translator worked. Did he seek out expert advice, especially from native English speakers? He may very well have known about Jerome translating the Bible with his Hebrew helpers.[79] He also surely knew that courts sought out such expertise: this must have happened often in much the same way that Ansketil de Bulmer, reeve of the North Riding, served as translator in the York inquest of 1106.[80]

6.2; and II 59i [= Af 39.2]). It is good to remember that in the source at the time of its composition, these terms did not carry a 'precise semantic burden': A. J. Kennedy, 'Cnut's Law Code of 1018', *ASE* 11, 1983, 67.

[75] E.g. BL Sloane MS 2030, item 10; in general see Burnett, *Introduction*, 5, 40–6, figs 4, 8, 9, 16, 18–20, and plates 3 and 4.

[76] Eadmer, *The Life of St Anselm, Archbishop of Canterbury*, trans. R. W. Southern, Oxford 1962, i.19, 30–1, citing C. H. Talbot in *Analecta Sacri Ordnis Cisterciensis* 6, 1951, 223 n; É. Lalou, 'Les Tablettes de cire médiévales', *Bibliothèque de l'École des Chartes* 147, 1989, 123–40.

[77] *Gesta Regum* vol. 1, xxii–xxiii, xxvi.

[78] Liebermann, 'On the Instituta', 103–4; he used this to explain apparent contamination in the *Leges Edwardi*: Liebermann iii, 340.

[79] Adam Kamesar, *Jerome, Greek Scholarship, and the Hebrew Bible: a Study of the Quaestiones Hebraicae in Genesim*, Oxford 1993; Jerome's prefaces to the individual books of the Vulgate are filled with discussion of translation issues, including alphabets, using Hebrew interpreters, specific renderings from the Greek and Hebrew source, and the failings of other translators. These prefaces were fairly widely known and available: Richard Marsden, *The Text of the Old Testament in Anglo-Saxon England*, Cambridge 1995, 35–8, and chapters 10–12; Helmut Gneuss, *Handlist of Anglo-Saxon Manuscripts*, Tempe, Arizona, 2001; Richard Gameson, *The Manuscripts of Early Norman England (c. 1066–1130)*, Oxford 1999. The prefaces can be found in *PL* 28, as well as better edited in Dom Donatien de Bruyne, ed., *Les préfaces de la bible latine*, Namur 1920. The Septuagint story, where the Egyptian pharoah summoned seventy men to perform a simultaneous translation of the Torah from Hebrew into Greek, was also well known. It appears, for example, in Jerome's preface to the Pentateuch (*PL* 28, cols 181–4), as well as in copies of Josephus, *Antiquities*, 12.11 and 12.31: *Flavii Iosephi Opera ex Versione Latina Antiqua*, ed. C. Boysen, part 6: *De Iudaeorum Vetustate*, Prague 1898. Henry of Huntingdon preserves a fragment of this tale in his letter to Henry I, c. 69: *Huntingdon*, 526–7. Gilbert Crispin attempts to shift authority from the Hebrew source to the Septuagint by using his considerable knowledge of the history of the Septuagint translation: Gilbert Crispin, *Disputatio Iudei et Christiani*, cc. 119–32, in *The Works of Gilbert Crispin, Abbot of Westminster*, ed. A. S. Abulafia and G. R. Evans, London 1986, 39–44.

[80] R. C. van Caenegem, ed. and trans., *English Lawsuits from William I to Richard I*, Selden Society 106–7, London 1990, vol. 1, 139 (no. 172). See H. Tsurushima, 'Domesday Interpreters', *ANS* 18, 1995 (1996), 201–22. Oral witness, rather than translation assistance, has attracted attention: Robin Fleming,

Related to that issue is whether or not he used glossaries and grammars. Many glossaries – including bi- and tri-lingual legal glossaries – survive.[81] Some have been arranged alphabetically and would thus have been easy to consult; but even those not so arranged can be scanned rather quickly for difficult words. The translator did, it seems, use a glossary, though only selectively and not mechanically. His classic error was in fact a result of his rather uncritical use of a glossary like Ælfric's. The word before him was *landebræde* 'loin', which he translated as *assatura renum* 'roast kidneys'. It seems unlikely that he could possibly have thought that roast kidneys appeared suddenly in the midst of Alfred's list of tariffs for injured body parts. He had found *bræde* in the glossary with *assatura* as its gloss and had borrowed it, thinking a *bræde* was a (*lande-*) *bræde*.[82] If he had persevered, he might have found his *landebræde* glossed by *lumbolos* 'little loins', which occurs in many of the same glossaries as *bræde*. It is clear from this example that he sought out written help rather than oral – which surely, if he were working at Worcester, would not have been hard to find and might have prevented such errors.[83] We should not of course assume that in all cases the native interpreter would be trustworthy or accurate.

His choice of text over expert may have been the result of his training, his education. What would have been emphasized in his school? Perhaps the variety in styles of translation betrays the variety of teachers' styles in training children to read and write Latin.[84] How someone learned a foreign or learned language would have established a pattern or method that would guide later translating. This education also authorized that method – especially since this is an age without standard dictionaries and almost no grammatical material in vernacular languages. An education built on classical Latin texts – Cicero, Virgil, Ovid – would produce a very different trans-

'Oral Testimony and the Domesday Inquest', *ANS* 17, 1994 (1995), 101–22, for Domesday Book; with narrative sources, see E. M. C. van Houts, 'The Memory of 1066 in Written and Oral Traditions', *ANS* 19, 1996 (1997), 167–80, and *idem*, 'Hereward and Flanders', *ASE* 28, 1999, 202–4.

81 On the legal glossaries, see A. G. Dyson, 'The Career, Family and Influence of Alexander le Poer, Bishop of Lincoln, 1123–48', B. Litt. thesis, Oxford Univ. 1972, 19–21, and O'Brien, *God's Peace*, 55. Texts and editions are listed in J. E. Wells, *A Manual of the Writings in Middle English, 1050–1400*, New Haven 1916, 834.

82 III 31 = Af 67, at Liebermann i, 85; *bræde* 'roast meat' (cf.*brædan* 'to roast'). T. Wright and R. P. Wülker, *Anglo-Saxon and Old English Vocabularies*, 2 vols, 1884, no. 10, col. 127; *Aelfrics Grammatik und Glosssar*, ed. J. Zupitza, with a new foreword by H. Gneuss, Berlin 1966, 316 and apparatus. Extant copies are listed in Ker, *Catalogue*, index 1, 517. BL MS Cotton Faustina A. x (A), a late eleventh-century copy of Ælfric's *Grammar and Glossary*, which shows evidence of significant use s. xi/xii and again towards the end of the twelfth century, is in a hand very like a known Worcester creation, according to Ker, *Catalogue*, 196.

83 See E. Mason, *St Wulfstan of Worcester, c. 1008–1095*, Oxford 1990, 206–9, 269–77, 288–9; V. H. Galbraith, 'Notes on the Career of Samson, Bishop of Worcester, 1096–1112', *EHR* 82, 1967, 86–101; Gameson, 'Book Production', 218–35; A. Gransden, 'Cultural Transition at Worcester in the Anglo-Norman Period', in *Medieval Art and Architecture at Worcester Catheral: British Archaeological Association Conference Transactions* 1, 1978, 43–50. Further evidence of the availability of help comes from the fact that Old English texts were copied and composed at Worcester during this time, as well as at Christ Church, Canterbury, Rochester, and Peterborough: E. M. Treharne, 'The Dates and Origins of Three Old English Manuscripts', in *Anglo-Saxon Manuscripts and their Heritage*, ed. P. Pulsiano and E. M. Treharne, Aldershot 1998, 231; *Rewriting Old English in the Twelfth Century*, ed. M. Swan and E. M. Treharne, Cambridge 2000. See above, 187, n. 61.

84 B. Bischoff, 'The Study of Foreign Languages in the Middle Ages', *Speculum* 36, 1961, 209–24; J. J. Murphy, 'The Teaching of Latin as a Second Language in the Twelfth Century', *Historiographia Linguistica* 7, 1980, 159–75; H. Gneuss, 'The Study of Language in Anglo-Saxon England', *Bulletin of the John Rylands University Library* 72, 1990, 3–32; *Anglo-Saxon Conversations: the Colloquies of Ælfric Bata*, ed. and trans. S. Gwara and D. W. Porter, Woodbridge 1997, 8–11, 15–43, 51–7; S. Reynolds, *Medieval Reading: Grammar, Rhetoric and the Classical Text*, Cambridge 1996, esp. chapters 2, 3 and 5.

lation than an education built on the Vulgate and Church Fathers. The consequences should be visible in everything from lexis and syntax to the imagined status of the translation. Such an education may explain the difference between the classicizing and grandiloquent *Consiliatio Cnuti* and the unclassical *Instituta Cnuti*. Here you have to leave aside the word for word or sense for sense dichotomy taken from Jerome. The actual process of translation is more complicated. Medieval translators moved freely between invention, paraphrase, and literalness in meaning and shape, without leaving the category of translation.[85] But when they did want to translate individual words – rather than paraphrase or omit them – their choices were three: transliteration, which brought in the source word whole but gave it a target language inflection; etymological translation, which produces calques, where each component of a source word is translated by its target equivalent and re-combined to create a usually unique word; and last, finding an equivalent word in the target language.[86] The translator's choice here was dependent on the level of his training – had the translator achieved fluency in either or both languages? This fluency was prized. Ian Short has written on the miraculous acquisition of other languages – in particular French by the English after the conquest – but this miracle occurs in a world with much language contact and which valued knowledge of other tongues.[87] A contemporary portrait of Alexander the Great has him speaking Greek, Hebrew, Chaldean, Latin, and Indian, without the need for interpreters and using this skill to extend his own power.[88] Those who failed to achieve fluency – like Hubert Walter in Gerald of Wales' famous story, could find themselves embarrassed.[89] The translator of the *Instituta* did not work in his own language, but in two other languages that were in different ways foreign.

It is easiest to see this if we take a closer look at a sample of the *Instituta*. I have chosen two chapters from II Cnut – c. 13 and c. 15 – to represent the translator at work. In this section of the source, the various rights of the king in English, Mercian, and Danish law are being detailed, including the power of the king to impose outlawry.

[II Cn 13][90] Se ðe utlages þeorc gepyrce . þealde se cyng ðæs friðes. [13.1] 7 gyf he boc land habbe . sy þæt for þorht ðam cynge to hande . sy ðæs mannes man ðe he sy. [13.2] 7 loc hþa ðone fleman fede oððe feormie . gylde fif pund ðam cynge butan he hine geladige þæt he hine flema nyste.

85 See, e.g., N. V. Curling, 'Translation and Innovation in the *Roman de Brut*', in *Medieval Translators and their Craft*, ed. J. Beer, Kalamazoo 1989, 30–2.

86 S. Brock, 'Aspects of Translation Technique in Antiquity', *Greek, Roman, and Byzantine Studies* 20, 1979, 69–87.

87 I. Short, 'On Bilingualism in Anglo-Norman England', *Romance Philology* 33, 1980, 467–79; Reginald of Durham, *Libellus de Vita et Miraculis S. Godrici, Heremitae de Finchale*, ed. J. Stevenson, Surtees Society 20, London 1847, 179 (c. 79), 203–4 (c. 94), and 206–7 (c. 96).

88 Elisabeth Schulze-Busacker, 'French Conceptions of Foreigners and Foreign Languages in the Twelfth and Thirteenth Centuries', *Romance Philology* 41, 1987, 24–47, citing (at 38–9) the examples from the late twelfth-century *Le Roman d'Alexandre*. Incidently, 'Chaldean' here probably refers to Aramaic: Jerome indentifies the Aramaic parts of Daniel as being written in 'sermo Chaldaicus': Jerome, preface to Daniel, *PL* 28, cols 1357–8.

89 Bartlett, *England*, 485.

90 The Old English text is taken from Cambridge, Corpus Christi College 383 (Liebermann's MS B and also the base text used by Robertson in her edition), pp. 51–2.

[15] 7 on Denalage . he ah fiht þite . 7 fryd þita . grið bryce . 7 ham socne butan he hþæne furðor gemæðrian þylle. [15a] 7 gyf hþa ðonne . friðleasan man . helade . oððe feormie . bete spa hit lagu þæs. [15.1] 7 se ðe unlage rære oððe undom gedeme heonan forð for læðde . oððe for feoh fange . beo se þið ðone cyng hundtþelftig . scill' . scyldig . on Engla lage . buton he mid aðe cyðan durre þæt he hit na rihtor ne cuðe . 7 ðolie aa his þegen scipes butan he hine æt ðam cyng gebycge . spa he him geðafian þylle. [15.1a] 7 on Dena laga lahslites scyldig . buton he hine geladige þæt he na bet ne cuðe. [15.2] 7 se ðe rihte lage 7 riht dom forsace . beo se scyldig þið ðone ðe hit age . spa þið cyng hund tþelftig scill'. spa þið eorl syxtig scill' spa þið hundred XX scill' . spa þið . ælc ðara gyf hit spa gepeorðeð on Engla lage. [15.3] 7 se ðe on Dena lage rihte lage þyrde . gylde he lahslite.

[II. 13][91] Si quis fecerit opus expulsi quod Angli uocant utlages þeorc . uideat rex de pace. [13.1] uerum si ipse habet alodium [*bocland* written above *alodium*] totum sit regis cuiuscunque homo sit. [13.2] Et qui exulem quem Angli uocant utlaga pauerit post expulsionem . quod Angli dicunt fede oþþe fermie: det regi centum solidos . nisi se purgauerit quod illum nescisset expulsum clamatum . quod Angli dicunt gekidne utlaga.

[15] In lege autem Danorum . habet rex has . Violationem monetę quod Angli uocant feohþite . dimissionem belli . quod Angli dicunt ferdþite . fractionem pacis . quod dicunt griðbrece . inuasionem in domo uel in curia quod dicunt hamsocne . nisi rex dare uelit quod suum est. [15a] Qui expulsum pauerit aut detinuerit pacifice . quem Angli uocant friðleasne man . reddat regi sicut lex est plenam emendationem . et qui expulsum expulit . despectum suum si ita iustum est. [15.1] Si quis iniustas leges adinuenerit et iudicauerit . aut causa odii . aut adquisitionis pecunię; sit reus regi . xl . solidis in lege Anglorum . nisi iuramento affirmauerit se rectius iudicare nescisse; et postea careat liberalitate sua . nisi eam a rege redimat ad uelle regis. [15.1a] In lege Danorum erit reus forisfacturę . quam Dani uocant lahslit. In lege eorum liberalis hominis lahslit uocant decem dimidię marcę . hoc est quinque marcae. Hominis alodium [*bocland* written above *alodium*] habentis . vi . dimidię marcę . hoc est tres marcę. Villani lahslit quem Angli uocant ceorlman . xii^{ci} . orę. [15.2] Qui rectum iudicium et iustam legem abnegat . sit forisfactus ei cui iustum est. Si regi; det illi . xl . solidos. Si comiti; xx . solidos. Si hundredo; x . solidos. Si contra omnes hos; omnibus reddat. [15.3] Per legem Danorum; lahslit reddat.

These two chapters tell us a good deal about the translator's method:[92]

1. The translator adds sections from other codes to explain elements of Cnut. The scale of fines based on status at 15.1a, from 'In lege eorum' to 'duodecim orę', has been taken from the *Northumbrian Priests' Law*, cc. 51–53.
2. Similarly, he composes sections to enlarge upon his source. At 15a, he has extended one sentence and inserted another: '. . . plenam emendationem . et qui expulsum expulit . despectum suum si ita iustum est'.
3. He avoids repetition in order to be concise: at 15.3, he assumes that the offence is the same in English and Danish law and so omits repetition.

91 The Latin text is taken from *Textus Roffensis*, fols 64r–65r.

92 The model for such an approach is A. Orchard, 'The Style of the Texts and the Translation Strategy', in *Two Old English Apocrypha and their Manuscript Source: 'The Gospel of Nicodemus' and 'The avenging of the Saviour'*, ed. J. E. Cross, Cambridge 1996, 105–30; see also the analysis in *Poème anglo-normande sur l'ancien testament*, ed. P. Nobel, Paris 1996, vol. 1, 85–169.

4. He replaces vague statements with direct ones: While the source was content with the rather vague 'butan he hþæne furðor gemæðrian þylle',[93] a phrase that has played a prominent role in discussions of the existence of franchises before the conquest as well as of whether or not Edward the Confessor dissipated royal authority, the translation says 'nisi rex dare uelit quod suum est'.[94] He has performed a similar maneuver at 13.1, 15.1 and 15.2.
5. He maintains for the most part the tense and mood of the Old English (present subjunctive).
6. He replaces in 13.2 the Old English terms from the source with other English terms. For example *utlaga* takes over for *fliema*, and *gekidne utlaga* for, again, *fliema*. Neither *utlaga* nor *gekidne utlaga* are in any surviving version of the Old English source, but are very likely the translator's choice. The latter phrase is, in fact, an English translation of his own Latin text's *expulsum clamatum*, which he uses to cover the source's *fleman*. The motive for such a change is difficult to recover. Perhaps the translator has chosen, as Liebermann suggested, more current words of his own day to replace archaic or dialectal words he found in the original.[95]
7. He was usually confident enough of his abilities to choose a Latin equivalent for key words – mostly legal jargon – but occasionally he retreated, elsewhere – not here – to etymological translation for compounds, supported by transliteration or simply by the inclusion of the actual word with its Old English inflection in his Latin translation. At times, he has not been successful; II 64's *husbryce* 'home invasion' has been transformed by etymological translation to become *destructio domus*, which goes a bit beyond the original. He does use transliterated words and some unadulterated English of his day; witness above his retention of *lahslit*, an older Scandinavian loan, which is defined at 15.1a, and then used without translation at the end of 15.1a and at 15.3.[96]

From all of this, it appears that his understanding of Latin was slightly better than his understanding of Old English, but that clearly both were foreign and learned languages for him, and only imperfectly acquired.

Given his habits, skills, and limitations as a translator, what does the *Instituta* say about the law? Do the changes made by the translator reflect the state of the law when the *Instituta* was composed? Liebermann thought that the places where the author had changed his source or had included Old English legal jargon did in fact reflect the state of the law, or at least the translator's attempt to render his understanding of what the law was.[97] Where the translation was literal, or close to that, Liebermann was doubtful. In several places, Liebermann recognized that procedures and laws of Cnut's day had not been amended and yet were arguably obsolete by the early twelfth century.[98] Why the translator, who was so anxious in many places to amend his translation to fit – it appears – some new circumstances, would have left obsolete elements in the translation unamended, Liebermann did not say.

93 'unless he shall wish to honor anyone'; Cnut's code is the only place where the verb *gemæðrian* appears in all extant Old English texts: A. diP. Healey and R. L. Venezky, eds, *A Microfiche Concordance to Old English*, Toronto 1980, *s.v.*
94 'unless the king wishes to give what is his'.
95 Liebermann, 'On the Instituta', 85.
96 *Lahslit* originally meant a 'breach of the law', but transfered to mean the fine levied for this breach: Robertson, *Laws*, 354 n. 1, and Downer, *Leges Henrici*, *index verborum*, *s.v.* 'lahslit'. It is used in Hn 11.11 as the Danelaw equivalent of full *wite* in English law.
97 Liebermann, 'On the Instituta', 89–92.
98 Liebermann, 'On the Instituta', 87, 91.

It is clear that Liebermann's argument can only partially convince and that we cannot assume that the translator's changes and use of Old English *ipso facto* reveal the law of his day. We have already seen that his retention of the language of his source, or his insertion of Old English synonyms or glosses, is not driven by any legal need. The appearance of English in the Latin cannot comfortably be used as a clue to the legal currency of that chapter of the text. However, the editing the translator performed is another matter. Although the translator felt the pull of his source, and this has dampened his urge to emend it, nevertheless there is no other persuasive reason why he would alter the source in the way he has except that he wanted to say something about the law. His additions, subtractions, and shifting of the source are clues to Anglo-Norman law and can tell us where to look for changes from previous law-making and also, can cautiously be used as a guide to postconquest practice or to legal expectations outside the king's court. It can serve this purpose provided we continue to be aware of the translator's limitations.

Changes made by the translator are too numerous to rehearse them all here. Rather, I will merely point out a few examples where the translator has changed his source and suggest what level of insight we might gain from studying this change. First, a change may show procedures being altered. The translation of II Cn 8.2 shows the use of the ordeal extended into some cases where it previously was not ordered to be used. This chapter in the *Instituta* adds the ordeal to oath as the methods of purgation for accused counterfeiters.[99] Second, the translator's interventions can help clarify the developing meaning of the concepts with which a postconquest court worked. The gloss on *foresteall* at II.12 makes it clear that this is not just *assaultus* 'assault' – which is used in other contemporary texts to translate *foresteall* – but is an attack which is not defensive or retributive and involves intention to do harm.[100] The translation can explain actual procedures where preconquest sources are vague. *Nam* 'distraint' is glossed to explain what anyone who wants to distrain has to do in the county courts in order to get permission to distrain. The translator's addition here of a longer description of course implies nothing about any change in the law, but rather provides some confirmation of contemporary practices. Perhaps the translation can even at times reveal something of the conflicts in the translator's world that would likely invoke legal remedies. The addition cited earlier specifying that compensation is allowed in cases of murder (I.5.2d) speaks, it appears, of the continuing existence of feud and the use of compensation to end it. This addition neatly supports the Worcester story of Wulfstan II's attempts to end a particularly violent feud.[101] This conjunction may mean that we should understand the fixation of postconquest translators on such tariffs and wergeld not as antiquarian obsession, but as a reflection of the still powerful preconquest ideal.

There is much more to be said along these lines. The worry in each case is the degree to which the translator's changes are new, rather than newly explicit about what had earlier been implicit. But even in the latter case, the translator at least

99 R. Bartlett, *Trial by Fire and Water: the Medieval Judicial Ordeal*, Oxford 1986, 64. By Glanvill's day (c.1189) oath had disappeared as an option in such cases: *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, 171, 176–7 (xiv, 1, 7).

100 F. E. Harmer, ed., *Anglo-Saxon Writs*, Manchester 1952, 81; cf. A. Cooper, 'Extraordinary Privilege: the Trial of Penenden Heath and the Domesday Inquest', *EHR* 116, 2001, 1167–92.

101 William of Malmesbury, *Vita Wulfstani*, 2.15, 38–9; P. Hyams, 'Feud in Medieval England', *HSJ* 3, 1992, 1–21.

speaks to continuing vitality of the particular practices and does provide details about the law that we would otherwise not possess.

If translation is performance, as some have said, then how do we evaluate the success or failure of the task of translating law? What were the consequences of the *Instituta*'s alterations of its source or for that matter, of the *Leges Henrici*'s heavy reliance on the author's previous translations of Old English codes, or the *Consiliatio Cnuti*'s classicizing tendency in translation, or the *Leis Willelme*'s preservation of the English names for the offenses, but substitution of French names for agents and classes of people in its translation of Cnut? The answer to these questions depends on the status of written law in the half century after the Norman conquest. In so far as we can tell, this law was recorded by private or non-royal initiative. The texts are not the witnesses to King William I having done anything like Charlemagne, who ordered his *comites* to make copies of his latest capitularies.[102] Some of these Anglo-Norman writers decided to record something closer to the actual practices of their day – for example, the author of the *Leges Edwardi Confessoris*, whose description is almost wholly free of any textual source and whose details fit what we know about law in the Danelaw.[103] The *Leges Henrici* too aims to describe contemporary law, though it does so with significant reliance on preconquest texts, utilizing Cnut as its starting point.[104] Others were more reliant on older texts – again to differing degrees. The legal results, then, suggest some conclusions about the relationship of written law to practiced law in the half century after 1066, and specifically of the relationship of the translation of legal texts to the recording and study of law.

Although the texts achieve very different ends, this variety of accomplishment does not allow me to say that some succeeded and some failed. Rather, the variety says that the relationship of text to the administration of law was not thought to be only direct. The texts could be an intellectual and symbolic anchor to the practice of the law, or at times an indicator of what kinds of things the law ordered. What they were not – even when updated and accurate – was black letter law, to be consulted by *iudices* seeking black and white answers to legal questions. Even if some familiar with developments in canon law had wanted secular codes to serve this purpose, the texts they possessed had no authority to do so. Courts do not appear to resolve issues by referring to legal treatises or codes, yet copies of such texts were relatively abundant throughout the twelfth century.[105] In a sense, copying Cnut around 1100 or translating it is something akin to copying or translating Magna Carta in the nineteenth century. It is both historical and legal at the same time.

Why then did the translator translate? The *Instituta* and the other legal translations, like many postconquest translations, reflected not only the immediate needs of insular audiences after 1066, but also the rise of Latin in the late eleventh and twelfth century as part of the intellectual and cultural renaissance in western Europe, a renaissance in large part propelled by translation.[106] In such a world, it is too easy to read legal translations such as the *Instituta* as explicable merely in terms of Norman-English relations. Not all translations produced after 1066 were responses to conquest and colonialism, though conquest inevitably cast continuing programs of

102 J. L. Nelson, 'Literacy in Carolingian Government', in *The Uses of Literacy in Early Medieval Europe*, ed. R. McKitterick, Cambridge 1990, 280–5.
103 O'Brien, *God's Peace*, 62–104.
104 See references to Cnut's laws as sources in the commentary to Downer, *Leges Henrici*.
105 O'Brien, 'Becket', 3–4, 9–11; Wormald, *Making*, 155, 160.
106 M.-T. d'Alverny, 'Translations and Translators', in *Renaissance and Renewal in the Twelfth Century*, ed. R. L. Benson and G. Constable, Cambridge, Mass., 1982, 421–62.

translation into a different light and imparted to them a new significance. In the broadest sense, translations in this age sought out strange knowledge. There was much interest in the orient – in foreign wisdom – just as had characterized the end of the Anglo-Saxon period, when translations were made of the *Wonders of the World*, Appolonius of Tyre, and the *Letter of Alexander.*[107] After 1066, however, the movement is into Latin, not English, and the source languages and subjects multiply: from Arabic, the *Astronomical Tables* of Al-Khwarizmi, the *Abbreviation of the Introduction to Astrology* of Abu Ma'shar, and the *Book of Talismans* of Thabit ibn Qurra, all translated by Adelard of Bath;[108] from the Greek, Adelard's translation of Euclid's *Elements*, and a description of the holy sites in Constantinople translated by an anonymous English pilgrim;[109] interests implied by the study of Hebrew by English clerics and the donation to Durham cathedral of the medical books of Isaac, a north African Jew, translated into Latin by Constantine the African;[110] and even the rising fascination with Egyptian, Chaldean, Greek, Hebrew, and Runic alphabets as symbols of antiquity and magic.[111] This was, one might say, for the most part barbarian knowledge – barbarian in its enlarged classical sense meaning anything outside of the three sacred languages: Hebrew, Greek, and Latin. Such barbarian wisdom could be found by the curious scholar in England itself, in the texts in Old English that were in the kingdom's libraries. It could be found even in texts of old law issued by the mighty monarchs of England's past: barbarian wisdom indeed.

107 S. B. Greenfield and D. G. Calder, *A New Critical History of Old English Literature*, New York 1999, 99.

108 Burnett, *Introduction*, *passim*; Thābit ibn Qurra, *Book of Talismans (Liber Prestigiorum)*, selections translated by C. Burnett, 'Talismans: Magic as Science? Necromancy among the Seven Liberal Arts', in *Magic and Divination in the Middle Ages: Texts and Techniques in the Islamic and Christian Worlds*, Aldershot 1996, no. I, 9–13; Abū Ma'šar, *The Abbreviation of the Introduction to Astrology, together with the Medieval Translation of Adelard of Bath*, ed. C. Burnett, K. Yamamoto and M. Yano, Leiden 1994; al-Khwārizmī, *Die astronomischen Tafeln des Muhammed ibn Mūsā al-Khwārizmī in der Bearbeitung des Maslama ibn Ahmed al-Madjrītī und der lateinische Übersetzung des Athelhard von Bath*, ed. H. Suter, A. Bjørnbo and R. Bestborn, Copenhagen 1914.

109 *The First Latin Translation of Euclid's Elements Commonly Ascribed to Adelard of Bath*, ed. H. L. L. Busard, Toronto 1983; K. N. Ciggaar, 'Une description de Constantinople traduite par un pèlerin anglais', *Revue des Études Byzantines* 34, 1976, 211–67.

110 Bartlett, *England*, 519, 589–90.

111 R. Derolez, *Runica Manuscripta: the English Tradition*, Bruges 1954, esp. 219–29, 274–8.