Conquests in Eleventh-Century England: 1016, 1066

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Conquests in Eleventh-Century England: 1016, 1066

Edited by

Laura Ashe
and
Emily Joan Ward

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Preface

LAURA ASHE

In July 2016 the conference 'Conquest: 1016, 1066' was held in Oxford, to mark the millennial anniversary of Cnut's conquest of England, and the 950th anniversary of the Norman Conquest. Speakers were invited and papers submitted from all disciplines, with the explicit aim of 'doing comparative history'.[1] The primary intention was simple, but surprisingly fresh: to compare the Danish with the Norman conquest – to compare their agents, origins and effects; their mechanics and logistics; their ideologies, hinterlands and legacies. The present volume had its genesis in the Oxford conference, but it has been independently shaped by much further, and separately commissioned, work. In the process, of course, necessary comparisons have multiplied: of England with its neighbours, of the effects of different conquests in different regions, and on different institutions, and in the varied spheres of cultural production and social experience. The wholly interconnected, European and Scandinavian, nature of eleventh-century England emerges at every turn, and provides comparisons which are, more importantly, essential components: of a fundamentally hybrid and multiple identity to 'English' politics, society and culture.

The aim of this volume is to offer a breadth of scope which amounts to an overview of England's eventful eleventh century, while each chapter nonetheless gives deep and close attention to its central questions, in many cases breaking new ground in the documentary evidence, or providing fresh synoptic readings which newly reveal the landscape. With this in mind, the first two parts consider in turn the high politics of the period, its greatest agents and institutions, and its economic, legal and bureaucratic practices; then its social, ideological and artistic phenomena: conquered England's cultural production, influence and connections. Finally, the third part explicitly turns outward, to place conquered and reconquered England in the context of its European, Scandinavian and insular neighbours.

[1] See Chris Wickham, 'Problems in doing comparative history', in *Challenging the Boundaries of Medieval History: The Legacy of Timothy Reuter.* Studies in the Early Middle Ages, 22, ed. Patricia Skinner (Turnhout, 2009), pp. 5–28, esp. p. 6.

The Norman Conquest has been much studied; the Danish conquest (with its lower case 'c') comparatively very little. Yet as many of our contributors suggest, the former may have been unimaginable without the latter; certainly, it would have taken thoroughly different forms. This volume aims to clarify and illuminate that relationship, and thereby to throw new light on eleventh-century history as a whole. Marked by multiple chronological, geographical and political caesurae which have separated scholars in their various departments, eleventh-century historiography is ripe to be reconstituted.

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Abbreviations

Adam of Bremen, *Gesta*	Adam of Bremen, *Gesta Hammaburgensis ecclesiae pontificum*, ed. Bernhard Schmeidler, MGH SS rer. Germ. 2 (Hanover, 1917): *History of the Archbishops of Hamburg-Bremen*, trans. Francis J. Tschan, intr. Timothy Reuter (New York, 2002).
AHR	*American Historical Review*
ANS	*Anglo-Norman Studies*
ASC	The Anglo-Saxon Chronicles in their various versions, cited by year.
ASC, MS A	*The Anglo-Saxon Chronicle, A Collaborative Edition, Volume 3: MS A*, ed. Janet M. Bately (Cambridge, 1986)
ASC, MS C	*The Anglo-Saxon Chronicle, A Collaborative Edition, Volume 5: MS C*, ed. Katherine O'Brien O'Keeffe (Cambridge, 2001)
ASC, MS D	*The Anglo-Saxon Chronicle, A Collaborative Edition, Volume 6: MS D*, ed. G. P. Cubbin (Cambridge, 1996)
ASC, MS E	*The Anglo-Saxon Chronicle, A Collaborative Edition, Volume 7: MS E*, ed. Susan Irvine (Cambridge, 2004)
ASC, MS F	*The Anglo-Saxon Chronicle, A Collaborative Edition, Volume 8: MS F*, ed. Peter S. Baker (Cambridge, 2000)
ASD Online	Joseph Bosworth et al., *An Anglo-Saxon Dictionary Online*, ed. Thomas Northcote Toller and others (Prague, 2010), www.bosworthtoller.com [accessed April 2019]
ASE	*Anglo-Saxon England*
BAR	British Archaeological Reports

BHL	*Bibliotheca Hagiographica Latina*
BL	London, British Library
CCCM	Corpus Christianorum, Continuatio Mediaevalis
CCSL	Corpus Christianorum, Series Latina
Councils and Synods	*Councils and Synods with Other Documents Relating to the English Church I: A.D. 871–1204*, ed. Dorothy Whitelock, Martin Brett and Christopher N. L. Brooke, 2 vols (Oxford, 1981)
CSEL	Corpus Scriptorium Ecclesiasticorum Latinorum
DB i / ii	Domesday Book, National Archives E 31/2 (Great Domesday / Little Domesday)
DB	*Domesday Book*, gen. ed. John Morris, 38 vols (Chichester, 1975–92); entries cited by DB i / ii; editorial material cited by volume and note.
DMLBS	*The Dictionary of Medieval Latin from British Sources*, ed. R. E. Latham, D. R. Howlett and R. K. Ashdowne (British Academy, 1975–2013), clt.brepolis.net/dmlbs/ [accessed April 2019]
EEMF	Early English manuscripts in facsimile
EETS	Early English Text Society
EHD 1	*English Historical Documents c. 500–1042*, ed. Dorothy Whitelock, 2nd edn (Oxford, 1979)
EHD 2	*English Historical Documents 1042–1189*, ed. David C. Douglas and George W. Greenaway, 2nd edn (Oxford, 1981)
EHR	*English Historical Review*
Electronic Sawyer	*The Electronic Sawyer Online Catalogue of Anglo-Saxon Charters* (King's College London), www.esawyer.org.uk [accessed April 2019]
Encomium	*Encomium Emmae Reginae*, ed. and trans. Alistair Campbell (1949; 2nd edn with a supplementary introduction by Simon Keynes, Cambridge, 1998)

Gesta Guillelmi	*The Gesta Guilllelmi of William of Poitiers*, ed. and trans. R. H. C. Davis and Marjorie Chibnall (Oxford, 1998)
Gesetze	*Die Gesetze der Angelsachsen*, ed. F. Liebermann, 3 vols (Halle, 1903–16), available online at early-englishlaws.ac.uk [accessed April 2019]
GND	*The Gesta Normannorum Ducum of William of Jumièges, Orderic Vitalis and Robert of Torigni*, ed. and trans. E. M. C. van Houts, 2 vols (Oxford, 1992–5)
Goscelin, *Miracles of St Edmund*	Goscelin of Saint-Bertin, 'Miracles of St Edmund', in *Herman the Archdeacon and Goscelin of Saint-Bertin: Miracles of St Edmund*, ed. Tom Licence, trans. Tom Licence with the assistance of Lynda Lockyer (Oxford, 2014), pp. 127–303
Henry of Huntingdon, *HA*	Henry of Huntingdon, *Historia Anglorum: History of the English People*, ed. and trans. Diana Greenway (Oxford, 1996)
Herman, *Miracles of St Edmund*	Herman the Archdeacon, 'Miracles of St Edmund', in *Herman the Archdeacon and Goscelin of Saint-Bertin: Miracles of St Edmund*, ed. Tom Licence, trans. Tom Licence with the assistance of Lynda Lockyer (Oxford, 2014)
HSJ	*Haskins Society Journal*
JL	Philipp Jaffé, *Regesta pontificum Romanorum ab condita ecclesia ad annum post Christum natum mcxcviii*, 2nd edn, rev. W. Wattenbach, S. Loewenfeld, F. Kaltenbrunner and P. Ewald, 2 vols (Leipzig, 1885–8)
JMH	*Journal of Medieval History*
John of Worcester, *Chronicle*	*The Chronicle of John of Worcester*, ed. R. R. Darlington and P. McGurk, trans. Jennifer Bray and P. McGurk, 3 vols (Oxford, 1995–8)
ODNB	*Oxford Dictionary of National Biography* (Oxford, 2004), www.oxforddnb.com [accessed April 2019]

Orderic, *Historia Ecclesiastica*	*The Ecclesiastical History of Orderic Vitalis*, ed. and trans. Marjorie Chibnall, 6 vols (Oxford, 1968–80)
PASE	*Prosopography of Anglo-Saxon England*, www.pase.ac.uk [accessed April 2019]
PL	*Patrologiae cursus completus, Series Latina*, ed. J.-P. Migne, 221 vols (Paris, 1844–64)
Rumble, *Reign of Cnut*	*The Reign of Cnut: King of England, Denmark and Norway*, ed. A. R. Rumble (London, 1994)
Stafford, *Emma and Edith*	Pauline Stafford, *Queen Emma and Queen Edith: Queenship and Women's Power in Eleventh-Century England* (Oxford, 1997)
TRHS	*Transactions of the Royal Historical Society*
Vita Ædwardi	*Vita Ædwardi: The Life of King Edward who Rests at Westminster*, ed. and trans. F. Barlow, 2nd edn (Oxford, 1992)
William of Malmesbury, *GP*	William of Malmesbury, *Gesta pontificum Anglorum: The History of the English Bishops*, ed. and trans. M. Winterbottom with R. M. Thomson, 2 vols (Oxford, 2007)
William of Malmesbury, *GRA*	William of Malmesbury, *Gesta regum Anglorum: The History of the English Kings*, ed. and trans. R. A. B. Mynors, R. M. Thomson and M. Winterbottom, 2 vols (Oxford, 1998–9)

3

Conquest and the Law

BRUCE O'BRIEN

Conquest and law are necessarily intertwined subjects. Conquerors seize not only a territory, but also sovereignty over a people. Usually the most visible display of this sovereignty is a conqueror's issuance of laws to better control or reshape what they have conquered. The Roman empire, the model state for many early medieval kingdoms, expanded its sovereignty over many independent peoples through military conquest, and followed up these conquests by imposing its law.[1] The most famous of early medieval conquerors, Charlemagne, with his eyes on Rome, amended and fixed in form the laws of the peoples he had conquered or subordinated. In the most extreme case, he reinforced his brutal military conquest of the Saxons by issuing harsh laws to suppress their pagan religion and eliminate their political independence. Conquest was one of the preferred times for a new sovereign to impose new laws or to authorize old or existing ones. Both imposition of the new and authorization of the old were options and were often done at the same time, in the same piece of legislation.[2]

We often treat the laws issued after a conquest as a litmus test for the level of change or continuity experienced by the conquered people, which is not unwarranted, given that laws are reflections of the policies arising out of political agendas. This, of course, is a very top down view of what a text purporting to describe the

[1] Freculf of Lisieux, *Historiarum Libri XII*, ed. M. Allen, in *Frechulfi Lexoviensis episcopi opera omnia*, CCSL 169A (Turnhout, 2002), pp. 415–16 (I.7.16), praised Augustus for having compelled a host of conquered peoples – including the Germans, Britons and Gauls – to obey Roman law ['Germanos videlicet, Gallos, Britones, Hispanos, Hyberes, Austeres, Cantabros, occiduo sub axe jacentes, per se Augustus, ad eos veniens, Romanis legibus servire coegit'].

[2] Peter Stein, *Roman Law in European History* (Cambridge, 1999), p. 31, and *passim*. For Charlemagne's first capitulary concerning the Saxons, see *Capitulatio de partibus Saxoniae*, ed. C. von Schwerin, *Leges Saxonum und Lex Thuringiorum*, Fontes Iuris Germanici Antiqui in Usum Scholarum (Hanover, 1918), pp. 37–44; Jennifer R. Davis, *Charlemagne's Practice of Empire* (Cambridge, 2015).

law actually represents. It also presumes the authenticity of records of the law. For the most part, texts of law codes are treated by historians as if authored by the kings whose names appear in their prologues. That the laws were the historical law-giver's is no doubt often the case. Not many historians would doubt that Roman imperial rescripts reflect the decisions of the imperial court of this or that emperor. In the same way, the laws aimed at the Saxons are considered by historians to be genuine reflections of the attitude and strategies of the Frankish conquerors who issued them.

Of course, things are not always as simple as they first appear. Early medieval law has a more complicated relationship to conquerors and to the conquered than can be explained by claiming that law reflects a winner's decision to change or maintain the existing laws of a conquered state. It may or may not be a reflection of a king's policy or ideas. No matter how literally unambiguous its attribution is to a law-making king, a legal text cannot be assumed to be by that king, or to have official status, or to have some kind of sovereign authority. These attributes must be shown.

In England in the eleventh century, the laws composed or issued in the wake of two conquests offer an important perspective of the effects of the conquest. How did the conquered English fare under their new rulers in 1016–18, and again in the aftermath of 1066? What sort of kingdom had the conquering kings acquired, and how well did they understand how it worked? What disruptive or catalytic effect did the conquests have on the laws and their administration, for both conquerors and conquered? These are the questions whose answers lie at the heart of any socio-political understanding of the impact of these conquests on the people. Using the surviving eleventh-century legal texts to answer these questions is complicated, as suggested above, in a number of respects. Interpretations are weakened by our difficulty understanding the true intentions of the conquerors, and intentions may depend on how these conquerors understood the legitimacy of their claim to a 'foreign' throne. Our interpretations are tied to our assessment of the stages of development of the eleventh-century English state and its laws. Visible disconnects between languages and peoples, and between peoples and texts, need to be measured before the legal texts can serve as evidence. Lastly, our interpretations need to be calibrated to what we think are the existing traditions (or lack of tradition) in written law in Denmark, Normandy and England.

This chapter will attempt to unpick these complications, first with the laws associated with the conquest of England in 1016 by the Danish king, Cnut, and then the same for William the Bastard's conquest in 1066. It will, in particular, consider the relationship of written laws to kings, their advisers and nobles. Finally, it will briefly explore the aspects of law that do appear to have changed at each conquest. Considered in the round, the laws which follow these two conquests are as much symptoms of the health and structural strength of the English kingdom as reflections of the content of the law or the intentions of the conquerors; as much tools of government as images of the past.

Danish Conquest

Since law can be so many different things – custom or statute in form, normative or idealistic in intention, historical or current in authority – it pays to consider what each conqueror thought about law before his conquest of England. We unfortunately know little about Cnut's acts as a potential king of Denmark before the 1016 conquest, and next to nothing about his ideas of law or its uses. The one thing we can say is that he thought of tribute arrangements as a kind of law. Not infrequently, Latin and vernacular words for law and custom covered fiscal arrangements such as the payment of fines, tax, rent or tribute.[3] Otherwise, we are left with silence. Contemporary sources tell us nothing about any laws or edicts issued by Cnut before the conquest of England.

After the conquest, four texts are associated with or issued by King Cnut. All four come from Cnut's lifetime – none is a retrospective creation like some of the treatises written after the Norman conquest which claim to record the laws of Edward the Confessor.[4] All lay down some kind of law or say what the king's responsibilities toward the law are. To call them all 'law' or 'lawcodes' is over-simplifying their status. Two are letters which Cnut sent to England in 1019/1020 and 1027. Their survival has been fortunate. The earlier only survives in a single Old English copy added to a Gospel Book at York, though in a form which reveals Archbishop Wulfstan to have added chapters and perhaps touched up the whole after it had been sent out by the king.[5] A Latin translation of the 1027 letter was added in the twelfth century to John of Worcester's *Chronicle* and to William of

3 All English lawcodes are cited using the standard abbreviations found at the Early English Laws site (www.earlyenglishlaws.ac.uk/). I also provide reference to the standard editions, especially *Gesetze*. Many of the uses of 'lah' to mean a financial right occur when the codes are discussing what was due to the king in the different 'legal' regions of the kingdom; the fine levels associated with breach of the law is what these chapters describe, which is more concerned with revenue than with justice: see, e.g. II Cn 12, 14–15 (*Gesetze*, I:316, 318–20), and Leis Wl1 2–3, 8, 16, 17.1, 21.2–3 (*Gesetze*, I:492–8, 502–4, 508), and Leis Wl2 39.2 and 422 (*Gesetze*, I:516, 517). For Latin uses, see *DMLBS*, *s.v.* 'consuetudo', 4c.

4 See below, p. 00.

5 *Gesetze*, I:273–5; Patrick Wormald, *The Making of English Law: King Alfred to the Twelfth Century*, *Volume 1: Legislation and Its Limits* (Oxford, 1999), pp. 347–8. Kennedy and Keynes both argue, based on style and contents, that chapters 1–13 are likely from the original letter, and chapters 14–20 were added by Wulfstan: A. G. Kennedy, 'Cnut's Law Code of 1018', *ASE* 11 (1983), 57–81 (p. 63), and Simon Keynes, 'The Additions in the Old English', in *The York Gospels*, ed. Nicolas Barker (London, 1986), pp. 81–99 (p. 96). M. K. Lawson, *Cnut: The Danes in England in the Early Eleventh Century* (London, 1993), p. 88, argues that the 'D' Chronicler used the 1019/20 letter as a source, but the differences in language between chronicle and letter might also point to a common source, or simply to common knowledge. Both letters have a general address to all the English, but do single out a few individuals – Earl Thorkell, who in 1019/1020 was probably acting as a regent during Cnut's absence, and the kingdom's two archbishops in 1027.

Malmesbury's *Gesta regum Anglorum*.[6] We know only a little about who received these, less about who read them, and even less about their effects beyond the fact of their twelfth-century reception and preservation. The third legal text is a code produced, so its prologue tells us, by a gathering of the *witan* and King Cnut at Oxford. Some versions of the Anglo-Saxon Chronicles date a meeting resembling this to 1018, when Cnut made peace between the Danes and the English, and this code appears to represent the agreement they reached.[7] Last is a code in the king's name which became the final piece of royal law-making in the Anglo-Saxon period.[8] This code, known by historians as I–II Cnut or the Winchester code, was issued in 1020 or 1023, and had a greater influence on eleventh- and twelfth-century English lawbooks than any other pre-conquest code.[9]

It is the code of 1018 that is most relevant to our topic. This code inhabited only the margins of scholarship until the second half of the twentieth century. Until then, it was treated as a collection of scraps of law and other texts gathered by Wulfstan, archbishop of York, rather than as a proclamation of law by an important assembly.[10] Felix Liebermann relegated it to the bottoms of the pages holding the sections of Æthelred's and Cnut's laws from which it seemed to be derived.[11] In 1948, however, Dorothy Whitelock convincingly identified this as, surprisingly, exactly what it said it was, a record of the settlement made between the Danes and the English at Oxford in 1018 after Cnut had assumed control of the whole kingdom.[12] The code then waited almost four decades for its own edition and translation, work performed by Alan Kennedy. Kennedy confirmed both Whitelock's identification of the authorial hand as that of Archbishop Wulfstan, and her conclusions about the code's place in the canon of works reflecting the conquering king's laws.[13]

Despite the current weight of scholarly opinion in favour of the code's date and place of issue, we should still ask if these laws represent the agreement reached at Oxford in 1018. M. K. Lawson, for example, has raised the possibility that the code

6 *Gesetze*, I: 276–7; John of Worcester, *Chronicle*, II: 512–19; William of Malmesbury, *GRA*, I:324–31; Wormald, *Making*, pp. 348–9. It is unlikely that John of Worcester or William of Malmesbury added these copies to their own chronicles.

7 Cn 1018, prol., ed. and trans. in Kennedy, 'Cnut's Law Code', p. 72; *ASC*, MSS CDE, *s.a.* 1018.

8 *Gesetze*, I:279–371; Wormald, *Making*, pp. 349–66.

9 Bruce O'Brien, 'Pre-Conquest Laws and Legislators in the Twelfth Century', in *The Long Twelfth-Century View of the Anglo-Saxon Past*, ed. Martin Brett and David A. Woodman (Farnham, 2015), pp. 233–46.

10 K. Jost, *Wulfstanstudien* (Bern, 1950), pp. 94–103.

11 See, e.g. *Gesetze*, I:288–91; and Liebermann's description of the manuscript at *Gesetze*, I:xxii–xxiii.

12 Dorothy Whitelock, 'Wulfstan and the Laws of Cnut', *EHR* 63 (1948), 433–52.

13 Kennedy, 'Cnut's Law Code', pp. 58–70; the introduction, edition, translation and images of the manuscript folios are available at www.earlyenglishlaws.ac.uk/laws/texts/Cn-1018/.

of 1018 might be an act of wishful thinking by the clergy about reform, and 'may reveal little of the real business of the Oxford meeting'.[14] We can never assume a text of written law, especially one written by Wulfstan, has a direct relationship to its purported king or alleged origins; we need to show this. Starting with the code, it is significant (though not unusual) that it mentions no date or place, but only some of the circumstances behind its creation:

> Ðis is seo gerædnes þe witan geræddon. 7 be manegum godum bisnum. asmeadon. And þæt wæs geworden sona swa cnút cyngc. mid his witena geþeahte. frið 7 freondscipe. betweox denum 7 englum. fullice gefæstnode. 7 heora ærran saca. ealle getwæmde.
>
> (This is the ordinance which the councillors determined and devised according to many good precedents. And that took place as soon as King Cnut, with the advice of his councillors, fully established peace and friendship between Danes and English, which put an end to all their enmity.)[15]

The code, then, is a cypher, revealing little of where and when it was created, except for the reference to the time when peace was established. Cnut's letter of 1019/20 asks the English to keep the law of Edgar as they had sworn they would at Oxford. Like the laws, however, the letter mentions no date for the oath and is broadly addressed to all the nation, lay and clerical, rather than to the Danes and the English like the laws.[16] It is the similarity of this establishment of peace mentioned in the prologue to the laws, as well as in the 1019/20 letter, with the 1018 entry in MS D of the Anglo-Saxon Chronicles, that seems to complete its full historical context:

> On þisum geare wæs þæt gafol gelæst ofer eall Angelcynn – þæt wæs ealles twa 7 hundseofonti þusend punda, butan þam þe seo burhwaru on Lundene geald, endlifte healf þusend punda. 7 se here þa ferde sum to Denmarcon, 7 .xl. scypa belifon mid þam cynge Cnute. 7 Dene 7 Engle wurdon sammæle æt Oxanaforda to Eadgares lage.[17]
>
> (In this year the tribute was paid over all England, namely 72,000 pounds in all, apart from what the citizens of London paid, namely 10,500 pounds. Then some of the army went to Denmark, and 40 ships remained with King Cnut, and the Danes and the English reached an agreement at Oxford according to Edgar's law.)

We must be wary of assuming any of Wulfstan's legal creations saw the light of day. Some clearly did, some probably did not, and for most, we cannot be sure either way. It is only later in the eleventh century that the phrase 'according to Edgar's

14 Lawson, *Cnut*, p. 61.

15 Cn 1018, prol., in Kennedy, 'Cnut's Law Code', p. 72.

16 '7 ic wylle þæt eal þeodscype, ge hadode 7 læwede, fæstlice Eadgares lage healed the ealle men habbað gecoren 7 to gesworen on Oxenaforda': Cn 1020, ch. 13 (*Gesetze*, I:274).

17 *ASC*, MS D, *s.a.* 1018 (MSS CE lack the final clause referring to Edgar's law).

law' was added to the 'D' chronicle. The scribe, probably working in York, may well have picked up this phrase from the 1019/20 letter, available there copied into one manuscript of the Gospels.[18]

Although the most likely conclusion is that the code reflects the 1018 assembly's agreement, it is certainly possible that the code was issued earlier, when Cnut had taken over northern and eastern England in 1016 or 1017.[19] The prologue does not say where Cnut and his councillors deliberated, nor does it tell us which English were party to this peace – just those he ruled in the north and east before 1018, or all those he ruled afterwards? The author, Wulfstan, was archbishop of York in 1016 and so technically a part of the elite of Cnut's half of the English kingdom.[20] As for the Anglo-Saxon Chronicles' annal, no version says anything about the assembly at Oxford issuing a lawcode.[21]

Nevertheless, there are reasons to think that this text was meant to reflect the 1018 agreement, or some part of the agreement, between Cnut, his Danish followers and the English elite. For one, laws were almost always issued at assemblies, and almost always involved the participation and affirmation of the *witan*.[22] Edgar's laws are all enacted 'with the advice of his councillors', while two of Æthelred's important early codes were issued by the king 'and his councillors' at Woodstock and Wantage.[23] Æthelred and other English kings so regularly enacted laws with their *witan* that to find no reference to that assembly in the text of the code would

[18] *ASC*, MS D, pp. lvi–lvii.

[19] At various points in the period 1015–18, Cnut received submissions of some of the English, was titled in some sources as 'king', secured Mercia and the north in 1016, and became king of all England after Edmund Ironside's death on 30 November 1016. Any assembly gathered before Cnut ruled all of England, or even immediately afterwards, would be most unlikely to be recorded in a charter, which is how we know about many of the assemblies of the tenth and eleventh centuries: Simon Keynes, 'Church Councils, Royal Assemblies, and the Anglo-Saxon Royal Diplomas', in *Kingship, Legislation and Power in Anglo-Saxon England*, ed. Gale R. Owen-Crocker and Brian W. Schneider (Woodbridge, 2013), pp. 140–57.

[20] Wulfstan appears to have spent most of the years leading up to 1016 in the south, where Æthelred and Edmund Ironside ruled, but our knowledge of his movements is slight. He is a witness to a probably authentic grant of Æthelred in 1015 (S 934, the only one surviving from that year): see *Charters of Abingdon Abbey*, ed. S. E. Kelly, 2 pts, Anglo-Saxon Charters 7–8 (Oxford, 2001), part II, pp. 535–40 (no. 137). The only charter dated to 1016 does not include Wulfstan in the witness list, but is, according to most scholars, spurious: S 935, *Electronic Sawyer*.

[21] The chronicler's use of 'wurden sammæle' is unique as a reference to a law-making assembly or its product. The word *sammæle* appears elsewhere in the legal corpus but there means the unanimity of local people or thegns making a decision or judgment: see III Atr 13.2 and Wif 6 (*Gesetze*, I:232, 442).

[22] Levi Roach, *Kingship and Consent in Anglo-Saxon England, 871–978: Assemblies and the State in the Early Middle Ages* (Cambridge, 2013), pp. 107–21; Keynes, 'Church Councils', pp. 140–57, lists all known assemblies which produced some form of record, including legislation.

[23] II Eg prol. (*Gesetze*, I:194), IV Eg 1 (I: 206), I Atr prol. (I: 216), and III Atr prol. (I: 228).

suggest the text was corrupt or a draft.[24] The very wording of Cnut 1018 explains that it was the product of such an assembly, a meeting of the *witan* of the English and, one presumes, the leaders among Cnut's Danish followers.

If we can accept that the code was produced at this assembly, we ask first what would it have meant to Cnut to issue a written lawcode for his new kingdom? Law in Denmark before the conquest of England was remembered, adjusted or created by spoken word at, as far as we can tell, assemblies much like those held in England.[25] The production of a written code was therefore not likely an idea proposed by the Danes. The suggestion to produce a written lawcode which the king would affirm must have come from the English gathered at Oxford. Judging by the stylistic fingerprints on this code, one of those gathered there was Archbishop Wulfstan, and it is likely that the suggestion came from him.[26] According to MS D of the Chronicle, the agreement was done 'according to the law of King Edgar'.[27] Although there is very little of Edgar's laws in this 1018 code, the rhetorical choice of Edgar's laws was also probably Wulfstan's suggestion. We know that he was studying Edgar's laws; one copy of Edgar's Andover code preserved now in a later assemblage not only dates from this time, but also bears Wulfstan's own annotations and alterations to some of its contents.[28] Edgar's Andover code was, as Wulfstan would have known, the most significant statement of law issued after King Alfred's *Domboc*. Edgar's laws were the standard under King Æthelred, and Æthelred's laws are not mentioned in Cnut's 1019/20 letter. Both Cnut and no doubt Wulfstan would have thought that the codes of a powerful and undefeated king, a conqueror who expanded his sovereignty, would be a more appropriate foundation for establishing the governance of a new king – especially a king who sat

24 E.g. VI Atr prol. On the issue of distinguishing draft from authorized text, see Kenneth Sisam, 'The Relationship of Æthelred's Codes V and VI', in *Studies in the History of Old English Literature* (Oxford, 1953), pp. 278–87, and Wormald, *Making*, pp. 190–5, 333–5. For the historical context, see Simon Keynes, 'An Abbot, an Archbishop and the Viking Raids of 1006–7 and 1009–12', *ASE* 36 (2007), 151–220 (pp. 177–9).

25 On the existence of larger regional assemblies in Scandinavia, see Timothy Bolton, *The Empire of Cnut the Great: Conquest and the Consolidation of Power in Northern Europe in the Early Eleventh Century* (Leiden, 2009), p. 159.

26 Dorothy Whitelock, 'Wulfstan's Authorship of Cnut's Laws', *EHR* 70 (1955), 72–85; Whitelock, 'Wulfstan and the Laws of Cnut', pp. 437–9, 444, 448–50.

27 *ASC*, MS D, *s.a.* 1018; also in John of Worcester, *Chronicle*, *s.a.* 1018, 2:504–5.

28 Very little of Edgar's laws has left traces in Cn 1018: Alan Kennedy ('Cnut's Law Code', p. 59) identified two potential borrowings, both from the secular version of the Andover code (III Eg prol. and 3). Dorothy Whitelock thoroughly reviewed all of the connections between Wulfstan's own compositions, not just the laws, and Edgar's legislation: Whitelock, 'Wulfstan and the Laws of Cnut', pp. 444–5. One of the witnesses to the Andover code (London, BL, MS Harley 55, fols 3v–4v) was at Worcester and bears, according to Neil Ker, annotations in Wulfstan's own hand: N. R. Ker, 'The Handwriting of Archbishop Wulfstan', in *England Before the Conquest: Studies in Primary Sources Presented to Dorothy Whitelock*, ed. Peter Clemoes et al. (Cambridge, 1971), pp. 315–31 (p. 327).

on the throne not so much by hereditary right as by conquest. While the contents and form of the 1018 code were supplied by the English (whether by Wulfstan alone or with assistance from others), the authorization was intended to be seen to come from King Cnut.

If the issuance of this code was a meaningful gesture to the English, something they expected at a moment such as the one they faced at Cnut's takeover, is was not meaningless for the new king. Cnut would have grasped that this was how the English made agreements between themselves and their kings, especially when a king first began his reign. Some tenth-century kings at their coronations made promises to stop crime and be just and merciful in judgements; the liturgy of this coronation ceremony, what historians call the coronation *ordo*, is preserved in what one manuscript titled the *promissio regis*.[29] Several versions of this promise were used in the late Anglo-Saxon period and they continued to be used after the Norman conquest.[30] Just before Cnut's conquest, Æthelred had been forced to swear off bad practices and to promise to be a good lord as conditions for his return in 1014.[31] That such a promise was also made by Cnut, and in fact lies behind a series of chapters near the end of Cnut's Winchester code, was a point made by Pauline Stafford in 1982 and is now accepted by most historians as likely to be true.[32] Some historians believe that Cnut, upon his acceptance by the English *witan* after Edmund's death in 1017, swore the same oath as Æthelred.[33] Even though the conditions implied by the terms of the promise reflect Æthelred's situation, the presence of the text in Cnut's secular laws has been interpreted as a sign that Cnut himself also had to agree to make the same promises, and that the words were then added by Wulfstan to what became Cnut's Winchester code. This argument would place the oath-swearing at that Oxford assembly in 1018.

What causes doubt about Cnut having made such a promise at Oxford, and about his approval of its inclusion in II Cnut, is its absence from Cnut 1018. This code is much more firmly linked to its context, and that context was the assembly that made the agreement that made Cnut England's king. This is where and when Cnut would most likely have made this promise, and yet it is nowhere to be

29 Mary Clayton, 'The Old English *Promissio regis*', *ASE* 37 (2008), 91–150; Janet L. Nelson, 'The First Use of the Second Anglo-Saxon *Ordo*', in *Myth, Rulership, Church and Charters: Essays in Honour of Nicholas Brooks*, ed. Julia Barrow and Andrew Wareham (Aldershot, 2008), pp. 117–26, and works cited there.

30 For a text of the Old English version, see Clayton, 'The Old English *Promissio*', pp. 91–150; Clayton's edition and translation also appears at www.earlyenglishlaws.ac.uk/laws/texts/Sacr-cor/. The Latin version is in *Gesetze*, I:215, 217.

31 *ASC*, MS CDE, *s.a.* 1018.

32 Pauline Stafford, 'The Laws of Cnut and the History of Anglo-Saxon Royal Promises', *ASE* 10 (1982), 173–90.

33 E.g. Patrick Wormald, 'Archbishop Wulfstan: Eleventh-Century State-Builder', in *Wulfstan, Archbishop of York: The Proceedings of the Second Alcuin Conference*, ed. Matthew Townend, Studies in the Early Middle Ages 10 (Turnhout, 2004), pp. 9–28 (p. 20).

found in this reasonably comprehensive 1018 record of the legislative agenda of the start of his reign. It seems much more likely that, given his working method, Wulfstan added the oath he had written for his previous king to the code he was compiling for Cnut in the 1020s. The majority of this code, in both its ecclesiastical and secular parts, is derived from earlier codes, many of which were written by Wulfstan for other 'kings' (living, like Æthelred, or long dead, like Edward and Guthrum) and for other situations.[34] That he would reuse an Æthelredian coronation oath in a document meant to reflect the powers of a new king is unsurprising. Nor is it surprising that he did not signal its original purpose and authority in the text of Cnut's code. Why, then, did he also include the peculiar 'Alleviatory' clause, a rhetorical prologue to this oath, which clearly signals that something different, albeit unidentified, is to follow? 'This is the alleviation by which I will deliver all the people from those things which vexed them very much before now' ('Þis is þonne seo lihtingc, þe ic wylle eallon folce gebeorgan, þe hig ær þyson mid gedrehte wæran ealles to swyðe'), it announces, and follows with a series of promises to restrain reeves, keep to customary expectations and be a good lord to the English.[35] The roughness of this editing work by Wulfstan may well be evidence, as Mary Richards has argued, that the secular portion of Cnut's Winchester code (II Cn) is a draft rather than a finished product.[36] If so, then Wulfstan intended to rearrange and revise all of its contents, including possibly the old coronation oath, at a later point.

This does not mean that the thrust of the Oxford code is not principally retrospective. We should understand the message implicit in its form and contents as a political gesture of continuity. There are different ways continuity in this circumstance can be understood. Although it might signify a promise to maintain everything as it was and is – in other words, to preserve Edgar's laws as issued and as maintained by his successors – it might also mean that the new king was promising not to radically overturn what existed. The emphasis on respect for the existing laws was meant as a brake on further development rather than as the final goal of rule. Seen this way, the statement about Edgar's laws was a sign to those gathered at Oxford that Cnut would move slowly and only with the *witan*'s participation.[37] The assembled English in particular would have been most keen to hear this very point made by the Danish king. The principal goal of the legislation issued that day

34 Wormald, *Making*, pp. 356–60 (table 5.4).

35 II Cn 69 (*Gesetze*, I:356).

36 Mary P. Richards, 'I–II Cnut: Wulfstan's Summa?', in *English Law Before Magna Carta: Felix Liebermann and Die Gesetze der Angelsachsen*, ed. Stefan Jurasinski, Lisi Oliver and Andrew Rabin (Leiden, 2010), pp. 137–56. If Richards is right, then we must see Wulfstan perhaps drafting his work in Latin, moving it into Old English for its final, but substantial, editing.

37 For the importance of this period to the development of constitutional restraints on the king, see J. R. Maddicott, *The Origins of the English Parliament, 924–1327* (Oxford, 2010), pp. 40–1.

might very well have been to assure the English of their continued participation in ruling the realm, rather than to signal the first act of domination by the new king.

This picture of sensibly sought and sensibly given continuity of law over the Danish conquest, built around respect for English customs, is at odds with what the English ealdormen and thegns experienced in the years immediately before and after 1018. The evidence, albeit anecdotal, shows that large numbers of Danish and new English lords replaced existing English lords from long-established and prominent families. This replacement did not happen just in the aftermath of the 1018 assembly, but was a result of deaths during decades of warfare, along with losses through executions, outlawry and exile. Katharin Mack concluded that there had been 'a purge of the thegnly aristocracy between 1010 and 1017 which rivaled the carnage of the Norman Conquest'.[38] Between 1016, when Cnut began his rule of northern and eastern England, and in the fallout from the 1018 assembly, when he gained firm control of the whole kingdom, his reign was marked by a ruthless consolidation of his rule. His unsurprising goal was to put in positions of authority those on whom he could rely, be they Danes or English, and by 1017 he had achieved this, though outlawries and executions continued to occur as late as 1021. By then, there were few of the old aristocracy left to remove.

Ironically, then, it appears that Cnut's acceptance of the agreement recorded in the 1018 code was sincere. Regardless of whether the words were all Wulfstan's, or were a collective effort of the *witan*, or in some way were also Cnut's, the king kept them.[39] The contents of the 1018 code served as a first run for what became his fuller statement of the law, the Winchester code of 1020 or 1023. This code remained almost as derivative of earlier law as had been that of 1018.[40] Elsewhere, without Wulfstan to guide him, Cnut used law not to signal continuity but to make changes. Consider, for example, Cnut's alleged code for Norway, which he conquered in 1027 and then held for a few years. In Norway he tried to use the promulgation of a law code as the vehicle for what were taken by the subjugated

[38] Katharin Mack, 'Changing Thegns: Cnut's Conquest and the English Aristocracy', *Albion* 16 (1984), 375–87 (p. 380).

[39] Lawson believes we cannot know whether or not the words of the codes Wulfstan wrote for Cnut reflect the ideas or intentions of the king, though he does say there is no reason to think they do not: *Cnut*, pp. 58–63, 207–10. It is striking, nonetheless, that with Wulfstan's death the production of new lawcodes ends. Cnut appears not to have learned the lesson from Wulfstan that written laws were an important political tool of governance. If, as Stephanie Hollis argues, other advisers in Cnut's court contributed to the laws, and even forced Wulfstan to make compromises on the issue of regulating widowhood, these advisers never produced a code of their own for their king: Stephanie Hollis, '"The Protection of God and the King": Wulfstan's Legislation on Widows', in *Wulfstan, Archbishop of York*, ed. Townend, pp. 443–60.

[40] For identification of sources, see the marginal notation in *Gesetze*, I:278–371; Richards, 'I–II Cnut', pp. 137–56, walks the reader through the sources used and the steps of Wulfstan's assemblage of the whole code, section by section.

Norwegians to be new and oppressive measures, and extortionate ones at that.[41] Cnut's laws in Norway look more like the kinds of agreements Viking kings had made with the English and other victims about receiving tribute. It was certainly not a collection of older, familiar, and acceptable customs issued by the conquering king to show the Norwegians he would be as good a lord as any of their past kings. Resentment among the Norwegians over these laws and other acts of heavy-handed governance led to rebellion, and increased support for Cnut's rivals for control of Norway. These problems left him with only a shaky hold on the kingdom and a lasting reputation there as a tyrant.[42]

Despite all of his legislative activity in England, it is unclear whether much of anything changed in the law itself. One major problem in deciding what Cnut had changed is our inability often to know whether the law was in fact changing for internal reasons unrelated to the conquest, or whether the conquest was the cause of the change. As difficult to know is whether we have legislation because the king was using all of his legislative power as a way to shape his kingdom, or whether he was instead recording existing custom to put his stamp on his realm. John Hudson, in his recent *History of the Laws of England*, remains firmly agnostic about the extent of Cnut's changes to the law for these very reasons.[43] For instance, although there are good reasons to trace the origins of the frankpledge system to a combining of tithing and suretyship during the reign of Cnut, it is far from clear that Cnut (or Wulfstan) had anything to do with this, except insofar as a political crisis such as a conquest might have proved the catalyst to formulate something already developing slowly in the tenth century.[44] Other scholars have been able here and there to identify what appear to be shifts in a particular law or procedure. Stephanie Hollis, for example, placed Cnut's laws on widows under high magnification and detected signs in the language that Wulfstan needed to compromise with

41 *Ágrip af Nóregskonungasogum: A Twelfth-Century Synoptic History of the Kings of Norway*, ed. M. J. Driscoll (Birmingham, 1995), pp. 40–3 (chs 28–9); discussed by Bolton, *Empire of Cnut*, pp. 275–87.

42 *Ágrip*, pp. 42–7 (chs 30, 32 and 35).

43 John Hudson, *The Oxford History of the Laws of England: Volume 2, 871–1216* (Oxford, 2012), pp. 158, 245 n. 5.

44 Many (including me) rationalize their dating of institutional changes (and not just the creation of frankpledge) based not solely on the institution's appearance in a datable text, but also on their belief that particular historical circumstances were more likely than others to encourage change: contemporary work shows the range. Arguing for Æthelstan's reign as the time when frankpledge was created is David Pratt, 'Written Law and the Communication of Authority in Tenth-Century England', in *England and the Continent in the Tenth Century: Studies in Honour of Wilhelm Levison (1876–1947)*, ed. David Rollason, Conrad Leyser and Hannah Williams (Turnhout, 2010), pp. 337–49; for the peaceful reign of Edgar as the key period, see George Molyneux, *The Formation of the English Kingdom in the Tenth Century* (Oxford, 2015), pp. 116–94, 195–6; the turbulent times of Æthelred are indicated by Roach, *Kingship and Consent*, pp. 216–17; for my argument that Cnut's reign is the most likely to have taken advantage of this newly combined institution, see below, p. 00

other contributors, or with members of the court, in the composition of the laws.[45] These shifts, however, are few and often more changes of emphasis or proportion rather than of the principles behind the laws.[46]

Norman Conquest

When William, duke of Normandy, conquered the same kingdom fifty years later, at least a quarter of its people would have had some memories of the time of Cnut. Although William I's military and political accomplishments caught the attention of all eleventh- and twelfth-century historians of his reign, the first Norman king has only a modest reputation as a law maker. When he is mentioned, the references are often frustratingly vague. When explicit, they are clearly a product of bias and are mainly interested in condemning or praising the conqueror's work rather than describing it. The Anglo-Saxon Chronicles decry the imposition of the savage forest laws, which by default appears to be, in the chronicler's eyes, William's only contribution to the laws of the kingdom.[47] Another contemporary, William of Poitiers, praises the king not only for being a just and fair king – the usual *topoi* – but also for maintaining control of his conquering army in order to prevent his soldiers from harming one another or the newly conquered English:

> Ad hoc decere, ne quid turpiter in externis agitando, terrae ubi natus uel altus est dedecus infligeret. Milites uero mediae nobilitatis atque gregarios, aptissimis edictis coercuit […] Potare militem in tabernis non multum concessit, quoniam ebrietas litem, lis homicidium solet generare.
>
> ([King William] added that it was not honourable to act disgracefully when abroad in such a way as to bring dishonour to the land where one was born or brought up. He restrained the knights of middling rank and the common soldiers with appropriate regulations… He scarcely allowed the soldiers to drink in taverns, since drunkenness leads to quarrels and quarrels to murder.)[48]

Some post-conquest chroniclers and historians who used the Anglo-Saxon Chronicles as a source are surprisingly silent on the Norman king's forest laws, and any laws issued or emended during his reign. The Norman writer Gaimar, who relied

45 Hollis, 'Protection of God', pp. 459–60.

46 Stefan Jurasinski, '*Reddatur parentibus*: The Vengeance of the Family in Cnut's Homicide Legislation', *Law and History Review* 20 (2002), 157–80; Wormald, *Making*, p. 364.

47 *ASC*, *s.a.* 1087.

48 *Gesta Guillelmi*, pp. 158–61 (2.33); for an argument about what this passage means, see below, p. (QQ).

on the *Chronicle*, says nothing about William's laws.[49] Gaimar's contemporary, the post-conquest chronicler John of Worcester, writing before 1131, praised Harold Godwineson for annulling unjust laws and establishing good ones, but recorded nothing concerning the Conqueror's legislation. King Harold, we learn, 'ordered the earls, ealdormen, sheriffs, and his own officers generally to seize thieves, robbers, and disturbers of the realm'.[50] Symeon of Durham repeated John of Worcester's words about Harold's enforcement of the law.[51] Roger of Howden in the later twelfth century, a writer close to the royal court and the administration of justice as well as knowledgeable about English historical scholarship, took this passage about Harold from Symeon almost verbatim and added nothing else on William.[52] Throughout the twelfth century King Harold, in fact, has a higher reputation as a law-giving and law-enforcing king than does William I. Harold enjoyed this high reputation despite a concerted effort by the court of the first Norman king to damn his memory, erase his acts and delegitimize his brief rule.[53]

William's relationship to the law is therefore unclear. We start with what can be known about his actual laws. Here we come up against a curtain of anonymity. We do not know the names of any of the people who wrote laws for William, and so have no purchase on the process as we do with Wulfstan and Cnut.[54] Worse yet, we do not know how many of the legal texts which survive from his reign or name him as their promulgator are actually his. Furthermore, it is unclear how, or whether, many of the clearly unofficial texts that claim or can be argued to record something of the law of the time actually reflect William I's legislative agenda.

49 Geffrei Gaimar, *Estoire des Engleis: History of the English*, ed. and trans. Ian Short (Oxford, 2009), pp. 264–5.

50 'leges iniquas destruere, equas cepit condere […] ducibus, satrapis, uicecomitibus et suis in commune precepit ministris fures, raptores, regni disturbatores comprehendere', John of Worcester, *Chronicle*, *s.a.* 1066, 2:600–1.

51 Symeon of Durham, *Historia regum*, in *Symeonis Monachi Opera Omnia*, ed. Thomas Arnold, 2 vols, Rolls Series 75 (London, 1882–5), II:179.

52 Roger of Howden, *Chronica*, ed. William Stubbs, 4 vols, Rolls Series 51 (London, 1868–71), I:111. Roger did include the *Leges Edwardi* and the *Articuli Willelmi* in his 'Book of English Laws' appended to the *Chronica*, but does not appear to have used them as sources for the history of legislation – as had Wace shortly before in his *Roman de Rou*: Wace, *The Roman de Rou*, ed. and trans. Glyn S. Burgess (St Helier, 2002), pp. 290–1 (lines 8998–9010). It may be that the *Liber de legibus Anglie* came to him long after he had written his account of William I's reign, and he had no desire to go back and revise the account: see Roger of Howden, *Chronica*, II:215–52.

53 George Garnett, *Conquered England: Kingship, Succession, and Tenure 1066–1166* (Oxford, 2007), pp. 1–44.

54 There is a claim in the early thirteenth-century compilation known as the *Leges Anglorum* that Bishop Maurice of London (1086–1107) helped write the laws. This reference is quite late and is supported by no other sources: Bruce O'Brien, *God's Peace and King's Peace: The Laws of Edward the Confessor* (Philadelphia, PA, 1999), pp. 55–6.

There are three texts accepted by historians as edicts of the conqueror. All are in the form of writs and are relatively brief when compared to pre-conquest codes.[55] The writ form is generally not used by English kings to issue laws before 1066, in so far as we can tell. Nevertheless, these three writs form a pattern that shows William I was content to issue written edicts on particular points of law, something the dukes of Normandy had done, albeit orally, before 1066.[56] The writs are undated and two are generally addressed to all England. The first dovetails Norman methods of proof into the existing English system.[57] The second separates pleas belonging to the church's jurisdiction from those belonging to the king.[58] The last confirms the rights and privileges of the city of London, and as such is the least law-like of the bunch.[59] All were put into writing, and the language chosen was English. In this, they are following the pattern of other kinds of administrative or executive documents produced before 1066 by the royal chancery.[60] If we do not have the names of their authors or drafters, we may still suspect that the edicts were published this way on the advice of William I's chancellor, Regenbald, a man who had served in the same role under Edward the Confessor and perhaps under Harold as well.[61]

These three writs were likely not the only official legislative texts issued by William I. Evidence for at least one additional edict, issued in writ form, is now part of an apocryphal treatise known as the 'Ten Articles of William I' (*Articuli decem Willelmi*). This text looks like a pastiche of other texts, some copied, some paraphrased, which describe legal changes after the conquest.[62] For example, one chapter explains how the men William brought over with him are going to enjoy additional protection in this new kingdom (about which more below). The text of the chapter, almost entirely in Latin, includes some Old English legal terms whose

55 By a rough estimate, the shorter pre-conquest codes (I Ew, II Ew, I As, III As, I Em, and III Em) include about 360 words (with I Em, the shortest, having 207), while Wl ep has 250 and Wl lad 233. The pre-conquest codes rarely use a form of address in any way analogous to a writ address like that used by William I. Hudson, *Oxford History*, p. 259, is hesitant to attach the change to the conquest itself, since from what we can tell the English stopped writing lawcodes with Cnut's half a century earlier.

56 Mark Hagger, 'Secular Law and Custom in Ducal Normandy, c.1000–1144', *Speculum* 85 (2010), 827–67.

57 Wl lad: *Regesta regum Anglo-Normannorum: the Acta of William I (1066–1087)*, ed. David Bates (Oxford, 1998), pp. 445–7 (no. 130); this introduction and edition, along with a translation and manuscript image, are available at www.earlyenglishlaws.ac.uk/laws/texts/Wl-lad/.

58 Wl ep: *Regesta regum Anglo-Normannorum*, pp. 440–2 (no. 128); also at www.earlyenglishlaws.ac.uk/laws/texts/Wl-ep/.

59 Wl Lond: *Regesta regum Anglo-Normannorum*, p. 593 (no. 180); also at www.earlyenglishlaws.ac.uk/laws/texts/Wl-lond/.

60 Richard Sharpe, 'The Use of Writs in the Eleventh Century', *ASE* 32 (2003), 247–91.

61 Simon Keynes, 'Regenbald the Chancellor (sic)', *ANS* 10 (1988), 185–222; Garnett, *Conquered England*, p. 13.

62 *Gesetze*, I:486–8; Wormald, *Making*, pp. 402–3. The text is also called the *Decreta Willelmi* and, in older works, *Hic Intimatur*, after its first words.

presence and form raise the possibility that an originally English document was translated for inclusion in the *Articuli Willelmi*. This chapter finishes with the statement that 'This decree was authorized in Gloucester', much as a contemporary writ might end with an identification of the venue where it was written.[63] The absence of a similar clause either from other chapters of the *Articuli* or from any of the other legal texts of the reign does not eliminate the possibility that they also remember other edicts issued by the king.

William I's reign might also have been the time when unofficial law books were compiled to map out not just the innovations of his reign, but all English law. The text with which the *Articuli* is associated on the basis of some shared language, method and layout may in fact be the product of a legal translator active during William I's reign or very soon thereafter. This text is usually called the *Instituta Cnuti* because that is what its last editor, Liebermann, called it, though there is good reason to think that its title should be something closer to that which appears at the beginning of its earliest copy, the *Instituta de legibus regum Anglorum*.[64] This title is more accurate since the text holds a good deal more than just a translation of Cnut's Winchester code.[65] The *Instituta*'s first three books include long tranches from Cnut's laws and some other English codes, notably that of Alfred, much of which has been edited. Its fourth book is filled with wholly unsourced material, likely to be translations of texts which are no longer extant. In its earliest copy and in some other branches of its manuscript family, the *Articuli* of William I follows hard on the heels of this unsourced material. In the oldest copy of the *Instituta* (c. 1123), the *Articuli* is rubricated and laid out as if it were a fifth and final book of the *Instituta*.[66] Connections between these two texts go beyond the appearance that both are parts of the same text. Whoever drew up the *Articuli* certainly had the *Instituta* at hand and borrowed phrases from it. In method of assembly, both gather and rearrange separate texts of the law with confidence. Both appear to be, at least in part, translations of Old English sources, and they follow to a large extent the same translation method, preserving at times the Old English legal register found

63 'Hoc decretum sancitum est in Ciuitate Claudia', *Gesetze*, I:487.

64 Bruce O'Brien, '*Textus Roffensis*: An Introduction', in *Textus Roffensis: Law, Language, and Libraries in Early Medieval England*, ed. Bruce O'Brien and Barbara Bombi, Studies in the Early Middle Ages 30 (Turnhout, 2015), p. 6 and n. 13.

65 Felix Liebermann, 'On the Instituta Cnuti aliorumque Regum Anglorum', *TRHS* 7 (1893), 77–107; Bruce O'Brien, 'The *Instituta Cnuti* and the Translation of English Law', *ANS* 25 (2003), 177–97. My edition and translation of the *Instituta* will appear at www.earlyenglishlaws.ac.uk/laws/texts/in-cn/.

66 It should cause no surprise that, in a copy made from *Textus Roffensis*, the *Articuli* was hived off from the rest of the *Instituta* by someone interested in, it appears, separating the laws of Cnut from those attributed directly to the Conqueror: see Oxford, Bodleian Library, MS Rawlinson C. 641, whose texts of the *Instituta* and the *Articuli* were copied directly from *Textus Roffensis*.

in their sources.[67] It seems likely that the *Articuli*, this short compilation and translation of contemporary laws attributed to William I, was the product of the person responsible for the long compilation and translation of older laws now called the *Instituta Cnuti*. At the very least, the two texts are more likely to share a compiler-translator than for them to be products of different and unrelated writers. If these texts do share an author-translator – and such an authorship can only be suggested at this point – then we have in the *Instituta-Articuli* a lawbook for William I's reign comparable to the *Quadripartitus-Leges Henrici* collection completed in the reign of Henry I.[68] Although the *Instituta-Articuli* is a much shorter text, it combines old laws in translation, updated or revised in many places, with recent edicts as an appropriate statement of law in the half century after the conquest.

There are two other kinds of proscriptive and descriptive evidence which, on the surface, appear to preserve the laws of the Conqueror. The first kind, consisting of two treatises, only provides at best a much-attenuated description of what might be conquest-era laws. Both treatises claim to represent the laws of Edward the Confessor as confirmed or amended by William I. The setting of one of these treatises, the *Leges Edwardi*, is elaborate, with a description of an assembly which met in 1070 and recited English laws to William I for his confirmation.[69] The second treatise, the *Leis Willelme*, essentially makes the same claim, but without any elaborate scene setting. It claims that its contents represent the *laga Edwardi*, or laws of King Edward, granted to the English by their conquering king, William I.[70] Despite their claims, it would be unwise to assume that these treatises preserve anything older than the period of their composition (probably sometime in the 1130s or 1140s). They preserve some memory of the conqueror's laws, but these have been altered significantly by the passage of time. They are much better evidence for later developments in the time of Henry I.

67 For a sign of the rare exception to this rule, see In Cn 2.13.2 (*Gesetze*, I:316–17), where the translator has substituted *utlag*a for *flyman* in order, it appears, to have consistency of terminology in the chapter on *útlages geweorc*. As mentioned above, Wl art 4 identifies a custom 'quod ipsi dicunt on hlóte et an scóte' (*Gesetze*, I:487), which does not prove it a translation, but does follow the pattern of vernacular glosses provided this way in In Cn. Wl art 6 provides a paraphrase of Wl lad, which is either an expansion of the source or a translation of a different version which has not survived. Where Wl lad 1 provides a list of crimes which would lead to a decision about proof in a court (between an Englishman and a Norman), the source's 'for þeofte oðde for manslihte oðde for ænigan þingan' is much less fulsome than the the *Articuli*'s 'de periurio aut mordro, furto, homicidio, rán, quod Angli dicunt apertam rapinam' (*Gesetze*, I:483, 487). The In Cn translator was often happy to significantly revise his Old English sources, eliminating chapters or parts of chapters as well as adding brief glosses, occasionally longer explanatory passages, and reconfiguring the basic text.

68 Wormald, *Making*, p. 405, offers a similar observation.

69 ECf prol. and ch. 34: O'Brien, *God's Peace*, pp. 158–9, 192–3.

70 *Gesetze*, I:492; a new edition and translation of version 1 of the *Leis Willelme* by Ian Short et al. is available at www.earlyenglishlaws.ac.uk/laws/texts/leis-wl1/.

The other kind of evidence is in fact the best we have for what the law was thought to be at the end of William I's reign: the record of a kingdom-wide inquest known as Domesday Book. Even though the Domesday Inquest's commissioners were not asked by the king in 1086 to record the laws and customs of the English, they nevertheless ended up writing down a good deal of what local juries testified was the local law. Despite the unsystematic nature of its jury testimony, Domesday Book is the most trustworthy statement we have of the law as known by those who had to obey or enforce it.[71] What we see is an understandable variety of statements of custom or practices that reflects the legislative *foci* of Anglo-Saxon kings and witans: general and specific prohibitions, royal and other rights, penalties, fines and outlawry.[72] Perhaps it is significant that while we hear many times that there had been unlawful or unauthorized claims of possession of land, there is no point in the survey but one where the jurors say that the laws – meaning the royal proscriptive acts of the past – had been thus, but now were something else.[73]

The exact nature of the relationship of any of this evidence, even the official edicts, to William I is uncertain. It is hard to know what sense the king made of English-style legislation since he, like Cnut, came from a land without written law. Although Norman dukes were accustomed to making law and using assemblies to do this, issuing their edicts in written form appears not to have been thought necessary.[74] There are no Norman codes that predate the conquest. The Norman texts closest to codes are the records of church councils which met infrequently, and which even less frequently published their canons.[75] There were lawbooks in Norman libraries, but these held collections of Carolingian capitularies and tribal *leges* like the Frankish *Lex Salica* and *Lex Baiuariorum* – the same kind of lawbooks

71 The fundamental book on this is Robin Fleming, *Domesday Book and the Law: Society and Legal Custom in Early Medieval England* (Cambridge, 1998).

72 Patrick Wormald, *Papers Preparatory to the Making of English Law: King Alfred to the Twelfth Century*, *Volume II: From God's Law to Common Law*, ed. Stephen Baxter and John Hudson (London, 2014), pp. 237–9, and see www.earlyenglishlaws.ac.uk/reference/wormald/.

73 The exception is a number of cases where Picot the sheriff was the object of jurors' testimony: see, for example, Fleming, *Domesday Book*, p. 107 (F[leming numbers] 162–4). The 'law' when disputed elsewhere in Domesday Book often means the state of possession and rights in the past, e.g. F 622, where the witnesses to one party 'refused to accept any law but the law of King Edward, until it [the inheritance case under dispute] is determined by the King': Fleming, *Domesday Book*, pp. 153–4. The custom which was meant in cases where it had changed was usually the amount of rent owed to the new lord. Other small changes mentioned underline the continuity of institutions over the conquest; for example, the names of the lawmen in Danelaw boroughs before 1066 are then matched with the current names of the lawmen in 1087. For the lawmen of Lincoln, see Fleming, *Domesday Book*, pp. 190–1 (F 965).

74 Hagger, 'Secular Law', p. 867: 'The dukes made law in the same way and at the same sorts of times as the Carolingian emperors and English kings'.

75 Hagger, 'Secular Law', p. 830.

which could be found in libraries throughout Francia.[76] How anyone could use these lawbooks is uncertain. To a reader they were obviously records of old Frankish-era laws; their context is *de facto* historical even if some readers might possibly have mistaken them to be *de iure* normative texts. There is, however, no evidence to suggest that anyone who actually read these books thought this way. These lawbooks likely appeared to eleventh-century readers to be what they in fact were: artifacts of an empire from a former age.

William and his Norman advisers, politically savvy but after 1066 in a situation beyond their experience, would have done well to look to Cnut's conquest for lessons learned. The history of the Danish conquest of England would probably have been well-known in Normandy, since bonds between the rulers of England and Normandy were then strong. Most recently before 1066, Normandy had served as a refuge for King Æthelred and his children when they fled in 1014. Æthelred's queen, Emma, was the sister of the reigning duke, Richard II. And if the Normans had missed the parallels, the English would have pointed them out. By 1066, the Danish conquest looked like an exercise in continuity that preserved many of the kingdom's institutions in the wake of 1016. After the Norman conquest, few of the chronicles or other sources written then spent much, if any, time on the bloodbath the Danish conquest had been or on the executions and outlawries Cnut had engineered.

There are good reasons to think that, in matters of law, William I and his council studied the history of the previous conqueror. This at least is suggested by the fact that, although it was probably the English who explained to the Normans the importance of affirming the good old law, which meant affirming the laws of Cnut, it was the Normans themselves who were responsible for translating, composing and compiling almost all of the legal texts and lawbooks of the period.[77] The strength of the English pre-conquest tradition must have impressed the Normans. They probably learned that the English had made Edward agree to maintain the laws of Cnut as a condition of his acceding to the throne in 1041 – an event whose only record comes from a Francophone writer at work probably late in the reign of William II.[78] Like Cnut's laws, the Anglo-Norman *leges*, both the authentic ones like the edicts and *apocrypha* like the *Leges Edwardi*, stress the role of the *witan* and,

[76] Listed and described by Hubert Mordek, *Bibliotheca capitularium regum Francorum manuscript*, MGH Hilfsmittel 15 (Munich, 1995).

[77] A rare example of the English reaching back, in front of a Norman audience, to Cnut's reign for a precedent occurs in the *Miracles of St. Edmund* by Herman of Bury. According to Herman, Abbot Ælfwine of Ramsey, near the end of his life in about 1080, 'cast his mind back to the days of King Cnut' for evidence of Bury's liberty, a memory then confirmed by an assembly made up of nine counties: *Miracles of St Edmund*, pp. 76–7. On Norman responsibility for writing the treatises and copying the books, see O'Brien, *God's Peace*, pp. 131–4.

[78] *Quadripartitus*, Argumentum 9–11 (*Gesetze*, I:533). The passage is translated by Richard Sharpe, 'The Prefaces of "Quadripartitus"', in *Law and Government in Medieval England and Normandy: Essays in Honour of Sir James Holt*, ed. G. Garnett and J. Hudson (Cambridge, 1994), pp. 148–72

in some cases, were issued in English. The claim such texts are making is relentlessly conservative. If it were merely a mask to cover up radical changes imposed by the new sovereign, surely we would hear more than we do.

Given the problems with much of the evidence, it is hard for us to say with certainty what William I's new laws were. As with Cnut's laws, any changes visible after 1066 are not necessarily a reflection of the legislative agenda of the conqueror or of the unintended consequences of the conquest. Most obviously, William I's writ separating ecclesiastical from secular pleas looks more like royal support for an ongoing ecclesiastical reform to bring English practices into line with what was done on the continent. Does this make the law William's or his clergy's? This law was promulgated after a conquest, but not necessarily because of that conquest. Most of the new elements in William's laws cluster around the issues of proof and punishment. The edict detailing what proofs are allowed in cases when the opposing parties are French and English is clearly addressing a new matter, and doing so without any strong precedent in English or Norman law to follow.[79] Nevertheless, it is more a restatement of what both the English and the Normans already trusted than anything new.

The introduction or application of certain punishments has often been cited as one of the Norman changes to the law. This identification is based on the evidence of two principal sources: the *Articuli* of William I and the *Historia Ecclesiastica* of Orderic Vitalis. The *Articuli* shows William substituting blinding and castration for execution or hanging as the punishment for serious offences, while Orderic reports that traitors receive different punishments for treason depending on whether they are English or Norman: the English are executed while the Normans are merely mutilated.[80] Mark Hagger has recently made a strong case that Orderic is wrong to say that the Normans had a fixed custom, because there are several different punishments for treason (including execution) noted in the Norman sources.[81] Other than church pleas, proof and punishment, William I's contribution to England's legal development consists of a small barrage of promises to restore or maintain the *laga Edwardi* – the laws, customs and practices which were in force before 1066, however variable or particular they were.

This leaves only William I's alleged creation of the murder fine to be considered. In the later twelfth century, this fine had become a massive collective penalty imposed on the English peasants living in a district where a body was found which could not be proved to be English. This Draconian law was maintained in a majority of the counties of the kingdom long after the Norman conquest until it

(p. 164). For an explanation of the historical implications, see J. R. Maddicott, 'Edward the Confessor's Return to England in 1041', *EHR* 122 (2007), 650–66.

79 Wl lad, summarized in Wl art 6 (*Gesetze*, I:487); it is hard to know if the precedents were known as such: e.g. AGu, EGu, II Atr, and Cn 1018.

80 Wl art 3–4 (*Gesetze*, I:487); Orderic, *Historia Ecclesiastica*, II:314, 318–22.

81 Hagger, 'Secular Law', pp. 861–2.

was abolished in 1340. It used to be universally accepted by historians as William I's imposition. Richard Fitz Nigel, writing in the late twelfth century, said it was enacted by the Conqueror to protect his men from English ambushes, and some of the handful of descriptions from the century after 1066 seem to point to William I as the creator of the institution. I argued in 1996 that the murder fine was not William's invention, but was created before the conquest. Given the evidence of the law itself and of the historical context, I thought it was more likely to be from the time of Cnut than from any other time. The reasons were many and the argument complex, so I will not reprise it here at length as I would not change it in any significant way. In brief, Richard Fitz Nigel gets things wrong about what happened in William I's reign often enough to cast doubt on all of his pronouncements about the past, including what he writes about the murder fine.[82] As for the four accounts in legal texts describing the procedure, they neither agree on the procedure's details nor on the attribution to William.[83] One, in fact, credits Cnut with the creation of the murder fine in the aftermath of what looks like the 1018 Oxford council.[84] But for the fact that this source, the *Leges Edwardi Confessoris*, is probably the most accurately attuned to contemporary criminal law and usually (but not always) gets things right, its distant memory would be dismissed.[85] The re-dating of the murder fine to Cnut's reign has been accepted *in toto* by some. Many others, while not accepting the attribution specifically to Cnut, now express doubts about William's responsibility for it. Still others have accepted pieces of the argument placing the development of the murder fine's parts to the period before 1066, but still claim its final combination into a new law was William's. Finally, some continue to argue that it was entirely a post-conquest Norman creation.[86]

82 Bruce O'Brien, 'From *Morpor* to *Murdrum*: The Preconquest Origin and Norman Revival of the Murder Fine', *Speculum* 71 (1996), 321–57 (pp. 322, 327–9); cf. John Hudson, 'Administration, Family and Perceptions of the Past in Late Twelfth Century England: Richard fitz Nigel and the Dialogue of the Exchequer', in *The Perception of the Past in Twelfth-Century Europe*, ed. Paul Magdalino (London, 1992), pp. 75–98.

83 The four descriptions are in Wl art 3–4, ECf 15–16, Hn 91 and Leis Wl 22.

84 ECf 16, trans. in O'Brien, *God's Peace*, pp. 174–5.

85 Hudson, *Oxford History*, pp. 870–1.

86 Consider the variety of conclusions found in these works: Marjorie Chibnall, *The Normans* (Oxford, 2000), pp. 53–4; Hugh M. Thomas, *The English and the Normans: Ethnic Hostility, Assimilation, and Identity 1066–c.1220* (Oxford, 2003), pp. 29 n. 43, 49–50, 59 n. 13; Hudson, *Oxford History*, pp. 405–9; Alan Cooper, 'The Rise and Fall of the Anglo-Saxon Law of the Highway', *HSJ* 12 (2002), 39–69 (pp. 55–8); T. B. Lambert, 'Theft, Homicide and Crime in Late Anglo-Saxon Law', *Past and Present* 214 (2012), 3–43 (p. 26 n. 75), and reaffirmed in *Law and Order in Anglo-Saxon England* (Oxford, 2017), p. 361; George Garnett, '*Franci et Angli*: The Legal Distinction between Peoples after the Conquest', *ANS* 8 (1985), 109–37 (pp. 116–28). Garnett's article predates my own, which was in part a response to Garnett's; Garnett presents the most cogent argument that the fine was imposed after 1066 and was a Norman invention.

I will revisit only three parts of the argument which have often been overlooked or marginalized by historians. First, the basic suretyship required of both lords and freemen which would allow the murder fine to operate was only definitely in place in Cnut's reign. The key issue is to identify when tithing and suretyship were combined in some sort of collective policing unit responsible for the actions of its own members, whether of freemen in the hundred or a lord and his household. Although an argument can be made that tenth-century kings were the ones responsible for creating both *tithing* and *borh*, and, perhaps, for combining them into the institution of frankpledge, nevertheless it is only in Cnut's laws of the 1020s that we see the two correlated for the first time.[87] More than that, Cnut's reign still provides the most likely period when a conquering king would need the tithing and suretyship system in place to establish a peace guaranteed by an onerous collective liability, and it is this frankpledge system which would allow the king to consider the imposition of a murder fine to protect his men.

The second point often overlooked is that the likely earliest description of the fine – the sentences in the *Articuli* of William I – says that it is the lords of men who commit the killings who are financially responsible for any killing their men might commit, and not the local hundred or village where the body was found, as in the classic murder fine procedure of the late twelfth century. This liability is exactly what we would expect of an institution imposed in the early eleventh century to keep Danish retinues from killing one another or attacking the English, at a time when the control of the kingdom depended on Danish military strength. In a similar way, William the Conqueror's secure hold on the kingdom depended on the Norman *milites* in the retinues of his new Anglo-Norman lords.

Cnut had not been the first to make his lords responsible for the crimes of their men. Kings from Æthelstan to Æthelred had increasingly legislated on this matter.[88] When their men committed crimes, lords who protected them from justice laid themselves open to penalties. According to two accounts well-informed about the Normans, William I recognized he had a problem with his followers' lawless behaviour in his new kingdom and took steps to prevent it. William of Poitiers, whom I quoted earlier, said the king restrained his men to prevent murders of Normans by Normans: his men were not allowed 'to drink in taverns, since drunkenness leads to quarrels and quarrels to murder'.[89] Orderic Vitalis, writing half a century later, said that the king saw that he would have to prevent his soldiers from committing violence. Not only did William forbid 'his own people to commit thefts, forcible entries, or crimes anywhere', but he was particularly keen to ban murders.[90] These

87 Pratt, 'Written Law', pp. 337–49; Molyneaux, *Formation*, p. 196 n. 5.

88 Stephen Baxter, 'Lordship and Justice in Late Anglo-Saxon England: The Judicial Functions of Soke and Commendation Revisited', in *Early Medieval Studies in Memory of Patrick Wormald*, ed. Stephen Baxter et al. (Farnham, 2009), pp. 383–419 (pp. 399–407).

89 *Gesta Guillelmi*, pp. 158–61 (2.33). See above, p. [illegible] for the full text.

90 Orderic, *Historia Ecclesiastica*, II:192–3.

are not prohibitions aimed at the English, rebellious and plotting ambushes in the countryside, as claimed by Richard fitz Nigel. The context of the Gloucester decree preserved in the *Articuli* is just the one described by the two Norman chroniclers, where competition between conquering Normans might cause violence which would end up in murder. That the districts known as hundreds eventually end up with the collective liability for murders of strangers (assumed to be Norman) is merely the development of an extension of this restraint on lords whose men might direct their lethal skills at one another. The longevity of the ethnic understanding of *murdrum* as exclusively a protection of Normans against the English is another story, and not originally the reason why William I used this institution to secure his conquest.

Last, there is the matter of secrecy. It is a commonplace in modern historical accounts that the killings covered by the murder fine were by definition 'secret' – unwitnessed and unattributed. So it later was, but at first secrecy was not part of the definition of the crime. This is especially clear when one considers the likely situations where, as William of Poitiers wrote, arguments led to brawls and brawls to murders. When, then, did *murdrum* become a secret crime? Answering this question must start with a review of all the uses in Old English texts of the two words that lie behind Latin *murdrum*: *morþ* and *morþor*. From this review, it is clear that the words conveyed two meanings. First, *morþ* and *morþor* meant a killing which could not be compensated for, what the English called a *botleas* crime.[91] Second, they meant a betrayal of one's lord even when there was no homicide.[92] This latter meaning is particularly interesting, given that the murders Danish and Anglo-Norman kings wished to prevent could leave their lords liable to serious penalties.[93] Nevertheless, the secrecy of the killing had clearly become a part of the understanding of the murder fine in the first half of the twelfth century, but from where did this understanding come? It seems likely that it slowly seeped into the meaning of Old English 'murder' terms as a semantic loan from the French cognate *mordre*, where secrecy was a principal attribute of this type of killing. The institution of the

[91] E.g. *Beowulf*, lines 1079 and 1105, where the murder of kin ('morþorbealo maga') cannot be resolved by compensation: *Beowulf and the Fight at Finnsburg*, ed. F. Klaeber, 3rd edn (Lexington, MA, 1950), p. 41.

[92] Lucifer's betrayal of God was the most dreadful of murders (*morþra*) in *Genesis B*, line 297, in *The Saxon Genesis: An Edition of the West Saxon Genesis B and the Old Saxon Vatican Genesis*, ed. A. N. Doane (Madison, WI, 1991), p. 210. Northumbrian Gospel translators used *morþor* for *homicidium* when the killing was a result of treason: Luke 23:19 in *The Gospel According to Saint Luke in Anglo-Saxon and Northumbrian Versions*, ed. W. W. Skeat (Cambridge, 1874), p. 221.

[93] Secrecy appears possibly to be a part of murder in only one pre-conquest text, and there, since betrayal of a lord is the actual act, it is more likely that *morþ* was used to convey this particular kind of betrayal than to signal the significance of any secrecy attributed to the magic practised by the mother and her son: *Anglo-Saxon Charters*, ed. A. J. Robertson, 2nd edn (Cambridge, 1956), pp. 68–9 (no. 37); discussed in its context by O'Brien, 'From *Morþor*', pp. 342–5 (and esp. p. 344 n. 103).

murder fine itself was sufficiently in flux in the half century after the conquest for the Normans to have thought *mordre* when they heard or read *murdrum* or *morþor*, and so provide a simple way for the continental meaning of *mordre* to have migrated to its Old English cognates without causing too much of a ripple. The institution itself evolved to fit better the changing circumstances of the Norman occupation, without cutting the king off from this lucrative revenue stream.[94]

Conclusion

The conquests of 1016 and 1066 have rarely been seen as having the same effects on the law. Nor have historians been inclined to argue that the two kings used the law in similar ways as a tool to control their hold on their new territory. Instead, the two conquests have been characterized as starkly different. Cnut's conquest is accepted as conservative, a sincere continuation of English laws and governance by the Danish conquerors, while the evidence of William's is parsed to determine just how much revolution happened, and signs of continuity are as likely to be interpreted as political deceptions as evidence of an actual policy to maintain the old ways.

Yet these conquests and their effects are not dissimilar. Both kings conquered the same well-developed kingdom. By the time of Æthelred, almost all that would make England run well under a king's control had been set up, and these practices and institutions were enjoyed roughly equally by both conquerors. The conquests were both based on claims of legitimacy – Svein had been acknowledged king by many of the English in 1013, and his son Cnut was made king when Svein died in 1014; Duke William was cousin to Edward the Confessor and claimed that the king had named him heir in 1051. Despite these claims of legitimacy, both conquests were just that, bloody invasions to make the claims to rule real. Cnut's big battle, *Assandun*, was his last and ended in a victory, after which he and Edmund Ironside made a deal to divide the kingdom. This was the penultimate stop on the long road of war begun by the Danish king and his allies in 1002, which intensified between 1009 and 1013. The result was an endemic bloodbath for both sides. Dangers did not fade, but merely shifted their arena once Cnut was king of all of England at Edmund's death in 1016, since from then on, he had to decide how to rule a cross-sea collection of polities to which he was still actively adding new pieces. If William's most important battle was his first, at Hastings, which resulted in a devastatingly decisive victory for the Normans, he nevertheless did not sit securely on the throne thereafter, but fought battles, harried regions and suppressed rebellions as he tried to figure out how to rule a cross-channel collection of polities

94 *The Great Roll of the Pipe for the Thirty-First Year of the Reign of King Henry I: Michaelmas 1130 (Pipe Roll 1)*, ed. and trans. Judith Green, Pipe Roll Society 95 (Loughborough, 2012), *passim*.

which he showed some interest in expanding both in Britain and on the continent. In both cases, a less sophisticated, less politically centralized kingdom or duchy had conquered its more sophisticated, more developed and richer neighbour. The resemblances are striking.

Of course, the conquests were different in the longevity of their political consequences. This difference, however, is not so much because the conquerors created and circulated different self-justificatory theories or myths. Nor were they different because of any ethnic identity and ethnic enmity animating the new lords. Rather, it looks like the real difference between these two conquests lay in the fact that William I's children, unlike Cnut's, had children, and those children in turn had children. By not recognizing the reality of the longer rooting period created by the procreative luck of the Norman dynasty, the continuities and changes in the law after both conquests too often become mere subalterns to overly narrow analyses of each individual conquest.