

THE PRODUCTION OF THE ANGLO-SAXON LAWS : FROM
ALFRED TO CNUT

Ingrid Fagernes Ivarsen

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The Production of the Anglo-Saxon Laws: from Alfred to Cnut

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University of
St Andrews

This thesis is submitted in partial fulfilment for the degree of

Doctor of Philosophy (PhD)

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Abstract

This thesis examines the production of written law in Anglo-Saxon England by asking some basic questions. What is ‘an Anglo-Saxon law’? Where and when were surviving laws made? Who wrote them? What characterizes the laws as texts? These questions are answered using the laws’ language, text and form as evidence. In the first part of the thesis, I argue that the modern idea of what makes ‘an Anglo-Saxon law’ is adopted from editions, specifically Felix Liebermann’s 1903 *Die Gesetze der Angelsachsen*. I show that the corpus presented in this edition is not just a product of Liebermann’s own political, academic and legal contexts, but also those of his editorial predecessors. By relying on such a corpus we have constructed our view of Anglo-Saxon law and legislation on unstable foundations. Therefore, I offer a new corpus of laws and set out the criteria for texts’ inclusion. I also propose a new way in which to categorize surviving legislation, arguing that there are two main categories: law codes and decrees. The second half of the thesis examines the production of the texts belonging to each of these categories. A key finding is that not all laws were produced in the same way. Some texts fit into the traditional model for the production of legislation, namely that it was done in relation to meetings between the king and *witan*. Some surviving texts may even be records of oral assembly proceedings. However, other texts appear to have been produced outwith an assembly context, including some that must have been made through long processes of research, compilation and juridical thinking. The evidence provided by language, text and form thus suggests that the production of Anglo-Saxon law was flexible and that the relationship between writing and law was complex and varied.

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Abbreviations

BL	British Library
BT	<i>An Anglo-Saxon Dictionary based on the Manuscript Collections of the late Joseph Bosworth</i> , ed. T. N. Toller (Oxford, 1898), with T. N. Toller, <i>An Anglo-Saxon Dictionary based on the Manuscript Collections of Joseph Bosworth: Supplement</i> (Oxford, 1921).
CCCC	Cambridge, Corpus Christi College
C&S	D. Whitelock, M. Brett, and C.N.L. Brooke (eds), <i>Councils & Synods: with other Documents Relating to the English Church. 1: A.D.871-1204</i> , parts 1 and 2 (Oxford, 1981).
DMLBS	<i>Dictionary of Medieval Latin from British Sources</i> , ed. R. Latham, D. Howlett, R. Ashdowne (Oxford 1975–2013).
DOE	<i>Dictionary of Old English: A to I online</i> , ed. Angus Cameron, Ashley Crandell Amos, Antonette diPaolo Healey et al. (Toronto, Dictionary of Old English Project, 2018).
DOE Corpus	<i>Dictionary of Old English Web Corpus</i> , compiled by Antonette diPaolo Healey with John Price Wilkin and Xin Xiang (Toronto, Dictionary of Old English Project, 2009).
EETS	Early English Text Society
EHD <i>i</i>	D. Whitelock (trans.), <i>English Historical Documents, Vol. I, c.500-1042</i> (London, 1979).
G&L	H. Gneuss and M. Lapidge, <i>Anglo-Saxon Manuscripts: A Bibliographical Handlist of Manuscripts and Manuscript Fragments Written or Owned in England up to 1100</i> (Toronto, 2014).
<i>Gesetze I</i>	F. Liebermann (ed.), <i>Die Gesetze der Angelsachsen vol. I: Text und Übersetzung</i> (Halle, 1903).
<i>Institutes</i>	<i>Institutes of Polity</i> ; edited in <i>Die Institutes of polity, civil and ecclesiastical: ein Werk Erzbischof Wulfstans von York</i> , ed. and trans. Karl Jost (Bern, 1959).
Ker	N.R. Ker, <i>Catalogue of Manuscripts Containing Anglo-Saxon</i> (Oxford, 1957).
MEL	P. Wormald, <i>The Making of English Law: King Alfred to the Twelfth Century. Vol. 1, Legislation and its Limits</i> (Oxford, 1999).
MEL <i>ii</i>	P. Wormald, <i>Papers Preparatory to the Making of English Law: King Alfred to the Twelfth Century. Vol. 2, From God's Law to Common Law</i> , ed. S.D. Baxter and J. Hudson (Oxford, 2014).
MGH	Monumenta Germaniae Historica
Napier	The homilies printed in A. Napier, <i>Wulfstan: Sammlung der ihm zugeschriebenen Homilien nebst untersuchungen über ihre echtheit</i> (Berlin, 1883).
OED	<i>Oxford English Dictionary</i>
S	Charters are cited by their number in P. H. Sawyer, <i>Anglo-Saxon Charters: an Annotated List and Bibliography</i> (London, 1968), in its revised form available online as the 'Electronic Sawyer' (www.esawyer.org.uk), abbreviated S + number.
WHom	The homilies printed in D. Bethurum, <i>The Homilies of Wulfstan</i> (London, 1957).

The laws

All references to and quotations from the Anglo-Saxon laws are from F. Liebermann (ed.), *Die Gesetze der Angelsachsen vol. I: Text und Übersetzung* (Halle, 1903). References to specific chapters in these texts are given with Liebermann's short titles (in brackets below) and the chapter numbers assigned by Liebermann. The texts in this list correspond to the revised corpus set out in chapter 1.

Law codes

Alfred-Ine (Af-Ine)

Chapter list (AfRb/IneRb)

Prologue (AfEl)

Alfred's laws (Af)

Ine's laws (Ine)

I-II Cnut (I–II Cn)

VI Æthelred Latin (VI Atr Lat)

VII Æthelred (VII Atr)

VIIa Æthelred (VIIa Atr)

VIII Æthelred (VIII Atr)

IX Æthelred (IX Atr) [fragment only]

X Æthelred (X Atr) [fragment only]

Cnut 1018 (Cn 1018)

Cnut's letters (Cn 1020, Cn 1027)

Hundred (Hu)

Decrees

Wihtræd (Wi)

Hlothhere-Eadric (Hl)

Alfred-Guthrum (AGu)

I Edward (I Ew)

II Edward (II Ew)

I Æthelstan (I As)

Æthelstan Alms (As Alm)

II Æthelstan (II As)

III Æthelstan (III As)

IV Æthelstan (IV As)

V Æthelstan (V As)

VI Æthelstan (VI As)

I-II Edmund (I-II Em)

Dunsate (Duns)

II-III Edgar (II-III Eg)

IV Edgar (IV Eg)

IV Edgar Latin (IV Eg Lat)

I Æthelred (I Atr)

II Æthelred (II Atr)

III Æthelred (III Atr)

IV Æthelred (IV Atr)

Edward-Guthrum (EGu)

V Æthelred (V Atr)

VI Æthelred Old English (VI Atr OE)

Tracts

Ordal

Wer

Grið, Norðgrið

Geðyncðu, Norðleoda laga, Mircna laga, Að and Hadbot (Geðyncðu group)

II Æthelred Appendix (II Atr App)

Alfred-Guthrum Appendix (AGu App)

Norðhymbra preosta lagu/Northumbrian priests' law (Northu)

Notes

Be blaserum

Forfang

Romscot

Pax

Walreaf

Ymb æwbrica

?

Æthelberht (Abt)

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0 Introduction

‘...the period is long and the documents, though relatively few, are diverse and difficult.’¹

Such was Michael Clanchy’s description of extant written texts from Anglo-Saxon England. If nothing else, it is certainly a very apt portrayal of the laws surviving from this period. Fortunately, difficulty and diversity have not caused neglect. That is largely because surviving legislation is often our only evidence for a number of features of the Anglo-Saxon world and its administration, social organization, economy and much else. However, our understanding of this evidence is limited by the lack of a proper understanding of the laws as texts and how they came into being as texts. Even after centuries of scholarship, details of the laws’ production – and even their *raison d’être* – remain unclear. This, then, is the topic of my study. I examine the circumstances of production of the Anglo-Saxon laws and the processes through which surviving texts were made. As will become clear, the laws’ difficulties cannot be denied, but their diversity offers rich evidence for the relationship between writing and law in the early Middle Ages.

0.1 Research Questions

As we shall see below, many debates about early medieval law are based on the fact that law – at least some law – was written down. Precisely *how* these texts were written is, however, less commonly examined. I am therefore asking several questions about the production of surviving written laws. First of all, what is ‘an Anglo-Saxon law’? Who wrote law in Anglo-Saxon England? Where and when did composition take place? What characterizes these laws as texts? These questions are answered using linguistic, textual and formal evidence, a method which the following section will explain in more detail. At the heart of this study is therefore a methodological question: what can language, form and text say about the process and circumstances of the writing of early medieval legislation?

¹ M.T. Clanchy, *From Memory to Written Record: England 1066–1307*, 2nd ed. (Oxford, 1993), p. 26.

0.2 Approach

0.2.1 A textual, linguistic and formal approach

Such questions are not new, as the following sections will show. Studies of Anglo-Saxon law, administration and institutions have dealt with related matters, such as the relationship between written law and political assemblies or the relationship between written law and law on the ground. As it turns out, the evidence provided by the language and written form of legislation yields new answers to many of these long-standing issues. This will become clear, for instance, in chapter 2, which shows how legal content – that is, whether a text contains old law or new, customary law or royal – has been at the basis of previous attempts to classify the laws. Evidence provided by texts' structure, form, language and use of sources gives different answers which involve less guesswork. I will also show how a linguistic approach can counteract the weight usually placed on chronology, which has arisen from a persistent interest in development, whether in terms of legal doctrine and practice or in terms of administration, institutions and the state.

There are many parts to this linguistic and textual approach, and I apply different techniques to different texts based on their individual traits. That said, on the whole my approach is characterized by a focus on law as text rather than on legal rules, practices or the uses and enforcement of written law. All texts are examined for their form, structure, syntax and other linguistic features, as well as for their use of written sources. I also interrogate the evidence provided by paratextual features – such as prefaces, epilogues, chapter divisions and numbering – to assess how texts self-represent. Parts of the study involve more specific methods, such as linguistic register analysis, that is, examining texts for their shared language features. Finally, like many linguistic studies, this is a comparative approach. Throughout, I will draw on other normative genres, primarily church council decrees, to illustrate features of the Anglo-Saxon laws.

My methods owe much to Patrick Wormald and especially his book *The Making of English Law*.² Within the field of Anglo-Saxon law, his work represents an unprecedented turn to manuscripts and text, demonstrating that any discussion of Anglo-Saxon law needs

² P. Wormald, *The Making of English Law: King Alfred to the Twelfth Century. Vol. 1, Legislation and its Limits* (Oxford, 1999) (hereafter *MEL*). The planned second volume of *MEL* was never completed, though some of its content has been published as P. Wormald, *Papers Preparatory to the Making of English Law: King Alfred to the Twelfth Century. Vol. 2, From God's Law to Common Law*, ed. S.D. Baxter and J. Hudson (Oxford, 2014) (hereafter *MEL ii*).

to take the transmission of law texts into account. What is more, in his 1999 book Wormald did not just include a chapter on ‘Legislation as Legal Text’, but also one on ‘Legislation as Literature’, opening up our view of the laws as texts. While my methods and conclusions differ from his in many ways, as the following chapters make clear, Wormald’s work is in many ways the foundation of this study.

I am also concerned with a textual aspect of the laws which Wormald did not explore, namely how a process might manifest in text. This approach is partly inspired by David Daube’s 1956 book *Forms of Roman Legislation*, which argued that formal and syntactical differences in Roman laws were a result of their different origins or ‘settings in life’.³ Daube’s ‘form criticism’ took place at the sentence level. He interpreted laws phrased as conditionals (‘if...then’) as the result of a need to describe a situation and the appropriate response to that situation, whereas relative clauses (‘he who’) are evidence of categorical rather than casuistic legal thinking.⁴ A directive followed by a conditional could have had its setting in life in the need to express a ‘new, unexpected or complicated’ rule.⁵ Daube found that many of these features could be traced back to circumstances of a text’s promulgation. A somewhat similar approach has been used in studies on early medieval Frankish laws, also on the level of individual provisions. Franz Beyerle observed in the 1920s that *Lex Salica* contained ‘two forms of juristic construction and linguistic expression’, which he argued revealed their different origins.⁶ One type, argued Beyerle, must have come from older law, possibly orally transmitted, and contains ‘the wisdom of judges and law-speakers’ on the topic of criminal law. The other type concerns private or procedural law, and shows signs of being newly made in response to particular cases, comparable to Roman *novellae*.⁷ Unlike Daube and Beyerle, my main concern is texts as complete units, though the syntax of individual provisions plays a supporting role. Nevertheless, in Daube’s words, my study is about the ‘setting in life’ of the Anglo-Saxon laws.

The genesis of the form of complete texts can be analyzed in the context of another kind of legislation, namely church council decrees. Early examples of this genre allow us to see the development of a particular textual form, including its roots in a particular process.

³ For his description of his methods, see D. Daube, *Forms of Roman Legislation* (London, 1956), pp. 1–3.

⁴ Daube, *Forms*, pp. 6–7.

⁵ Daube, *Forms*, pp. 23–30.

⁶ F. Beyerle, ‘Über Normtypen und Erweiterungen der Lex Salica’, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 44 (1924), pp. 216–61, at pp. 220–2.

⁷ Beyerle, ‘Über Normtypen’, p. 221.

Some early councils adopted procedures from the Roman senate, for instance one that involved the announcement of a formal proposal (*relatio*), followed by suggestions (*sententiae*) from the assembly.⁸ In his 2002 book, Hamilton Hess identified some distinct forms of written documents produced from such councils, including the ‘placuit’ and the ‘dixit-placet’ forms, which are followed in the canons of a number of early church councils.⁹ Several of the characteristics of these forms are testament to the underlying process, with some texts being, in Hess’ words, ‘not so much a listing of regulations enacted by a council as a report of the decisions reached’.¹⁰ For instance, Hess found examples where the *relatio*, *sententiae* and subsequent acclamation are discernible in the issued text.¹¹ Over time, such characteristics may have become conventions rather than reflections of a process. Nevertheless, the early councils and their *acta* provide a model for understanding the relationship between process and written text. Based on such a model, I seek to distinguish between Anglo-Saxon laws that appear to be ‘reports of decisions reached’ and those which appear to have been ‘made’ in writing.

0.2.2 An inductive approach

Another part of my method is to take individual texts as a starting point for investigations. This is similar to the approach taken by Christina Pössel in her 2006 study of the Carolingian capitularies. Pössel set out to ‘[look] at each text individually and [try] to answer questions on the basis of those findings rather than [work] from assumptions on capitularies in general’, especially in order to answer questions of audience and authorship.¹² She was following a call from Rudolf Pokorny for a more inductive approach to Carolingian legislation. Pokorny argued that we could avoid ‘defeatist’ conclusions if scholars would acknowledge the diverse

⁸ These processes and the development of the genre are described in H. Hess, *The Early Development of Canon Law and the Council of Sardica* (Oxford, 2002), p. 62. A useful summary can be found in G.I. Halfond, ‘Ecclesiastical Councils’, in P.L. Reynolds (ed.), *Great Christian Jurists and Legal Collections in the First Millennium* (Cambridge, 2019), pp. 107–27.

⁹ Hess, *Early Development of Canon Law*, pp. 69–70.

¹⁰ Hess, *Early Development of Canon Law*, p. 70.

¹¹ Hess, *Early Development of Canon Law*, pp. 67–8. Aspects of these early forms have also been identified in Frankish church council decrees, see G.I. Halfond, *Archaeology of Frankish Church Councils, AD 511–768* (Leiden, 2010), p. 9. Katy Cubitt noted some influences from Roman papal conciliar diplomatic on early English council decrees, see C. Cubitt, *Anglo-Saxon Church Councils c. 650–c. 850* (London, 1995), esp. pp. 77–87.

¹² C.H. Pössel, ‘Authors and recipients of Carolingian capitularies, 779–829’, in R. Corradini (ed.), *Texts and Identities in the Early Middle Ages* (Wien, 2006), pp. 253–74, at pp. 254–5.

nature of capitularies and use it as evidence.¹³ This approach has major benefits for the Anglo-Saxon corpus of laws, which can appear rather messy when looked at as a whole. As I will demonstrate in this study, this messiness is to some degree the result of a poorly constructed modern corpus where all texts are treated as more or less the same.

The ubiquitous practice of labelling any and all law from Anglo-Saxon England a 'law code' no doubt contributes to deductive views of the corpus of laws, as chapter 2 will show. For this reason, I seek to reassess the labels we impose on the earliest English laws. Similar efforts have been made for other material, for instance in Simon MacLean's 2010 study of the 'Ravenna Constitution'. Taking a similar approach as Pössel in looking at 'individual texts in context', he reassessed a text which 'appears to straddle the accepted genre barriers' and has suffered in scholarship from the imposition of a certain kind of generic label.¹⁴ This is a useful model for the Anglo-Saxon field, where labels and modern ideas of genres have also blocked our view of what texts are actually saying. At the same time, it highlights the difference in how continental and English law from this period is treated in the scholarship. Frankish and Carolingian legislation has traditionally been divided into categories, mainly *leges* and capitularies. There have also been distinctions made between different types of capitularies, especially in the early *Monumenta Germaniae Historica* editions, which have imposed certain interpretations on historians.¹⁵ The opposite has been the problem for Anglo-Saxon law, namely that there have rarely been sustained attempts to distinguish between different kinds of texts. All 'law codes' have been treated as more or less the same in editions and the scholarship, as I will discuss in chapters 1 and 2. The importance of the inductive approach for the Anglo-Saxon material is therefore that it allows us to take individual texts on their own merit, but also to see how those individual texts can be grouped together based on textual evidence rather than assumptions about lawmaking. Of course, this does open the Anglo-Saxon laws up to 'the potential treachery of modern categorizations' identified by MacLean.¹⁶ The trouble is that a lack of differentiation has proven no less treacherous.

¹³ R. Pokorny, 'Eine Brief-Instruktion aus dem Hofkreis Karls des Großen an einen geistlichen Missus', *Deutsches Archiv für Erforschung des Mittelalters* 52 (1996), pp. 57–83, at p. 78.

¹⁴ S. MacLean, 'Legislation and Politics in Late Carolingian Italy: the Ravenna Constitution', *Early Medieval Europe* 18 (2010), pp. 394–416, at pp. 397–8.

¹⁵ For a few examples of such problems, see T. Faulkner, *Law and Authority in the Early Middle Ages: the Frankish Leges in the Carolingian Period* (Cambridge, 2016), pp. 97–9; Pössel, 'Authors and recipients', pp. 260–2.

¹⁶ MacLean, 'Legislation and Politics', p. 402.

0.3 Sources

0.3.1 Manuscripts

Both linguistic analyses and an inductive approach would be meaningless without a clearly defined – and expressly justified – corpus of texts. This is therefore the topic of chapter 1, which considers the modern corpus and its historical creation. As that chapter will show, there has been almost no discussion of what makes ‘an Anglo-Saxon law’, and the selection of texts in Felix Liebermann’s 1903 edition of the laws, *Die Gesetze der Angelsachsen*, serves as an implicit corpus. I will offer a suggestion for a new corpus of Anglo-Saxon laws, which aims to reflect evidence provided by the texts themselves. Therefore, I will deal with the manuscripts, editions and available texts more fully in the next chapter.

My interpretation of the manuscript evidence is in large part based on Wormald’s fabulously detailed study.¹⁷ However, I place the manuscripts within a slightly different framework than Wormald. He divided extant manuscripts into six groups: law and *Gesta*, laws on loose leaves, laws in holy books, law and homily, law and penance and legal encyclopaedias.¹⁸ I deal with them as three groups instead, for reasons which will become clear in the following chapter. These groups are: post-conquest manuscripts, pre-conquest non-Wulfstan manuscripts and Wulfstan manuscripts.

The post-conquest group corresponds more or less to Wormald’s legal encyclopaedias, namely *Textus Roffensis*, Cotton Nero A.i(A), Cambridge Corpus Christi College 383 and the *Quadripartitus* collection.¹⁹ There is an additional twelfth-century manuscript, BL Harley 55(B), which contains only one text, namely *I-II Cnut*.²⁰ The second

¹⁷ Wormald, *MEL*, pp. 162–263.

¹⁸ Wormald, *MEL*, pp. 162–263. For a compressed discussion and handy list of these manuscripts, see P. Wormald, ‘Law Books’, in R. Gameson (ed.), *The Cambridge History of the Book in Britain. Vol. 1, c.400-1100* (Cambridge, 2012), pp. 525–36, at p. 528. There is a general study of the manuscripts in M.P. Richards, ‘The Manuscript Contexts of the Old English Laws’, in P. Szarmach (ed.), *Studies in Earlier Old English Prose* (Albany, 1986), pp. 171–92, though it has largely been superseded by Wormald’s work.

¹⁹ *Textus Roffensis* (hereafter *Textus*): Medway Archive and Local Studies Centre, MS DRc/R1; no 373 in N.R. Ker, *Catalogue of Manuscripts Containing Anglo-Saxon* (Oxford, 1957) (hereafter Ker). **BL, Cotton Nero A.i(A)**: Ker 163; no 340 in H. Gneuss and M. Lapidge, *Anglo-Saxon Manuscripts: A Bibliographical Handlist of Manuscripts and Manuscript Fragments Written or Owned in England up to 1100* (Toronto, 2014) (hereafter G&L). **Cambridge, Corpus Christi College 383** (hereafter CCCC 383): Ker 65, G&L 102. For a list of the **Quadripartitus manuscripts**, see Wormald, *MEL*, pp. 237–8. Their contents are listed in P. Wormald, ‘Quadripartitus’, in his *Legal Culture in the Early Medieval West: Law as Text, Image and Experience* (London, 1999), pp. 81–114, at pp. 92–3. These manuscripts will be referred to collectively as *Quadripartitus*, with manuscript differences noted where relevant.

²⁰ Ker 226. Wormald discusses this manuscript in *MEL*, pp. 253–5.

group – that is pre-conquest manuscripts with no association to Wulfstan – consists of three complete manuscripts, namely Corpus Christi College 173, Cotton Otho B.xi and Cotton Nero E.i, as well as two fragments.²¹ Their content will be considered in the next chapter.

The third group consists of manuscripts associated with Wulfstan, Archbishop of York and Bishop of Worcester (d.1023).²² Wulfstan will be a key figure throughout this thesis, because he wrote a significant number of laws for Kings Æthelred and Cnut. Wulfstan's distinctive linguistic style has made it possible to identify him as the author of these laws and of a myriad of other texts. Combined, this corpus affords a unique view of an individual lawmaker and his methods, which will be discussed in chapters 3 and 5. Wulfstan's importance is also due to his dominance in the manuscript realm. There are six manuscripts with an association with Wulfstan containing Anglo-Saxon law. These are Harley 55(A), Cotton Claudius A.iii, York Minster Add.1, Cotton Nero A.i(B), Cambridge, Corpus Christi College 201 and Cambridge, Corpus Christi College 265.²³ These six are part of a group I will collectively refer to as 'Wulfstan manuscripts'. This term encompasses manuscripts owned and used by Wulfstan as well as those that appear to be later copies of his collections. All told, there are about fifteen such manuscripts.²⁴ Identification as a Wulfstan manuscript is based on a combination of the texts included, their being located at Worcester or York in

²¹ There are two pre-conquest fragments seemingly without attachment to Wulfstan: a fragment of *X Æthelred* is found in **Rome, Vatican Library, MS Reg. 946**: G&L 917. This manuscript is not the original home of the *X Æthelred* fragment, as Wormald argued in *MEL*, pp. 256–7. A part of *Ine* is contained in **BL, Burney 277** (fol. 42): Ker 136, G&L 397. The complete manuscripts include: **Cambridge, Corpus Christi College 173** (hereafter CCC 173): Ker 39, G&L 52. **BL, Cotton Nero E.i**: Ker 166, G&L 344. **BL, Cotton Otho B.xi**: G&L 357. Only 52 of 231 leaves of Otho B.xi survived the Cottonian fire in 1731, though a (seemingly) complete transcript from 1562 by Laurence Nowell (now **BL, Additional MS 43703**) survives. See Wormald's discussion in *MEL* pp. 172–81 as well as R.J.S. Grant, 'Laurence Nowell's transcript of BM Cotton Otho B. xi', *Anglo-Saxon England* 3 (1974), pp. 111–24 and P. Wormald, 'BL, Cotton MS Otho B. xi: A Supplementary Note', in his *Legal Culture in the Early Medieval West*, pp. 71–80. It is possible, as Wormald suggested (following Roland Torkar), that Nowell's transcript was made using Otho B.xi as well as a now-lost pre-conquest manuscript containing V As, *Index* and a version of II As; see P. Wormald, 'The Lambard Problem: Eighty Years On', in his *Legal Culture in the Early Medieval West*, pp. 139–78, at p. 164.

²² Chapters 3 and 5 will deal with Wulfstan's contribution to the corpus of laws, and the relevant literature will be cited there. For a recent introduction to Wulfstan's activities – legal and otherwise – see the chapters in M. Townend (ed.), *Wulfstan, Archbishop of York: the proceedings of the second Alcuin Conference* (Turnhout, 2004).

²³ **BL, Harley 55(A)**: Ker 225, G&L 412, and see Wormald, *MEL*, pp. 185–90 for the Wulfstan connection. **BL, Cotton Claudius A.iii**: Ker 141, G&L 314. **York Minster, Add.1**: Ker 402, G&L 774. **BL, Cotton Nero A.i(B)**: Ker 164, G&L 341. **Cambridge, Corpus Christi College 201** (hereafter CCC 201): Ker 49, G&L 65. **Cambridge, Corpus Christi College 265** (hereafter CCC 265): Ker 53, G&L 73.

²⁴ These include CCC 201; CCC 190; CCC 265; Copenhagen, Kongelige Bibliotek, G.K.S. 1595; BL, Cotton Tiberius A.xiii; BL, Cotton Nero A.i(B); BL, Cotton Claudius A.iii; BL, Cotton Vespasian A.xiv; BL, Harley 55(A); BL, Additional MS 38651; Oxford, Bodleian Library, Barlow 37; Rouen, Bibliothèque municipale, 1382 (fols. 173–98); Oxford, Bodleian Library, Junius 121; Oxford, Bodleian Library, Hatton 20; Oxford, Bodleian Library, Hatton 42; and York Minster, Add. 1.

the relevant period and the presence of the ‘Wulfstan hand’ identified by Neil Ker.²⁵ Some of these manuscripts contain what is known as Wulfstan’s ‘canon law collection’, which consists of canon law extracts in Latin seemingly collected, sometimes perhaps even composed, by Wulfstan.²⁶ All these manuscripts will be used as evidence for Wulfstan’s style, writings, influences and sources.

Wulfstan’s manuscripts are also the only manuscripts which are roughly contemporaneous with the date of composition of the texts they contain. No other law text appears to have survived in an original copy. Two manuscripts – CCCC 173 and Cotton Nero E.i – may have been produced within decades of the texts they contain, respectively *Alfred-Ine* and *IV Edgar*. The upshot is that palaeographical and codicological considerations will only be directly relevant in a few cases, given that we do not know how most laws were put on the page in their original versions.

0.3.2 Chronological extent

While most of our texts only survive in late eleventh- and twelfth-century manuscripts, almost all of them were issued in the names of kings ruling between c.600 and 1035. Three of the earliest laws are from Kent, while the remaining texts were issued by the kings of Wessex, later the kings of England.²⁷ While the next chapter deals with the label ‘law’ and on what grounds we can group texts together under that label, it does not deal with the modifier ‘Anglo-Saxon’. On what grounds can we place texts in such a category?

²⁵ Ker, *Catalogue*, p. 211; N.R. Ker, ‘The Handwriting of Archbishop Wulfstan’, in P. Clemoes and K. Hughes (eds), *England Before the Conquest: Studies in Primary Sources Presented to Dorothy Whitelock* (London, 1971), pp. 315–332. For criticisms against Ker’s argument, as well as Wormald’s endorsement of the argument, see Wormald, *MEL*, p. 188 and fn 108 and ‘Wulfstan and the Holiness of Society’, in his *Legal Culture in the Early Medieval West*, pp. 225–51, e.g. pp. 226–9.

²⁶ A key study of the canon law collection manuscripts is H. Sauer, ‘The Transmission and Structure of Archbishop Wulfstan’s “Commonplace Book”’, in P.E. Szarmach (ed.), *Old English Prose: Basic Readings* (New York, 2000), pp. 339–93. For a more recent introduction (and reconsideration), see M.D. Elliot, ‘Wulfstan’s Commonplace Book Revised: The Structure and Development of “Block 7”’, on Pastoral Privilege and Responsibility’, *The Journal of Medieval Latin* 22 (2012), pp. 1–48, at pp. 1–11; A very useful shorter discussion of the Wulfstan manuscripts containing law, including some from the canon law collection, is found in Wormald, *MEL*, pp. 190–224. For the foundational studies, see M. Bateson, ‘A Worcester Cathedral Book of Ecclesiastical Collections, made c. 1000 AD’ in *The English Historical Review* 10 (1895), pp. 712–731 and D. Bethurum, ‘Archbishop Wulfstan’s Commonplace Book’, *Proceedings of the Modern Language Association* 57 (1942), pp. 916–29.

²⁷ The best place to start for an account of the development of a kingdom of England is G. Molyneux, *The Formation of the English Kingdom in the Tenth Century* (Oxford, 2015).

We should certainly take into account the warnings offered by Susan Reynolds, including her reminder that ‘...the term “Anglo-Saxon” invites us to beg questions and confuse our own ideas with those of the period we study’.²⁸ She noted that people at the time hardly ever called themselves ‘Anglo-Saxon’. That is certainly the case in the laws, where kings rarely self-identify with an ethnic title. Two of the seventh-century Kentish texts identify their kings as *Cantwara cyningc* (‘king of the people of Kent’), and Ine and Alfred both style themselves *Westseaxna cyning* in the openings of their respectively seventh- and ninth-century laws.²⁹ No such self-identification is found again until the eleventh century, when a few texts style the king as ‘English’.³⁰ Remaining texts give the names of kings and nothing more. However, as chapter 1 demonstrates, a corpus of laws can be constructed on grounds other than ethnic labels – whether theirs or ours. While some of the laws I discuss are the laws of Wessex, some the laws of Kent and some the laws of England, they appear to be part of the same tradition. Therefore, ‘Anglo-Saxon’ is a convenient label for a corpus which cannot be called ‘English’ nor ‘West Saxon’.

The corpus of surviving laws stretches across more or less the entire Anglo-Saxon period, starting with the laws of Æthelberht, possibly issued some time at the start of the seventh century.³¹ I will only occasionally refer to this earliest law text. The circumstances of its production are beyond our ken, but there are reasons to think that they would have been different to those underlying other surviving law texts.³² Given its potentially unique genesis – which would require a whole study in itself – I will not draw on its evidence as much as that of other texts.

I end my study with the laws of Cnut. As chapter 5 shows, there are similarities between the law code made in the name of the conquering Danish king Cnut and the digests of Anglo-Saxon law written after the Norman conquest. In a sense, some Anglo-Norman

²⁸ S. Reynolds, ‘What Do We Mean by “Anglo-Saxon” and “Anglo-Saxons”?’ *Journal of British Studies* 24 (1985), pp. 395–414, at p. 414.

²⁹ *Wihtræd* and *Hlothbere and Eadric* use these designations for the kings.

³⁰ *V* and *VIII Æthelred* purport to be issued by *Engla cyng*, though neither mention Æthelred’s name. Cnut’s law code and his letter of 1027 specify that Cnut is ‘king of all England and of the Danes’, with the letter adding ‘Norway and parts of Sweden’; see *I Cnut* prol., *Cnut 1027* inscr.

³¹ For the dating of Æthelberht’s laws, see L. Oliver, *The Beginnings of English Law* (Toronto, 2002), pp. 14–6.

³² The standard account of Æthelberht’s laws is Oliver, *Beginnings*, esp. pp. 52–116; and a useful account is, as always, found in Wormald, *MEL*, pp. 93–101. A shorter and linguistically interesting contribution is P. Lendinara, ‘The Kentish Laws’, in J. Hines (ed.), *The Anglo-Saxons from the Migration Period to the Eighth Century: An Ethnographic Perspective* (Woodbridge, 1997), pp. 211–44. For the most recent attempt to get to grips with the *raison d’être* of Æthelberht’s laws, see T.B. Lambert, *Law and Order in Anglo-Saxon England* (Oxford, 2017), e.g. on pp. 31–3, 63–110. Lambert’s views are discussed further in chapter 2.

laws could have been included in this study. However, given that this is a study of the circumstances of production and the processes that produced written law, I choose to include texts produced within the same system of issuing royal instructions. The preface to Cnut's code, as well as external evidence for its promulgation – set out in chapter 5 – suggest that Cnut's laws were composed and promulgated in similar ways as those of previous Anglo-Saxon kings. Indeed, it was even written by the same person, namely Wulfstan, who wrote laws for Cnut's predecessor Æthelred. Most of the post-conquest compilations are the products of a different system and they are self-consciously literary (perhaps historical) works, rather than self-styled acts of legislation. Therefore, the laws of Cnut mark a natural endpoint for this thesis.

0.4 Writing and law

While an inductive linguistic approach to the Anglo-Saxon laws is new, there is an extensive background on issues of writing and early medieval law, both English and continental.³³ I have already mentioned Daube's form criticism, which has only to a limited degree been applied to the English evidence.³⁴ Previous scholarship has grappled mainly with three questions. Firstly, why was law written down? Secondly, what is the relationship between law and writing in terms of legal force? Thirdly, what is the relationship between surviving law texts and assemblies? In broad terms, many of the relevant studies concern what the content of written law actually represents: is it the ideals of lawmakers or the combined views of an assembly, and should we think of it as prescribing practices that were later implemented on

³³ This has been a very important issue in Carolingian studies too, which I unfortunately cannot deal with in detail. One of the most important works, which has inspired some of the Anglo-Saxon scholarship, is R. McKitterick, *The Carolingians and the Written Word* (Cambridge, 1989). For more recent contributions, see A. Rio, *Legal Practice and the Written Word in the Early Middle Ages: Frankish Formulae, c.500–1000* (Cambridge, 2009) and M.J. Innes, 'Charlemagne, justice and written law', in A. Rio (ed.), *Law, Custom and Justice in Late Antiquity and the Early Middle Ages* (London, 2011), pp. 155–203, and references therein. Alice Taylor gives a good overview of a broader range of literature relevant to these issues in A. Taylor, 'Lex Scripta and the Problem of Enforcement: Anglo-Saxon, Welsh, and Scottish Law Compared', in J. Scheele and F. Pirie (eds), *Legalism: Community and Justice* (Oxford, 2014), pp. 47–75. I do not deal with the issue of literacy here, though it is also relevant to the uses of written law. A good introduction to both the Anglo-Saxon and continental material can be found in the chapters in R. McKitterick (ed.), *The Uses of Literacy in Early Mediaeval Europe* (Cambridge, 1992).

³⁴ Both Wormald and Jürg Schwyter have referred to some of Daube's conclusions, e.g. about the use of relative sentences: see Wormald, *MEL*, pp. 95 fn 333, 271 fn 23, 302 fn 169 and "Inter cetera bona genti suae": Law-Making and Peace-Keeping in the Earliest English Kingdoms", in his *Legal Culture in the Early Medieval West*, pp. 184, 186 and J.R. Schwyter, 'Syntax and Style in the Anglo-Saxon Law-Codes', in C. Ehler and U. Schaefer (eds), *Verschriftung – Verschriftlichung: Aspekte des Medienwechsels in verschiedenen Kulturen und Epochen* (Tübingen, 1998), pp. 189–231, at p. 214 fn 26.

the ground? As we shall now see, most previous studies thus deal with the role and function of written law, whereas studies on the actual text and written features of the laws are lacking.

0.4.1 Uses of written law

One of the most enduring debates in the field of Anglo-Saxon law concerns why law was written down at all. This debate is above all associated with Patrick Wormald, who argued that early medieval written law may never have been intended to be used for practical purposes, but that law was written down in emulation of Roman and Biblical law. His 1977 article '*Lex Scripta* and *Verbum Regis*: Legislation and Germanic Kingship from Euric to Cnut' showed that there is almost no evidence that written law was used in deciding cases. Wormald took this as one indication that law was not written down to provide direct instructions for dispute resolution.³⁵ What is more, extant written laws contain only a fraction of what must have been the law, and surviving written laws appear to be too disorganized and haphazard to offer much value to judges in court. To Wormald, this was further indication that the commitment of law to writing was 'ideological in its inspiration'.³⁶ Wormald raised the issue again in *The Making of English Law*, arguing that lawmaking in early medieval northern Europe was 'a perpetuation of Roman patterns', with the Anglo-Saxons also following Frankish examples.³⁷ Furthermore, he argued that the commitment of law to writing should be seen in connection with ideas of 'imperium' and that it may have happened more frequently during periods of 'heightened ideological aspirations'.³⁸ Wormald has therefore come to characterize 'the ideological stance' within this debate.

The decades since the publication of Wormald's '*Lex Scripta*' article have seen a range of responses.³⁹ Many of these have demonstrated that written laws seem to have been used on the ground, both in judgment and as part of the administrative system. Simon Keynes' article 'Royal Government and the Written Word in Late Anglo-Saxon England' aimed to examine 'the extent to which late Anglo-Saxon government and administration were

³⁵ P. Wormald, '*Lex Scripta* and *Verbum Regis*: Legislation and Germanic Kingship from Euric to Cnut', in his *Legal Culture in the Early Medieval West*, pp. 1–44, at pp. 18–22.

³⁶ Wormald, '*Lex Scripta*', e.g. pp. 13, 37.

³⁷ This is the topic of Chapter 2 in Wormald's *MEL*. See, for instance, pp. 50, 67, 91, 96–7.

³⁸ Wormald, '*Lex Scripta*', pp. 30–1 and *MEL*, p. 50.

³⁹ An excellent overview of the issue and various viewpoints is found in Taylor, '*Lex Scripta* and the Problem of Enforcement', pp. 47–9.

dependent on the use of the written word'.⁴⁰ He found that there was 'extensive use of written documents in the dissemination of law', though he noted that this would have coexisted with 'purely oral forms of conducting the affairs of the realm'.⁴¹ To Keynes, then, the commitment of law to writing served a practical purpose, allowing the king's instructions to be communicated.

While Keynes focused on the administrative system, Katy Cubitt found an example of written law seemingly playing a role in solving a case on the ground. Her article "As the Lawbook Teaches": Reeves, Lawbooks and Urban Life in the Anonymous Old English Legend of the Seven Sleepers' examined the translation of a literary text. She argued that its reference to a *domboc* ('judgment book, written law') in the context of dispute resolution points in the direction that written law was consulted when solving cases.⁴² She concluded that judges might not have had a book open in front of them while judging, but that they were expected to act in accordance with written law.⁴³ She placed this in the context of 'textual communities', that is, a situation where texts influence practices and actions, even though they were not always consulted directly and could only be read by a few people.⁴⁴

0.4.2 Writing: a constitutive element?

The issue of written law and its intended and actual uses is thus closely connected to another question: was writing a 'constitutive' part of lawmaking or are surviving written laws, in Matthew Innes' words, '*aides-mémoires* recording decisions made orally'?⁴⁵ Wormald's early view corresponded to the second option: he stated that 'formal royal law-making may have

⁴⁰ S. Keynes, 'Royal Government and the Written Word in Late Anglo-Saxon England', in R. McKitterick (ed.), *Uses of Literacy in Early Medieval Europe* (Cambridge, 1990), pp. 226–57, at p. 230. Some further studies on the use of written text in the administrative system (with a focus on Æthelstan's legislation) are L. Roach, 'Law Codes and Legal Norms in Later Anglo-Saxon England', *Historical Research* 86 (2013), pp. 465–86; D. Pratt, 'Written Law and the Communication of Authority in Tenth-Century England', in D.W. Rollason, C. Leyser, and H. Williams (eds), *England and the Continent in the Tenth Century* (Turnhout, 2010), pp. 331–50.

⁴¹ Keynes, 'Royal Government', p. 244.

⁴² C. Cubitt, "As the Lawbook Teaches": Reeves, Lawbooks and Urban Life in the Anonymous Old English Legend of the Seven Sleepers', *The English Historical Review* 124 (2009), pp. 1021–1049.

⁴³ Cubitt, "As the Lawbook Teaches", p. 1046.

⁴⁴ Cubitt, "As the Lawbook Teaches", pp. 1046–7. 'Textual communities' is a concept introduced by Brian Stock; see references in Cubitt's article for his original studies.

⁴⁵ M. Innes, 'Charlemagne's Government', in J. Story (ed.), *Charlemagne: Empire and Society* (Manchester, 2005), pp. 71–89, at p. 77. This is one of the many issues I discuss which has a long historiographical background in Carolingian studies, which I cannot cover here. Helpful references to the debate for continental material are found in Innes' chapter just cited, as well as in the works I cite in the following footnotes. See also H. Mordek, 'Kapitularen und Schriftlichkeit', in R. Schieffer (ed.), *Schriftkultur und Reichsverwaltung unter den Karolingern* (Wiesbaden, 1996), pp. 34–66, with an overview of some of the historiography on pp. 37–8.

remained oral, and our texts may be more in the nature of ecclesiastical records of decisions taken than legislative acts in themselves.⁴⁶ He argued that the *verbum regis* ('word of the king') was the essential element and that extant texts were only attempts to fix it in writing.⁴⁷ A somewhat similar position was taken by Hannah Vollrath.⁴⁸ In her view, law gained its legal force from being announced. Writing was something which could happen – but by no means always did – after law had been made orally. She argued that only exceptional circumstances led to the commitment of law to writing, such as the church wanting a particular issue documented or because a meeting between legal cultures – such as the English and the Danish – necessitated it.⁴⁹ Our surviving texts are the products of such unusual circumstances. A somewhat similar view has more recently been taken by Tom Lambert, who argued that the writing down of the earliest laws (such as *Hlotthere*, *Ine* and *Wibtræd*) was merely a 'superficial act', serving no 'practical legal purpose'.⁵⁰

0.4.3 Law and assemblies

The questions raised above are relevant to yet another long-standing issue, namely the role of consensus and assemblies in lawmaking. Do our laws represent the will of the king or another lawmaker or are they expressions of collective decisions reached in meetings between the king and his advisors? Both on the continent and in Anglo-Saxon England such questions are relevant because there is evidence for a connection between assemblies and written law. As chapter 3 shows, many Anglo-Saxon royal laws mention the advice or deliberations of *witan* ('wise men, advisors'). Furthermore, many texts specify the place at

⁴⁶ P. Wormald, 'The Uses of Literacy in Anglo-Saxon England and its Neighbours', *Transactions of the Royal Historical Society* 27 (1977), pp. 95–114, at p. 112.

⁴⁷ See e.g. Wormald, '*Lex Scripta*', pp. 15–25 and *MEL*, pp. 366–97.

⁴⁸ H. Vollrath, 'Gesetzgebung und Schriftlichkeit. Das Beispiel der angelsächsischen Gesetze', *Historisches Jahrbuch* 99 (1979), pp. 28–54.

⁴⁹ Vollrath, 'Gesetzgebung und Schriftlichkeit', e.g. pp. 52–3. Part of Vollrath's argumentation concerned a potential Anglo-Saxon royal chancery. She did not see any evidence for such an agency, which led her to the conclusion that writing cannot have been a necessary part of lawmaking, because there were no mechanism in place for it. The existence of a chancery is the topic of another long-running debate, which has primarily taken place within scholarship on royal diplomas. Unfortunately, it is beyond the scope of this study to consider this issue in detail, although chapter 3 and the appendix on the language will consider some possibilities for who was in charge of the actual writing of the laws, partly in relation to a potential chancery. The main modern study on the question of a royal chancery is found in S. Keynes, *The Diplomas of King Æthelred 'the Unready': 978–1016* (Cambridge, 1980); with some updated views in S. Keynes, 'Church Councils, Royal Assemblies, and Anglo-Saxon Royal Diplomas', in G.R. Owen-Crocker and B.W. Schneider (eds), *Kingship, Legislation and Power in Anglo-Saxon England* (Woodbridge, 2013), pp. 17–182.

⁵⁰ Lambert, *Law and Order*, pp. 80–1.

which they were decided. The consistency of such self-representation – as well as evidence from charters – gives reason to think that law-making, and its (partial) recording in writing, was in one way or another connected to meetings. The trouble is that the precise relationship is unclear, as is the meaning of ‘*witan*’, as chapter 3 discusses in detail.⁵¹

In much of the scholarship, there nevertheless appears to be an assumption that law and law texts were made at assemblies. This is evident, for example, in Levi Roach’s *Kingship and Consent in Anglo-Saxon England*, where the premise of the chapter on ‘Legislation and Consent’ is that the content of law texts can to a large degree be taken as evidence for what topics were discussed at assemblies.⁵² A similar view is detectable in Keynes’ work, for instance in statements such as ‘Law-codes and royal diplomas, for the most part representing the products of royal assemblies...’⁵³ or ‘...law-codes and royal diplomas, which together represent the surviving written products of royal assemblies’.⁵⁴ Similar examples can be found elsewhere: ‘Like law-codes, diplomas are the written records of oral grants, and, like law-codes, they emanate from royal assemblies’;⁵⁵ or ‘Legislation was almost invariably the work of the king and his assembly, from the seventh up to the eleventh century’.⁵⁶

A seemingly more cautious stance is taken by Tom Lambert. He suggested that ‘our law texts represent part of the discourse of great royal assemblies – that the laws as we have them would have made sense to the aristocrats present’, even if the final versions of the texts were not made by the assembly itself.⁵⁷ At the same time, he too appears to base his study on the premise that law was made at assemblies. Lambert stated that ‘many of [the laws] contain prologues explaining that their contents represent the decisions of a particular king in conjunction with an assembly of leading noblemen, and well over a century of rigorous editorial scholarship has confirmed that most of these statements are broadly trustworthy.’⁵⁸

⁵¹ For a historiography on assemblies and the *witan*, as well as a working definition of ‘an assembly’, see L. Roach, *Kingship and Consent in Anglo-Saxon England, 871–978: Assemblies and the State in the Early Middle Ages* (Cambridge, 2013), pp. 1–26. These issues, including the meaning of the word ‘*witan*’ and its relation to assemblies, are discussed in more detail in chapter 3.

⁵² Roach, *Kingship and Consent*, pp. 104–21.

⁵³ S. Keynes, ‘The “Cuckhamsley Chirograph”’, in S. Jurasinski and A. Rabin (eds), *Languages of the Law in Early Medieval England: Essays in Memory of Lisi Oliver* (Groningen, 2019), pp. 193–211, at p. 193.

⁵⁴ Keynes, ‘Church Councils’, p. 140.

⁵⁵ A. Williams, ‘Introduction’, in G.R. Owen-Crocker and B.W. Schneider (eds), *Kingship, Legislation and Power in Anglo-Saxon England* (Woodbridge, 2013), pp. 1–14, at p. 13.

⁵⁶ C. Wickham, ‘Consensus and Assemblies in the Romano-Germanic Kingdoms: a Comparative Approach’, in V. Epp and C. Meyer (eds), *Recht und Konsens im frühen Mittelalter* (Ostfildern, 2017), pp. 389–424, at pp. 415, 417.

⁵⁷ Lambert, *Law and Order*, p. 14.

⁵⁸ *Ibid.*

The trouble is that none of the works cited to back up this claim – Liebermann’s *Die Gesetze*, Wormald’s *The Making of English Law* and the Early English Laws Project – confirm this.⁵⁹ Lambert rejected the notion that the laws represent the mentality of an intellectual elite only – as he interpreted Wormald’s view to be – claiming instead that they reflect a ‘broader mix of mentalities present in the assemblies whose decisions they purport to record’.⁶⁰ He acknowledged that there might be individual differences between texts, yet made no attempt to draw out such distinctions.

As my study will show, not all laws were produced in the same way. This observation will have an impact on all three debates just discussed. We do not need to search for only one answer to questions of constitutive force and the intended purposes for written law. Writing played an integral part in the making of some kinds of law texts – notably the law codes – whereas other texts may reasonably be seen as *aides-mémoires* or records of decisions reached. Similarly, while some law texts appear to be the products of assembly deliberations, there is some evidence to suggest that others were not. What is more, as I will suggest in chapter 3, it may be possible to distinguish between law texts made at assemblies, law texts only read out at assemblies and law texts which had little to do with assemblies at all.⁶¹ Thus, the laws’ textual, linguistic and formal evidence has the potential to add the nuance sometimes lacking in previous scholarly contributions, in addition to offering specific conclusions about the production of individual texts.

0.5 Thesis outline

The following five chapters will show how we can access evidence of the circumstances of production of written law and what the processes of production may have looked like for a number of surviving texts. The first step is to assess the surviving sources. In chapter 1, I uncover what is meant by references to ‘Anglo-Saxon laws’ in modern scholarship. Thereafter, I trace the development of this corpus of laws from medieval manuscripts to

⁵⁹ Lambert, *Law and Order*, p. 14 fn 42. Lambert does not supply exact page numbers, so this is a difficult claim to evaluate, but I am not aware of anything in Liebermann, *MEL* or earlyenglishlaws.ac.uk that confirms that the contents of laws represent assembly decisions.

⁶⁰ Lambert, *Law and Order*, pp. 21–2 fn 58.

⁶¹ This approach again resembles Christina Pössel’s. She also questioned the default position that Carolingian capitularies and assemblies must go together, arguing that capitularies can be records of assembly decisions or not be associated with an assembly at all; see Pössel, ‘Authors and recipients’, pp. 255–9.

printed editions issued between 1568 and 1903. This shows how editors' historical contexts and individual interpretations have contributed to shaping the modern understanding of the canon of Anglo-Saxon laws. In the conclusion to chapter 1, I set out a new corpus.

This new corpus is then divided into categories. Chapter 2 sets out the history of classification of the Anglo-Saxon laws. I will show how a small number of texts have been categorized within a framework inspired by continental law. However, a more significant issue has been the lack of categorization. I argue for the importance of recognizing different kinds of written texts and for a new division based on formal and processual features. My classification consists of two groups, law codes and decrees, which are described at the end of the chapter.

These two types are the topic of the remaining three chapters. Chapter 3 examines the decrees. I show the existence of subcategories within this group, such as legislative writs and agreements. The main emphasis of the chapter is on the production of individual texts in relation to assemblies. I will show that some texts appear to have been produced before an assembly, some at or shortly after and others significantly after or not at assemblies at all. This chapter will also examine some other categories of law texts, such as tracts, compilations and notes.

The topic of chapter 4 is the law code of King Alfred. The discussion is divided into two parts: sources and compilation process. Part one deals with the written sources that must have been used in the production of this text, as well as how these are adapted and structured. Part two attempts to reconstruct the process of compilation and composition, and it includes a consideration of who might have been involved. As this chapter makes clear, the selection and use of sources for the code is guided by someone's thinking *about* law and its nature. I set out these thoughts and trace the possible origins of such juridical thinking.

Chapter 5, on the law code of King Cnut, follows a similar structure. Part one investigates the sources used by its drafter, Archbishop Wulfstan, as well as how he copied and adapted his material. Part two concerns the structure of the law code, which I find is based around pairs of 'homiletic' and 'regulatory' blocks. Part three is an attempt to reconstruct the compilation and composition process of *I-II Cnut*. This chapter will offer conclusions on both law codes, including some thoughts on the potential contexts for the issuing of codes.

The appendix concerns the characteristics of the laws' language. It makes the case that there are certain generic conventions which were followed by law writers. I examine

paratextual features of the texts, such as prologues and chapter numbering, as well as textual features such as grammatical linking, syntax and expressions of obligation. The existence of conventional features may imply that there were people with knowledge of – or even specialist training in – legislative drafting, and I will explore the implications of such a possibility. The evidence set out in the appendix will be referred to throughout, and it can be read in full after chapters 1 and 2 or be consulted, as and when relevant, throughout the thesis.

1 The Corpus of Anglo-Saxon Law

In Patrick Wormald's view, Felix Liebermann's 1903 edition *Die Gesetze der Angelsachsen* turned Anglo-Saxon law into a 'statuesque monument', presenting the laws as a 'seamless web (like the *Corpus Iuris*)'.¹ Indeed, it is clear that Liebermann's edition has created an impression that there is a defined body of Anglo-Saxon laws. As I argue in this chapter, this corpus is not fit for purpose. Liebermann's edition-cum-corpus is the culmination of an 800-year effort to collect Anglo-Saxon laws, which has been guided by changing political, legal and scholarly concerns and circumstances. His corpus, and thus ours, is not just a product of its own time, it is also an amalgam of centuries of editors' individual answers to the question 'what makes an Anglo-Saxon law?'

In this chapter, I examine what the modern corpus is, before tracing its formation from the earliest collections of Anglo-Saxon law made in the twelfth century to the printed editions issued between 1568 and 1903. As will become clear, Liebermann's corpus may well be a good source for 'Anglo-Saxon law' and all its practices, customs, rules and principles, but it does not serve as a corpus of 'Anglo-Saxon laws', a purpose to which it has nevertheless been put. Therefore, I will consider the question of which texts we can and should classify as 'Anglo-Saxon laws'.² Finding an answer – and, most importantly, setting out the criteria on which that answer is based – is a prerequisite for any further study of the circumstances of production of law. At the end of the chapter, I will therefore suggest a revised corpus.

1.1 Today's corpus

No one has explicitly discussed what the corpus of Anglo-Saxon laws should be. Instead, the Old English texts in Liebermann's *Die Gesetze* are taken as the basis for almost all studies on Anglo-Saxon law and legislation. The clearest example is the *Toronto Dictionary of Old English*

¹ Wormald, *MEL*, p. xi and *MEL ii*, p. 6.

² The point here is not to attempt to define 'law' or 'legislation', though Wormald's working definition of 'legislation' might be used as a starting point: 'written decrees by secular authority with ostensibly general application': Wormald, *Lex Scripta*, p. 3.

and the associated textual corpus.³ For the making of the dictionary, all surviving Old English texts were assigned letters – representing poetry (A), prose (B) and glosses (C) – and numbers representing different types of text.⁴ B14 is the category labelled ‘The Laws of England’, and it includes all Old English texts found in Liebermann’s *Gesetze*, numbered in the order in which they are printed by Liebermann.⁵ The complete dependence on Liebermann is illustrated by the omission of the text known as *Cnut 1018*, which is now widely recognized as an independent text, but which Liebermann printed as a variant of Cnut’s main code.⁶ A search under B14 will also yield results from the Old English version of *Æthelstan Alms*. This text was printed by Liebermann, but it was shown in the 1920s to be an Elizabethan translation into Old English from a twelfth-century Latin text.⁷ In the *Dictionary of Old English*, any text which is sorted under B14 is labelled as ‘law’ in the citations, which again influences the definitions of words, which can be marked as being ‘frequent in law’ or have a certain meaning ‘in a legal context’.⁸ While not engaging directly with Anglo-Saxon law as a subject, the Dictionary and Corpus provide a definition of the legal corpus which is visible and available to most scholars.

The Dictionary and Corpus only adopt Liebermann’s Old English texts and not the rituals and formulas in Latin which, as we shall see below, Liebermann also included in his edition. This is the case in most other scholarship too. Most historians seem to adopt Liebermann’s full Old English corpus, sometimes explicitly though usually implicitly.⁹ Others

³ *Dictionary of Old English: A to I online*, ed. Angus Cameron, Ashley Crandell Amos, Antonette diPaolo Healey et al. (Toronto, Dictionary of Old English Project, 2018) (hereafter *DOE*); *Dictionary of Old English Web Corpus*, compiled by Antonette diPaolo Healey with John Price Wilkin and Xin Xiang (Toronto, Dictionary of Old English Project, 2009) (hereafter *DOE Corpus*).

⁴ R. Frank and A.F. Cameron (eds), *A Plan for the Dictionary of Old English* (Toronto, 1973), p. 27.

⁵ These so-called ‘Cameron numbers’ can be accessed online: tapor.library.utoronto.ca/doe/#listoftexts, and they are listed in Frank and Cameron (eds), *Plan for the Dictionary*, pp. 25–306.

⁶ A.G. Kennedy, ‘Cnut’s law code of 1018’, *Anglo-Saxon England* 11 (1982), pp. 57–81.

⁷ For more on the sixteenth-century translation of certain texts, see below on p. 39.

⁸ A free-text search for ‘law’ or ‘legal’ in the *Dictionary of Old English* gives plenty of examples.

⁹ For example, Mary Richards refers to Liebermann as the standard edition for laws and accepts his full list of Old English texts in her study of legal vocabulary, with the result that she considers, for example, *neofod* ‘altar’ to be a standard legal term, partly because it is used in a coronation oath, ordeal rituals and Alfred’s biblical translation (M.P. Richards, ‘Elements of a Written Standard in the Old English Laws’, in J.B. Trahern (ed.), *Standardizing English: Essays in the History of Language Change* (Knoxville, 1989), pp. 1–22, at p. 13). The same is the case in D. Bethurum, ‘Stylistic Features of the Old English Laws’ *The Modern Language Review* 27 (1932), pp. 263–279, at p. 263. Others also use almost all the texts found in Liebermann without discussion, though without mentioning that the selection is taken from Liebermann, such as J.R. Schwyter, *Old English Legal Language: The Lexical Field of Theft* (Odense, 1996), pp. 22–3. Roach discussed the variety of legal texts surviving and argued that such variety was not ‘problematic’ to the Anglo-Saxons, without bringing up precisely what he is counting or why the corpus looks the way it does: Roach, ‘Law Codes’, p. 478. The same is also the case in general overviews of the legal material, e.g. A. Rabin, ‘Law and Justice’, in J. Stodnick and R.R. Trilling (eds), *A Handbook of Anglo-Saxon Studies* (Chichester, 2012), pp. 85–98, at p. 86. Further implicit acceptances of

make adjustments to his list of texts, sometimes explicitly though usually implicitly.¹⁰ Importantly, where someone openly argues for or against considering a specific text as legal or ‘a law’, it is mostly done in reference to Liebermann, making it clear that his edition is seen as the starting point for a corpus.¹¹

Liebermann’s influence is thus clear, though the most conspicuous feature of the scholarship is the lack of actual discussion of the corpus. This tendency is particularly clear when it comes to certain texts which are not clearly legislative but which are printed in *Die Gesetze*. For example, a study of ‘proverbs in the Anglo-Saxon laws’ used the text known as *Rectitudines singularum personarum*, presumably because it provides rich evidence of proverbs.¹² As we shall see later, this text cannot straightforwardly be called legislative, though the author does not justify their choice to label it ‘a law’. Had this text not been printed in Liebermann, such a study would have had to be prefaced with a justification for why this text should be classified as ‘a law’. This then illustrates the general tendency: most of the time ‘Anglo-Saxon laws’ is mentioned as a category without further specification, with Liebermann’s edition functioning as a de facto canon.

1.2 The old corpus in manuscripts

This implicit corpus started its formation over 800 years ago, with the compilation of three Anglo-Norman collections of pre-conquest law. In this section I will trace this formation by

Liebermann’s corpus are, for instance: P. Wormald, ‘Laws’, in *The Wiley-Blackwell Encyclopedia of Anglo-Saxon England*, 2nd ed., ed. M. Lapidge et al. (Chichester, 2014), p. 285 or Keynes, ‘Church Councils’, p. 31.

¹⁰ Wormald explicitly discussed and gave reasons for omitting certain texts in *The Making of English Law*, such as *Episcopus* (p. 392 n 584) or the ‘Canons of Edgar’ (p. 391 n 579), though he included the text known as *Rectitudines singularum personarum*, despite considering it ‘barely legal’ (p. 387). Andrew Rabin has discussed and questioned the criteria for inclusion in the corpus, which he explicitly based on Liebermann; A. Rabin, ‘Ritual Magic or Legal Performance? Reconsidering and Old English Charm Against Theft’, in S. Jurasinski, L. Oliver, and A. Rabin (eds), *English law before Magna Carta: Felix Liebermann and Die Gesetze der Angelsachsen* (Leiden, 2010), pp. 177–95, at pp. 177–9, 194–5. He argued for a more inclusive corpus, which takes both twelfth-century manuscript context and relevance to the legal system into account. Implicit adjustments to Liebermann’s corpus are found in, for example, Lambert, *Law and Order*: the book contains no discussion of what precisely ‘an Anglo-Saxon law’ refers to, though the list of abbreviations (pp. xiii–xvi) and the index (s.v. ‘law texts’, pp. 386–7) shows that Lambert used most, but not all, of Liebermann’s texts in his analysis. More importantly, Lambert gave no explanation of what is included or omitted and why, which is problematic for a work that seeks to recover ideals of order through ‘pay[ing] close attention to the categories and priorities within our evidence, particularly our texts of laws themselves’ (p. 1).

¹¹ This is the case whether it is an argument is for excluding a text (such as in Wormald, *MEL*, p. 392 fn 584), or including a text (for example, Rabin, ‘A Charm against Theft’, pp. 177–9).

¹² R. Bremmer, ‘“Qui brecht ungewealdes, betan gewaldes”: Proverbs in the Anglo-Saxon Laws’, in S. Jurasinski and A. Rabin (eds), *Languages of the Law in Early Medieval England: Essays in Memory of Lisi Oliver* (Groningen, 2019), pp. 179–92.

examining the content and possible rationale behind the compilation of the twelfth-century collections *Textus Roffensis*, Cambridge Corpus Christi College 383 and *Quadripartitus*. The following section will explore the printed editions of Anglo-Saxon laws, the first of which appeared in 1568. The two sections make a continuous argument, because – as will become clear – there has been a degree of continuity since the twelfth century. However, the process is also marked by legal, political and scholarly changes which produced different ways of thinking about authenticity, genre and manuscripts. However, before dealing with the early collections and editions, I will set out the pre-conquest manuscript situation, which will suggest some ways in which we can access an Anglo-Saxon idea of a corpus of laws.

1.2.1 Anglo-Saxon manuscripts

No manuscript containing a collection of separate law texts has survived from the pre-conquest period.¹³ The pre-conquest manuscript context of legislation is instead a mixed bag, with laws appearing alongside historical, homiletic, penitential and medical texts.¹⁴ Yet, we should be cautious of making too much of this apparently eclectic context. There are so few manuscripts surviving that our view is extremely limited, and, even more importantly, it is heavily shaped by one individual, namely Wulfstan.

In fact, there are only three complete pre-conquest manuscripts containing law texts that have no association with Wulfstan and two more are in fragments.¹⁵ These manuscripts contain only four law texts: *Alfred-Ine*, *II Æthelstan*, *IV Edgar* and a fragment of the text known as *X Æthelred*. *IV Edgar* seems to have been brought into its current manuscript (Cotton Nero E. i) in the sixteenth century, and its original manuscript context could have been a liturgical book.¹⁶ The fragment of *X Æthelred* is also not in its original context, and Wormald suggested that it came from a gospel book, psalter or pontifical.¹⁷ The two pre-conquest

¹³ Wormald notes that Cotton Nero A.i(A) could date to just before or just after the conquest (*MEL*, pp. 224–8). It contains *I-II Cnut*, *II-III Edgar*, *Alfred-Ine*.

¹⁴ The following manuscripts (in chronological order) pre-date the conquest: CCCC 173 (G&L 52), Cotton Otho B.xi (G&L 357), Cotton Nero E.i (G&L 344), Harley 55(A) (G&L 412), Cotton Claudius A.iii (G&L 314), York Minster, Add.1 (G&L 774), Cotton Nero A.i(B) (G&L 341), CCCC 201 (G&L 65), CCCC 265 (G&L 73), CCCC 190 (G&L 59).

¹⁵ The complete manuscripts are CCCC 173 (Af-Ine), Cotton Otho B.xi (Af-Ine, II As) and Cotton Nero E.i (IV Eg). The fragments are found in Rome, Vatican Library, MS Reg. 946 (X Atr) and Burney 277 (*Ine*). These manuscripts are discussed in the introduction.

¹⁶ Wormald, *MEL*, pp. 182–5.

¹⁷ Wormald, *MEL*, p. 256.

manuscripts containing *Alfred-Ine*, the tenth-century book CCCC 173 and the early eleventh-century Cotton Otho B.xi,¹⁸ are best described as historical. They both place *Alfred-Ine* with the *Anglo-Saxon Chronicle* and a West-Saxon royal genealogy.¹⁹ The Otho manuscript also contains the Old English translation of Bede's *Historia ecclesiastica*, the *Burghal Hidage*, a poem on fasting, medical recipes and *II Æthelstan*.

The group of Wulfstan manuscripts is a different beast. They contain several versions of the laws known to have been written by the Archbishop himself, namely the later laws of Æthelred (*V–VIII Æthelred*) and some of those of Cnut (*Cnut 1018* and Cnut's letters), as well as several tracts.²⁰ These manuscripts contain only four secular laws not composed by Wulfstan himself, namely *I Æthelstan*, *I Edmund*, *II–III Edgar* and *IV Edgar* (with a Latin version).²¹ Otherwise the manuscripts include a large number of texts known to have been written by Wulfstan. These include homilies, the texts collectively known as the *Institutes of Polity* and the 'Canons of Edgar', which we will meet again later in this chapter. There is also a range of texts, in Latin and Old English, by other authors: penitentials, canons, letters and so on.²² Disentangling Wulfstan's texts and manuscripts is a huge and ongoing project. For the purposes at hand, it is enough to note that none of these manuscripts are dedicated solely to law – whether canon or secular – and only Cotton Nero A. i(B) has a continuous sequence of Anglo-Saxon royal laws.²³

However, this is only the extant manuscript context of the laws. One of Wormald's key arguments was that law texts may originally have circulated on loose leaves, in booklets

¹⁸ Cotton Otho B.xi (G&L 357) is dated to s. x med. (Bede's *Historia*) and to s. xi¹ (remaining content) and CCCC 173 (G&L 52) to s. ix/x. Otho B.xi survives only as fragments and as part of a transcript made by Nowell; see above p. 14 fn 21. Otho's version of *Alfred-Ine* and some of the annals were copied from CCCC 173; see Ker, *Catalogue*, pp. 230–32.

¹⁹ For an in-depth description of CCCC 173, see M.B. Parkes, 'The Palaeography of the Parker Manuscript of the Chronicle, Laws and Sedulius, and Historiography at Winchester in the Late Ninth and Tenth Centuries', *Anglo-Saxon England* 5 (1976), pp. 149–71, and see pp. 166–7 for the discussion of Alfred's code.

²⁰ Six manuscripts containing royal laws are associated with Wulfstan, namely Harley 55(A) (G&L 412), Cotton Claudius A.iii (G&L 314), York Minster, Add. 1 (G&L 774), Cotton Nero A.i(B) (G&L 341), CCCC 201 (G&L 65), CCCC 265 (G&L 73). The tracts include *Gefyncðu*, *Norðleoda*, *Mircna*, *Að*, *Hadbot*.

²¹ I As and I Em are found in CCCC 201 and Cotton Nero A.i(B); II–III Eg in CCCC 201, Cotton Nero A.i(B) and Harley 55(A); IV Eg in CCCC 265 (both Latin and OE versions). See below and chapter 3 (esp. sections 3.1.1.1, 3.2.1 and 3.2.4) for more on these texts in these manuscripts.

²² For more details about these manuscripts, see above pp. 14–5.

²³ The relevant part of Cotton Nero A.i(B) (i.e. fols. 70r–96v) is a self-contained unit, which shows signs of having been shifted around in the manuscript, as Wormald shows (*MEL*, pp. 198–201). Given that there is some internal thematic consistency to this section, which contains *inter alia* chapters from *Institutes of Polity* and I As, I Em, II–III Eg and V Atr, perhaps it originated as an independent booklet. I discuss the thematic coherence of this section in I. Ivarsen, 'Æthelstan, Wulfstan and a Revised History of Tithes in England' (forthcoming). See also the discussion of *I Æthelstan* in chapter 3, below on pp. 79–81.

or in folders.²⁴ Wormald's argument was primarily based on the tendency of certain clusters of texts to recur in the post-conquest manuscripts, even though the manuscripts do not mimic each other in the overall order of text.²⁵ This suggested to him that some of the post-conquest legal collections were copied from booklets or folders containing thematically linked loose leaves or quires.²⁶ While there is no definitive manuscript evidence for the circulation of loose leaves or booklets made up of Wormald's suggested 'mini-collections', there is some evidence of longer texts appearing in independent booklets. The only extant example of a free-standing booklet is the twelfth-century manuscript BL, Harley MS 55(B), which contains only *I-II Cnut*.²⁷ More evidence is found in composite manuscripts, some of which pre-date the conquest.²⁸ As M.B. Parkes established, the part containing Alfred's law code in its earliest manuscript, CCC 173, appears to have been written out as an independent booklet, which was added to the core part of the manuscript in the mid-tenth century.²⁹ A century later, perhaps some time around the conquest, the manuscript Cotton Nero A.i(A) was made by combining two clearly separate booklets written by two separate scribes, one containing *I-II Cnut* and the other *II-III Edgar* and Alfred's code.³⁰ One of Wulfstan's manuscripts, CCC 265, has what appears to have been an independent booklet, which contains a Latin text on excommunication, the Latin version of *IV Edgar* and the Old English version of *IV Edgar*.³¹ The other relevant Wulfstan manuscripts do not have clearly identifiable independent booklets containing royal law, though it does seem that Wulfstan's canon law collection was compiled and composed from independent booklets.³² These

²⁴ Wormald, *MEL*, pp. 181–2, 248, 263, 478–9.

²⁵ See especially Wormald, *MEL*, pp. 248–52 for this argument.

²⁶ Some of Wormald's proposed bundles are thematically linked, for instance the one containing *Hundred, Be blaserum* and *Forfang*, which all concern 'action by those locally entrusted with law enforcement and its rewards': Wormald, *MEL*, p. 379.

²⁷ Harley 55(B) is discussed in Wormald, *MEL*, p. 253–5.

²⁸ The criteria for identifying an originally independent booklet within a composite manuscript are set out in P.R. Robinson, 'The "Booklet": A Self-contained Unit in Composite Manuscripts', *Codicologica* 3 (1980), pp. 46–69, at pp. 47–8, reprinted in *The History of the Book in the West: 400AD–1455, Volume I*, ed. J. Roberts and P. Robinson (Farnham, 2010), pp. 159–82.

²⁹ Parkes, 'Palaeography of the Parker Manuscript', pp. 166–7.

³⁰ The final page of the booklet containing Cnut's code is blank (Cotton Nero A.i(A), fol. 41v), and the layout of the two booklets is different, with the second containing more text on each page. The two booklets in Nero A.i(A) are briefly discussed in P.R. Robinson, 'Self-contained Units in Composite Manuscripts of the Anglo-Saxon Period', *Anglo-Saxon England* 7 (1978), pp. 231–8, at p. 234 and see Ker, *Catalogue*, pp. 210–1 for a description of the hands and quiring.

³¹ CCC 265, pp. 211–27. These pages would fulfil the requirements for identifying booklets set out in Robinson, 'The "Booklet"', pp. 47–8. See also Wormald's discussion of *IV Edgar*'s placement in this manuscript in *MEL*, pp. 211–2.

³² I suggested above that Cotton Nero A.i(B), fols. 70r–96v may have been an independent booklet; see above p. 29 fn 23. For a description of the booklets making up Wulfstan's canon law collection, see Sauer,

manuscripts could be evidence of a wider practice of writing and circulating law on loose leaves or quires or in booklets.

There is some circumstantial evidence to support such a claim. Circulation on single sheets or in booklets also fits with what we know about the dissemination of some law texts. As the numerous studies of Æthelstan's legislation have shown, there seems to have been a back-and-forth circulation of legislation between the king and local agents in the tenth century.³³ It seems eminently more likely that these texts would have been conveyed on sheets or in booklets rather than in codices. The Carolingian context may offer a further clue: Ansegis notes in the preface to his capitulary collection that he gathered extant texts from loose sheets.³⁴ Finally, it is worth bearing in mind that the word *domboc* (literally 'judgment book'), which is occasionally used to refer to written law, as chapter 2 will show, could refer both to a codex and to single-sheets or booklets, as is clear from the fact that *boc* is a standard term for (single-sheet) charters.³⁵

The surviving manuscript evidence from the pre-conquest period thus offers intriguing clues about the writing and circulation of law. It does not, however, tell us which laws, if any, were considered to be a distinct group of texts at the time. How, then, can we know which texts to label 'Anglo-Saxon laws' based on pre-conquest ideas? In fact, the texts themselves can help us: the evidence provided by codification, cross-references and inter-textual relationships indicates that there was a group of texts that were seen as part of the same tradition. As we shall see in the next chapter, there are two longer law codes that collect and combine material from previous laws, namely *Alfred-Ine* and *I-II Cnut*. Both thus offer a view of which texts their compilers had access to and considered to be part of a relevant tradition (see chapters 4 and 5). In addition, some shorter texts also draw on other written laws, occasionally verbatim.³⁶ What is more, many texts state that they are making additions to other laws – either to specific pieces of legislation or to 'the law' in general – and yet others reference, comment on or change provisions from other texts.³⁷ This explicit and implicit

'Transmission and structure' and Elliot, 'Wulfstan's Commonplace Book', esp. pp. 34–6. I would also like to thank Samuel Holmes for showing me some of his unpublished work on Wulfstan's manuscript collections and their codicological makeup.

³³ These studies are Keynes, 'Royal Government', Roach, 'Law Codes' and Pratt, 'Written Law'.

³⁴ *Collectio Capitularium Ansegisi*, MGH Capit. N.S., ed. G. Schmitz (Hannover, 1996), p. 432: 'in diversis sparsim scripta membranulis per diversorum spatia temporum fuerant...?'

³⁵ DOE s.v. *boc*.

³⁶ These include Wi, II As, IV As, VI As, II Em, III Em, IV Eg, Æthelred's later decrees, Cn 1018, AGu App, *Wer*, *Ordal*.

³⁷ Several decrees contain explicit references to a *domboc* 'judgment book, written law' (I Ew 1, II Ew 5.2, II Ew 5, II As 5, II Eg 3, II Eg 5), which have been identified as references to Alfred's code: see Cubitt, "'As the

use and referencing of texts arguably reveals that there were – in Anglo-Saxon eyes – texts which were related to each other and were considered as a distinct body of normative texts which were in communication with each other. This shared, collective idea of a corpus is thus expressed through cross-referencing and codification, rather than through the compilation of discrete texts. This idea of a distinct body of legislation underwent great changes in the following centuries, but as the end of this chapter will show, an Anglo-Saxon framework of understanding can and should be used as the basis for constructing a corpus.

1.2.2 Post-conquest manuscripts

If they existed, Anglo-Saxon legal dossiers and booklets were soon complemented – or perhaps replaced – by what Theodore Plucknett called ‘anthologies of authorities’.³⁸ These Anglo-Norman collections of Anglo-Saxon law differed from the pre-conquest manuscripts in that they contained mostly law, prompting Wormald’s descriptor ‘legal encyclopedias’.³⁹ If we assume that the compilers did not have any ‘lost’ Anglo-Saxon models, this compilation of law texts must have involved making decisions on what to include, what to omit and how to structure the texts. These manuscripts therefore present a corpus, but, as we shall see, one made in a specific context and for specific reasons: to present a version of *laga Edwardi*, that is, the Anglo-Norman idea of the law as it was before the conquest.⁴⁰

There are three such collections: *Textus Roffensis*, Cambridge Corpus Christi College 383 (CCCC 383) and *Quadripartitus*.⁴¹ They were all produced in the first quarter of the twelfth century: CCCC 383 and *Quadripartitus* can both be placed in the first couple of decades of

Lawbook Teaches”, pp. 1032–3 and Keynes, ‘Royal Government’, p. 233. What is more, some decrees explicitly refer to other enactments, usually by the name of the place at which the text was promulgated, sometimes adding to or annulling their decisions (II Ew, III As, IV As, VI As, V As, IV Eg, *Hundred*). Some texts also describe themselves as containing or being an ‘increase’ (*eaca/eacan*) to the law (*a, þearf* or implicit) (HI prol, Wi prol, VI As prol/8.9, IV Eg 2.1a, 14.2, EGu prol).

³⁸ T.F.T. Plucknett, *Early English Legal Literature* (Cambridge, 1958), p. 21.

³⁹ This group of manuscripts is discussed in Wormald, *MEL*, pp. 224–52.

⁴⁰ This is the wording of B.R. O’Brien, *God’s Peace and King’s Peace: The Laws of Edward the Confessor* (Philadelphia, 1999), pp. 26–7. For a general introduction to the post-conquest laws, see B.R. O’Brien, ‘Pre-Conquest Laws and Legislators in the Twelfth Century’, in M. Brett and D.A. Woodman (eds), *The Long Twelfth-Century View of the Anglo-Saxon Past* (Farnham, 2015), pp. 229–74.

⁴¹ The first of Wormald’s ‘legal encyclopedias’ is Cotton Nero A.i(A), which, as he points out, might not date to the post-conquest period and only contains three law texts (Af-Ine, II-III Eg, I-II Cn). For that reason, it is not discussed here.

the century,⁴² while *Textus* seems to date from the 1120s.⁴³ *Textus* and CCC 383 contain copies of the laws in Old English, whereas *Quadripartitus*, which is the collective term for a work which exists in nine manuscripts, contains a translation of the laws into Latin.

CCC 383 is the shortest of the three, as is clear from its contents as listed in table 1 below. Notable omissions include the laws of Edgar, the four texts in Æthelstan's name and most of the laws of Æthelred, especially those written by Wulfstan. It is thus the least exhaustive of the collections, but it is more focused on legislation than its companion *Textus*, which, as we shall see, contains a number of texts that are neither Anglo-Saxon nor legislative. Another feature of CCC 383 is its many treaties. It contains the only surviving Old English copies of no less than three of them: the ninth-century treaty between Alfred and the Danish leader Guthrum (in two different versions); *Dunsate*, an agreement between two communities on the border between Wales and England; and *II Æthelred*, king Æthelred's *fridmal* ('peace agreement') with the Danish King Olaf.⁴⁴ The inclusion of such agreements between peoples, in particular invaders and the invaded, is unsurprising in the post-conquest period in England, perhaps providing some kind of precedent for legal co-existence.⁴⁵

Other clues to the rationale behind the compilation of CCC 383 suggest that such an interest in legal co-existence was of current practical relevance. The manuscript is small and portable, which led Wormald to propose that it may have been intended to provide access to Anglo-Saxon law 'on the go'.⁴⁶ It also features chapter divisions in all texts, perhaps introduced for ease of reference.⁴⁷ What is more, the royal laws are not ordered chronologically, which could indicate that it was not a purely historical work. All in all, the evidence – albeit slight – points to CCC 383 providing practical knowledge of Anglo-Saxon law and legal practices. It is possible that it was made for the bishop and clergy at St Paul's in London, as it contains a list of navy levies on estates seemingly related to St Paul's.⁴⁸ The

⁴² For the dating of CCC 383 and *Quadripartitus*, see respectively T. Gobbitt, 'The Other Book: Cambridge, Corpus Christi College, MS 383 in Relation to the *Textus Roffensis*', in B.R. O'Brien and B. Bombi (eds), *Textus Roffensis: Law, Language, and Libraries in Early Medieval England* (Turnhout, 2015), pp. 69–82, at p. 69 and fn 2 and R. Sharpe, 'The Dating of *Quadripartitus* Again', in S. Jurasinski, L. Oliver, and A. Rabin (eds), *English Law Before Magna Carta: Felix Liebermann and Die Gesetze der Angelsachsen* (Leiden, 2010), pp. 81–96.

⁴³ Wormald, *MEL*, p. 245 and Ker, *Catalogue*, p. 443.

⁴⁴ This observation has been made by many others, see e.g. Gobbitt, 'The Other Book', p. 72.

⁴⁵ As suggested by Wormald, *MEL*, p. 236.

⁴⁶ Wormald, *MEL*, p. 236.

⁴⁷ Richards, 'Manuscript Context', p. 181. See also T. Gobbitt, 'The twelfth-century rubrication of Anglo-Saxon legal texts in Cambridge, Corpus Christi College, MS. 383', *Historical Research* 86 (2013), pp. 536–49.

⁴⁸ For an edition and discussion of this list, see S.E. Kelly (ed.), *Charters of St Paul's, London*, Anglo-Saxon Charters 10 (Oxford, 2004), pp. 97–100.

evidence could point in the direction that CCCC 383 was a useful source of knowledge about the Anglo-Saxon legal system and its vocabulary, necessary for the community to protect its lands and rights. As we shall now see, this kind of purpose is even more strongly suggested by *Textus*.

The second Old English collection, *Textus Roffensis*, is longer and more varied in its content, as is clear from table 1. In its original quire order, the manuscript opened with the text now known as *Instituta Cnuti*, though its title in *Textus* is ‘Instituta de legibus regum Anglorum’.⁴⁹ Its title in another manuscript – ‘Instituta secundum Cnud regem anglorum’ – reflects its content somewhat better, given that it is a Latin translation of *I-II Cnut*, with thematically relevant parts of ten other Anglo-Saxon law texts occasionally inserted.⁵⁰ Regardless of whether *instituta* should be taken in its Roman legal sense of ‘introduction, overview’ or merely as ‘statutes, ordinances’, the text does seem to fulfil a role as a handbook to the laws of England before the conquest. *Instituta* is followed by the ‘Articles of William’ – which purports to be a series of enactments made by William I after the conquest – and thirteen folios of canon law extracts.⁵¹ The manuscript then turns to the Anglo-Saxon laws in roughly chronological order.⁵² It begins with the unique surviving copy of the seventh-century Kentish laws of Æthelberht, Hlothhere and Eadric and Wihtræd. Like in CCCC 383, the laws of Edgar are not included, and like in CCCC 383, there is a mix of royal and anonymous law. The final part contains Henry I’s coronation charter as well as church rituals for ordeals and excommunication, a West-Saxon genealogy and lists of popes, emperors and bishops. There is also a companion volume made by the same scribe, which contains charters pertaining to Rochester.

⁴⁹ For the original quire order of *Textus*, see P. Wormald, ‘Laga Eadwardi: The *Textus Roffensis* and its Context’, in his *Legal Culture in the Early Medieval West*, pp. 115–38, at pp. 116–22 and *MEL*, pp. 245–8. A more recent and very useful, discussion of the layout, content and making of *Textus* is B.R. O’Brien, ‘Introduction’, in B.R. O’Brien and B. Bombi (eds), *Textus Roffensis: Law, Language, and Libraries in Early Medieval England* (Turnhout, 2015), pp. 1–16. *Instituta* is edited in Liebermann, *Gesetze I* alongside *I-II Cnut*, with additional chapters edited on pp. 612–9. For a discussion of *Instituta*’s titles, see F. Liebermann, ‘On the Instituta Cnuti Aliorumque Regum Anglorum’, *Transactions of the Royal Historical Society* 7 (1893), pp. 77–107, at p. 79.

⁵⁰ For the precise content of *Instituta*, see Liebermann, ‘On the Instituta Cnuti’, pp. 80–1 and B.R. O’Brien, ‘The *Instituta Cnuti* and the Translation of English Law’, *Proceedings of the Battle Conference 2002* (2003), pp. 177–98, at pp. 177–8, 188.

⁵¹ For more on ‘The Articles of William’ see Wormald, *MEL*, pp. 403–4 and Hudson, *History of the Laws*, p. 869. For more on the canon law extracts, which are taken from Lanfranc’s collection, see M.P. Richards, *Texts and their Traditions in the Medieval Library of Rochester Cathedral Priory*, *Transactions of the American Philosophical Society* 78 (Philadelphia, PA, 1988), pp. 48–9.

⁵² There are some exceptions to the chronological order: for example, Æthelstan is placed after Alfred, followed by Edward. However, the overarching structure is chronological, starting with the three Kentish laws, followed by *Alfred-Ine* and so on. See Wormald, ‘Laga Eadwardi’, p. 121 n 9.

Wormald described this sequence of texts as ‘an updated guide to Old English law based on Cnut [i.e. *Instituta*]...followed by a set of amendments introduced by the current regime [i.e. ‘Articles of William’].⁵³ This is followed by the original Anglo-Saxon source material. The conclusion is Henry I’s Coronation charter, in which the king promises to uphold the laws of the pre-conquest kingdom with the amendments made by his father.⁵⁴ The narrative arc speaks clearly: *Textus* makes a statement about the sources of Anglo-Norman law and it represents the new regime’s absorption of the pre-conquest system.⁵⁵ In short, it is a collection reflecting current legal and political concerns, not antiquarian ones.

The long past of the system the Normans had taken over may have been seen as relevant for its authority. As Peter Cramer observed, the bishop thought to have commissioned the collection, Ernulf of Rochester, gives priority to the importance of *usus et antiquitas* in his writings on canon law, and such a position could account for the historical yet practical focus of *Textus*.⁵⁶ There may also have been a more concrete reason for such a collection. The existence of the second volume with Rochester’s charters may suggest that a guide to pre-conquest law was also needed to understand the legal terms and concepts used in the charters which confirmed Rochester’s rights and lands, and more broadly, to understand the system in which rights had been granted.⁵⁷ By combining the Latin overview of law contained in *Instituta Cnuti* with original texts in Old English, the compilers of *Textus* could meet both needs.

The third collection, known as *Quadripartitus*, presents one major difference: it is a translation of all the laws into Latin.⁵⁸ This took accessibility to the pre-conquest legal system to a whole new level. Of the nine manuscripts, no two have the exact same selection and

⁵³ Wormald, *MEL*, p. 405.

⁵⁴ ‘Lagam regis Eadwardi uobis reddo cum illis emendationibus quibus pater meus eam emendauit consilio baronum suorum’, ‘The law of King Edward, I restore to you together with the improvements by which my father improved it by the counsel of his barons.’ Text and translation from an edition prepared by Richard Sharpe, accessible at earlyenglishlaw.ac.uk [accessed March 2020]. The phrase *laga Eadwardi*, ‘the laws of Edward [the Confessor]’ was used to refer to Anglo-Saxon law and practices, probably as a reference to ‘the good old law’ rather than a specific text, for no law in Edward’s name seems to have existed. The *Quadripartitus* author and translator specified that Edward had confirmed the laws of Cnut and that Edward’s laws were therefore those of Cnut; see R. Sharpe, ‘The Prefaces of “Quadripartitus”’, in G. Garnett and J. Hudson (eds), *Law and Government in Mediaeval England and Normandy: Essays in Honour of Sir James Holt* (Cambridge, 1994), pp. 148–72, at pp. 162, 164.

⁵⁵ This point is also made in O’Brien, ‘Introduction’, p. 7 and ‘*Instituta Cnuti?*’, pp. 188, 193–4.

⁵⁶ P. Cramer, ‘Ernulf of Rochester and Early Anglo-Norman Canon Law’, *The Journal of Ecclesiastical History* 40 (1989), pp. 483–510, at pp. 492–3.

⁵⁷ Longer discussions of this point are found in Richards, *Texts and Traditions*, p. 53 and Wormald, ‘Laga Eadwardi’, p. 132.

⁵⁸ For the dating, see Sharpe, ‘Dating of *Quadripartitus*’. Wormald’s general discussions of *Quadripartitus* are found in *MEL*, pp. 236–44, 465–76 and in ‘*Quadripartitus*’.

order of texts. However, the content is broadly similar, and, as table 1 shows, it is much the same as the first portion of *Textus*.⁵⁹ In the earlier versions of the collection, the texts are mostly, but not entirely, chronologically ordered.⁶⁰ The first text is *I-II Cnut*, a text which, in the words of the *Quadripartitus* author, contains the laws ‘for which the hearts of Englishmen always sigh and long’.⁶¹ Its privileged position at the start is removed in a later incarnation of the collection – the thirteenth-century ‘London group’ of manuscripts – in which all laws are moved into their correct chronological position with historical commentary inserted in between.⁶²

None of the three post-conquest collections give us a clear view of how their compilers created their corpus, and it is unknown whether there was a now-lost body of texts they chose not to include. The loss of some original texts is clear from a set of laws which have only survived in their *Quadripartitus* translation, but we do not know the extent of such loss.⁶³ Thus, the selection of texts included in these manuscripts may reflect an antiquarian interest in collecting everything or it may reflect a more discerning selection based on criteria unknown to us. However, while we do not know what the compilers rejected, we do know what they accepted. That includes a wide variety of texts in addition to the royal laws, such as oaths, treatises, rituals, instructional manuals and so on. This is particularly the case for *Textus Roffensis*, with its canon law, liturgy, rituals and formulas. This expansive selection should be seen in light of the possible reasons these compilations were made: to provide knowledge of Anglo-Saxon law and legal practices. As Bruce O’Brien argued, the Normans had conquered a country that ‘ran on its vernacular’ and where ‘the rights and wrongs were all defined by a legal jargon that had been centuries in the making’.⁶⁴ Charters, writs, canon law and more existed in Old English, and knowledge of the law and its terms would have proven useful to the new rulers. That means all expressions of law, practice and custom would have been of interest, not just official acts of legislation. The post-conquest collections can thus be compared to later acts of ‘colonial codification’, in which the compilation of local

⁵⁹ See Wormald, ‘*Quadripartitus*’, pp. 92–3 for a list of the content of each *Quadripartitus* manuscript. See Wormald, *MEL*, pp. 250–1 for a table of the contents of *Textus*, CCC 383 and two versions of *Quadripartitus* side by side. This table also shows that many of the clusters of texts are the same in *Quadripartitus* as in *Textus* and CCC 383.

⁶⁰ Edward and Edmund’s laws are placed after the laws of Æthelstan in many of the manuscripts, though in general, the chronology of the Anglo-Saxon kings is followed; see Wormald, *MEL*, pp. 239–40.

⁶¹ Sharpe, ‘The Prefaces of “*Quadripartitus*”’, p. 165 (§11).

⁶² The London group is discussed in Wormald, ‘*Quadripartitus*’, pp. 88–90.

⁶³ The laws which only survive in *Quadripartitus* are III Em, As Alms, IV As, VII Atr, AGu App.

⁶⁴ B.R. O’Brien, *Reversing Babel: Translation Among the English During an Age of Conquests, c. 800 to c. 1200* (Newark, 2011), pp. 3–4.

custom serves as an assertion of power as well as a practical measure for invaders who need to map out how a region functions.⁶⁵

As we shall shortly see, modern editors have sometimes used these Anglo-Norman collections as guides to what to include in the corpus. However, the purposes of the modern editions are different: they do not have the legal-political underpinning of the Norman collections, nor would they have had the post-conquest need to know Old English words and concepts for immediately practical reasons. Some of the peculiarities of Liebermann's and the modern day's corpus are therefore a result of modern editors taking these collections as a guide, but also taking them out of their historical context.

1.3 The old corpus in printed editions

1.3.1 Lambarde (1568)

After the latest incarnation of *Quadripartitus* was made in the thirteenth century, a few centuries went by without any attempts to collect the Anglo-Saxon laws. The first printed edition,⁶⁶ *Archaionomia, sive de priscis anglorum legibus libri*, was published in 1568, edited by the lawyer and antiquary William Lambarde. As table 1 shows, Lambarde's corpus of roughly twenty texts consisted almost entirely of laws with explicit royal attribution, which, as we shall see, may be reflective of the post-Reformation context in which he was working.

Lambarde's preface to *Archaionomia* is more concerned with his views on the importance of law and less with his selection of texts. But what the preface does make clear is that Lambarde was supplied with some texts by his mentor and associate, the antiquary Laurence Nowell, seemingly in transcript from manuscripts.⁶⁷ Surviving transcripts in Nowell's hand and other material reveal their sources, which were CCCC 383, Cotton Nero

⁶⁵ For an introduction to the phenomenon of colonial codification, see N. Bhattacharya, 'Remaking Custom: The Discourse and Practice of Colonial Codification', in R. Champakalakshmi and S. Gopal (eds), *Tradition, Dissent and Ideology: Essays in Honour of Romila Thapar* (Oxford, 1996), pp. 20–51.

⁶⁶ I am only considering works which set out to be editions of Anglo-Saxon law, which means that I am not concerned with where individual texts were first printed. Liebermann included a summary of most of the works which have printed one or more of the law texts in *Gesetze I*, pp. xlv–liii.

⁶⁷ W. Lambarde, *Archaionomia, sive de priscis anglorum legibus libri ...* (London, 1568), sig. A.iii.: 'Obtulit mihi superiori anno Laurentius Noelus...priscas Anglorum leges, antiquissima Saxonum lingua et literis conscriptas, atque a me... ut latinas facerem, ac peruulgarem vehementer flagitavit.' Translations are my own throughout, unless otherwise specified. Transcripts of several of the laws survive in Nowell's hand. For more on these, see R. Flower, 'Laurence Nowell and the Discovery of England in Tudor Times', *Proceedings of the British Academy* 21 (1935): 46–63, at p. 53; reprinted in *British Academy Papers on Anglo-Saxon England*, ed. E.G. Stanley (Oxford, 1989), pp. 1–27.

A.i(A), BL Harley 55(B), Cotton Otho B.xi, as well as a *Quadripartitus* manuscript, possibly from the ‘London group’.⁶⁸ They do not seem to have had access to *Textus Roffensis*, CCC 201 or Cotton Nero A.i(B) at the time.⁶⁹ Nowell and Lambarde’s selection of texts can therefore be reconstructed. They copied all royal laws they came across, but left out *Be blaserum, Forfang, Hundred, Swerian, Wifmannes, Wergeld, Hit becwað, Romscot, Ymb æwbrica* and *Iudex*. Several of these texts are thematically close to the royal laws, which suggests that Nowell and Lambarde were not interested in setting out evidence for legal practice or doctrine irrespective of textual form. As George Garnett demonstrated, Nowell and Lambarde took pains to track down extant versions of some texts, indicating that they were not primarily guided by what they found in their manuscripts, but rather their own idea of what was relevant for an edition of *leges*.⁷⁰

There are two non-royal texts included, though neither is mentioned in the list of contents. The first is the treaty called *Dunsate* in modern usage, though the name given to the text in *Archaionomia – Senatusconsultum de Monticolis Wallia* – may explain its inclusion. The choice of the Roman law term *senatusconsultum* (‘decree of the senate’) seems to imply that Nowell or Lambarde considered *Dunsæte* to be an official act of legislation, albeit without the king’s involvement. Indeed, the text opens like most of the royal laws: ‘Dis is seo gerædnes ðe Angelcynnes witan 7 Wealhðeode rædboran betweox Dunsetan gesetton’ (‘This is the ordinance that the *witan* of the English and the councillors of the Welsh people have established among the *Dunsæte*’).⁷¹ The inclusion of such a text among the royal laws seems

⁶⁸ Wormald gave an overview of the manuscripts Nowell used and which laws may have been transcribed from each in ‘Lambarde Problem’, pp. 139–78. He suggested that Nowell might have used a now-lost manuscript for *inter alia* II As (see ‘Lambarde Problem’, pp. 177–8). For further discussion of Nowell’s manuscripts, see J. Batley, ‘John Joscelyn and the Laws of the Anglo-Saxon Kings’, in H. Gneuss, M. Korhammer, K. Reichl and H. Sauer (eds), *Words, Texts, and Manuscripts: Studies in Anglo-Saxon Culture Presented to Helmut Gneuss on the Occasion of his Sixty-fifth Birthday* (Woodbridge, 1992), pp. 435–66, at pp. 435–6, 438 and R. Brackmann, ‘Laurence Nowell’s Old English Legal Glossary and his Study of *Quadripartitus*’, in S. Jurasinski, L. Oliver, and A. Rabin (eds), *English Law Before Magna Carta: Felix Liebermann and Die Gesetze der Angelsachsen* (Leiden, 2010), pp. 251–72, esp. pp. 264–5.

⁶⁹ This is argued in Wormald, ‘Lambarde Problem’, pp. 142–3, 176 and Batley, ‘John Joscelyn’, p. 437. Lambarde knew about and used *Textus Roffensis* in the following decade; see Wormald, *MEL*, p. 262 fn 384. Lambarde listed King Æthelberht as the first English lawmaker in his preface, though this knowledge may have stemmed from Bede’s *Historia ecclesiastica* rather than the laws attributed to Æthelberht in *Textus Roffensis*.

⁷⁰ G. Garnett, *The Norman Conquest in English History, Volume 1, A Broken Chain?* (forthcoming), chapter 9. I’m grateful to Professor Garnett for sharing his work before publication. Elsewhere in this chapter, I deal with issues similar to those he discusses in his book, and we have reached some similar conclusions independently.

⁷¹ *Dunsate* prol. Molyneux proposed two different translations of the opening line, of which this is one; G. Molyneux, ‘The Ordinance concerning the *Dunsæte* and the Anglo-Welsh frontier in the late tenth and eleventh centuries’, *Anglo-Saxon England* 40 (2011), pp. 249–72, at pp. 249–50. For the standards of prefaces in the other laws, see the appendix.

to fit with what we know about the post-Reformation context and Lambarde's personal views. Many Protestant reformers believed that parliament had Anglo-Saxon roots, and Lambarde – a committed Protestant⁷² – argued that the English parliament of his day was descended from the Saxon assemblies described by Tacitus.⁷³ In his studies of Anglo-Saxon law in later books, he took all references to synods, the *witan* and councils to signify a parliament and as proof of their power to legislate.⁷⁴ Therefore, *Dunsate's* claim to be legislation made by *witan* and *rædboran* would fit Lambarde's idea of legislation and its inclusion in the edition possibly serve to bolster his views.

The second non-royal text – the cluster made up of *Norðleoda laga*, *Mircna laga* and *Að* – appears to have been included as part of Æthelstan's laws rather than as discrete items.⁷⁵ This cluster of texts plays a part in the strangest episode of the laws' editorial history: the versions of these texts printed in *Archaionomia* are actually Nowell's own translation into Old English from the *Quadripartitus'* Latin. This was not acknowledged by Nowell or Lambarde in the edition itself; in fact, it was only discovered in the 1920s, when Kenneth Sisam reviewed F.L. Attenborough's edition and translation of the laws.⁷⁶ In a later article, Sisam elaborated his argument. He proposed that Nowell had noticed some texts in *Quadripartitus* that had no extant Old English counterparts, which he then translated into his own Old English.⁷⁷ The texts in question are *I Æthelstan*, *Æthelstan Alms*, *Norðleoda laga*, *Mircna laga* and *Að*, which are found immediately before and after *II Æthelstan* in a version of the 'London group' of *Quadripartitus*.⁷⁸ Nowell and Lambarde did indeed appear to have taken the three anonymous texts to be part of Æthelstan's legislation. That much is indicated by the way in which they are laid out in *Archaionomia*, where the three pieces are written together as one

⁷² Both Brackmann and Gajda noted the hostility Lambarde levels against the pope in his writings: A. Gajda, 'The Elizabethan Church and the Antiquity of Parliament', in P. Cavill and A. Gajda (eds), *Writing the History of Parliament in Tudor and Early Stuart England* (Manchester, 2018), pp. 77–105, at p. 90 and R. Brackmann, *The Elizabethan Invention of Anglo-Saxon England: Laurence Nowell, William Lambarde, and the Study of Old English* (Cambridge, 2012), p. 194.

⁷³ For several examples of such views, including Lambarde's, see Gajda, 'Elizabethan Church', pp. 87–90.

⁷⁴ Gajda, 'Elizabethan Church', p. 90.

⁷⁵ Lambarde, *Archaionomia*, fols. 70b–72.

⁷⁶ K. Sisam, 'Review: The Laws of the Earliest English Kings', *The Modern Language Review* 18 (1923), pp. 98–104, at pp. 100–3. Several later editors, including Liebermann and Attenborough, assumed Nowell's translations were from a now-lost manuscript; Liebermann therefore printed Nowell's versions alongside other authentic Old English versions.

⁷⁷ K. Sisam, 'The Authenticity of Certain Texts in Lambard's "Archaionomia" 1568', *The Modern Language Review* 20 (1925), pp. 253–69, at p. 260.

⁷⁸ Two other texts (*Episcopus* and *Hadbot*) are also placed in between *II* and *V Æthelstan* in the London manuscripts, though these were not included or translated by Nowell. Both Sisam and Wormald proposed that *Episcopus* and *Hadbot* were rejected by Nowell because they are purely ecclesiastical in content, see: Sisam, 'Authenticity', p. 260 and Wormald, 'Lambarde Problem', p. 142 fn 11.

text, which appears right after *V Æthelstan*.⁷⁹ As a contrast, *Dunsate* is given its own heading and starts on a separate page, clearly marking that it is not part of the preceding laws of Æthelred. The *Norðleoda* cluster is therefore best interpreted as part of Æthelstan's laws.

This rather extraordinary translation work shows the strength of the belief that Anglo-Saxon law was – or should be – written in Old English.⁸⁰ However, like the *Quadripartitus* author, Lambarde was also concerned with accessibility and therefore provided his own Latin translation of all the laws.⁸¹ This – and the edition's glossary – would presumably have been important at a time when these laws were not just of interest to antiquaries and specialists in Old English, but also to participants in legal debates about the Reformation.⁸² The pre-conquest laws were held up as proof of the non-Roman past of England's laws and of the historical precedent for the English king and parliament to legislate over the church.⁸³ In fact, Anglo-Saxon laws were even brought up in parliamentary speeches.⁸⁴ This context helps make sense of an edition which looks like it was made up of 'early proto-statutes', or – as Lambarde calls them – expressions of the *regia voluntas*.⁸⁵ Like the Anglo-Norman manuscripts then, *Archaionomia* was guided by historical as well as current legal and political concerns. But where the post-conquest context led to an expansive selection of texts reflecting all practices and customs, the post-Reformation context produced a restricted and royally focused edition.

1.3.2 Whelock (1644)

Archaionomia was reissued in 1644 by Abraham Whelock – lecturer in Anglo-Saxon and Arabic and librarian at Cambridge – as a part of his edition of Bede's *Historia ecclesiastica* and

⁷⁹ Lambarde, *Archaionomia*, fols. 56b, 59, 69, 71.

⁸⁰ As Sisam notes (in 'Review', p. 103), Lambarde was later given an Old English wordlist which Nowell had compiled. Nowell's original contains none of the odd and spurious words from his own translations, but they have been added by what is probably Lambarde's hand. This suggests that Lambarde assumed Nowell's translations were genuine texts.

⁸¹ Lambarde explains his reasons for translating the laws into Latin in this way: 'I am displaying to specialists this translation with which they can busy themselves, to non-specialists this translation with which they may help themselves, and to both of them this translation with which they may amuse themselves'; Lambarde, *Archaionomia*, p. B.j.

⁸² For examples of such uses of Anglo-Saxon law in parliamentary speeches and polemical books, see Gajda, 'Elizabethan Church', pp. 78–84.

⁸³ For more on this point, see Gajda, 'Elizabethan Church', pp. 87–90, Brackmann, *Elizabethan Invention*, p. 192 and Garnett, *The Norman Conquest in English History*, ch. 9.

⁸⁴ Gajda, 'Elizabethan Church', p. 87.

⁸⁵ Garnett, *The Norman Conquest in English History*, ch. 9. Lambarde, *Archaionomia*, p. A.iiiij.

the *Anglo-Saxon Chronicle*.⁸⁶ This reissue of *Archaionomia* saw an expansion of the content of the first edition with the post-conquest laws *Leges Henrici Primi* and *Leis Willelme*, both supplied by the antiquarian Roger Twysden, who had requested the reissue of *Archaionomia* in the first place.⁸⁷ Three pre-conquest texts were also added: *De virgine desponsanda* (Liebermann's *Be wifmannes beweddunge*), *canones Edgari* ('Canons of Edgar') and *canones Ælfrici* (Ælfric's letter to Wulfsgige). The canons of Edgar are not associated with Edgar and the canons of Ælfric are not necessarily canons.⁸⁸ Both texts are, however, among the few extant examples of longer vernacular canonical regulations.

These additions can be accounted for by Whelock's position at Cambridge. Whelock was first and foremost a linguist and librarian; he was offered a lectureship in Anglo-Saxon at Cambridge before even learning Old English, on account of his work with Arabic and manuscripts.⁸⁹ His patron, Henry Spelman, secured this appointment, and later relied on Whelock for transcripts of and access to Cambridge's many Old English manuscripts.⁹⁰ It is precisely this access that explains Whelock's additions to *Archaionomia*. *Be wifmannes* as well as both canonical texts are found in Cambridge manuscripts used by Whelock. In fact, transcripts of these three texts were made by Whelock for inclusion in Spelman's 1639 edition of documents relating to the English church.⁹¹ That Whelock already had transcripts and editions of these regulatory texts could then explain his use of them for *Archaionomia*.⁹²

⁸⁶ A. Whelock, *Archaionomia, sive De priscis Anglorum legibus libri, sermone Anglico, vetustate antiquissimo, aliquot ab hinc seculis conscripti* (Cambridge, 1644). A full introduction to Whelock and his career is found in J.C.T. Oates, *Cambridge University Library: A History: from the Beginnings to the Copyright Act of Queen Anne* (Cambridge, 1986), pp. 173–211. For a discussion of Whelock's edition as a whole, including Bede and the *Chronicle*, see J.D. Niles, *The Idea of Anglo-Saxon England 1066-1901: Remembering, Forgetting, Deciphering, and Renewing the Past* (Chichester, 2015), pp. 113–6. The edition of Bede was issued first in 1643, but a corrected version appeared in 1644 with *Archaionomia* attached.

⁸⁷ Whelock, *Archaionomia*, p. [iii].

⁸⁸ Whelock printed the two texts which are now known as 'Canons of Edgar' and 'Handbook for the use of a Confessor' under the heading *canones Edgari*. Both are found in CCC 201. In fact, both were written by Wulfstan and have nothing to do with King Edgar. 'Canons of Edgar' is loosely associated with Edgar in the manuscript CCC 201, where it is introduced with the heading 'It here now pertains to Edgar's laws...'. These texts are edited in R. Fowler, *Wulfstan's 'Canons of Edgar'*, EETS no. 266 (London, 1972) and R. Fowler, 'A Late Old English Handbook for the Use of a Confessor', *Anglia* 83 (1965), pp. 1–34. The 'canons' of Ælfric refer to Ælfric's pastoral letter to Wulfsgige, edited in B. Fehr, *Die Hirtenbriefe Ælfrics in Altenglischer und Lateinischer Fassung*, Bibliothek der angelsächsischen Prosa bd. 9 (Hamburg, 1914), pp. 1–34.

⁸⁹ Oates, *Cambridge University Library*, pp. 185–6.

⁹⁰ Oates, *Cambridge University Library*, pp. 199–200.

⁹¹ Henry Spelman, *Concilia, decreta, leges, constitutiones, in re ecclesiarum orbis Britannici* (London, 1639). Whelock's contribution to Spelman's work is set out in Oates, *Cambridge University Library*, pp. 199, 208–9.

⁹² The reissue of *Archaionomia* did not include all the texts Whelock had supplied to Spelman's edition, which may have totalled around ten; the full list is set out in Oates, *Cambridge University Library*, p. 199. Almost all the others were in Latin, perhaps explaining their exclusion. However, *Nordhymbra preosta lagu* may have been among them and this text would have fitted well next to 'Canons of Edgar' and Ælfric's letter, though Whelock did not include it in *Archaionomia*.

What is more, one of the manuscripts from which he made such transcripts – the Wulfstan manuscript CCCC 201 – may have provided the inspiration for combining laws issued by kings with longer vernacular canon law texts.⁹³

1.3.3 Wilkins (1721)⁹⁴

A much bigger expansion of the corpus came with the next edition, David Wilkins's 1721 *Leges anglo-saxonicae ecclesiasticae & civiles*. For the first time, the early Kentish laws (*Æthelberht, Hlothbere and Eadric* and *Wibtræd*) were published as part of the legislative corpus. In addition, Wilkins added seventeen new pieces to Whelock's corpus, as table 1 shows, and some of these appeared in print for the first time ever in Wilkins's edition.⁹⁵ He also included much more post-conquest material than his predecessors. Wilkins's title, *Leges anglo-saxonicae ecclesiasticae & civiles*, clearly marks his intention to offer laws of the church too, and he included several canonical and homiletic texts primarily from Wulfstan's manuscripts, as we shall shortly see.

Wilkins's edition saw the use of more manuscripts. This is perhaps explained by his position as librarian at Lambeth Palace, which he took up in 1715 after having moved from his native Prussia a few years prior.⁹⁶ He had access to and used *Textus Roffensis*, CCCC 173, 190, 201, 265 and Cotton Nero A. i(A&B), as he explained in his preface.⁹⁷ In addition, he

⁹³ CCCC 201 is one of the Wulfstan manuscripts, and contains versions of I As, I Em, II–III Eg, V Atr, VIIa Atr, VIII Atr, *Cnut 1018* as well as 'Canons of Edgar', another pastoral regulatory letter by Ælfric and many other Wulfstan texts.

⁹⁴ Another edition had been in preparation by the siblings Elizabeth and William Elstob just before that of Wilkins was published, though it was never completed. The content is not certain. A manuscript in William Elstob's hand containing variant readings from the manuscripts of Lambarde and Whelock's texts implies that updated versions of all their texts would have been included. In addition, the Elstobs had access to *Textus Roffensis*; a transcription of the Kentish laws from *Textus* associated with the Elstobs survives. William Elstob died in 1715 and the edition was never finished. Wilkins seems to have had access to the Elstobs' preparatory materials, and he mentions it in his preface. See T. Graham, 'William Elstob's Planned Edition of the Anglo-Saxon Laws: a Remnant in the Takamiya Collection', *Poetica* 73 (2010), pp. 109–41.

⁹⁵ VI Atr, *Northu*, *Ordal*, *Pax*, *Waltraf*, *Sverian*, *Gehyncðu*, *Hadbot*, IV As 6, VI As, IV Eg (OE), V Atr, VIII Atr, *Be blaserum*, *Forfang*, *Wergeld* and *Grið*. See Liebermann, *Gesetze I*, p. xlix for more on the editorial history of these texts.

⁹⁶ A. Hamilton, 'Wilkins, David (1685–1745), Coptic scholar', *Oxford Dictionary of National Biography* (2004). His nationality is perhaps besides the point, though it is often mentioned; as Maitland remarked in his review of Liebermann's *Gesetze*, there appears to be no trace of 'foreign learning' in Wilkins editorial approach to the laws: F.W. Maitland 'The Laws of the Anglo-Saxons' *The Quarterly Review* 399 (1904): 139–57; reissued in *The Collected Papers of Frederic William Maitland*, vol. III, ed. H.A.L. Fisher (Cambridge, 1911), p. 454.

⁹⁷ Wilkins presented his manuscripts in *Leges*, p. [ix]. The correspondences between Wilkins's shelf-marks for Cambridge, Corpus Christi College manuscripts and the modern ones are as follows: 173=S. 11, 190=L. 12, 201=S. 18, and 265=K. 2.

used a transcript of *Textus*, as well as Lambarde and Whelock's editions and Spelman's *Concilia*.⁹⁸ Wilkins's selection of texts from these manuscripts seems to have been guided by a desire for comprehensiveness, as he stated in his preface: 'Totum opus complectitur omnes, quae hodie extant, Leges Anglo-Saxonicas...'.⁹⁹ In what he called a *novum legum corpus*, Wilkins included all known royal laws in Old English as well as a large number of the so-called anonymous laws. None of the anonymous texts are listed in the contents or given a heading,¹⁰⁰ and Wilkins's placement of them seems entirely based on where they appear in the manuscripts, and, in particular, where they appear in *Textus Roffensis*.¹⁰¹ The result is that these shorter anonymous texts appear under the name of the kings whose laws they follow in *Textus*, and Wilkins may not have considered them as individual texts at all.

Wilkins's edition is thus where the twelfth century, in the form of one of its legal collections, properly made its mark on the modern Anglo-Saxon legal canon. Nevertheless, Wilkins did not follow *Textus* in including Latin liturgy for ordeals and excommunication or Latin canons. Like his predecessors, he only included texts in Old English.¹⁰² He also departed from the manuscript context in printing the laws of *Ine* before those of *Alfred*, taking his cue from Lambarde (or from a concern for chronology). He also seems to have been guided by the content of some of Wulfstan's manuscripts, including CCC 201 and 190. These manuscripts provided several of the canonical and homiletic texts, such as the extracts from Wulfstan's *Institutes*, Ælfric's letters and an anonymous homily (listed by Wilkins as *Liber*

⁹⁸ The transcript is BL, Cotton Julius C.ii (Liebermann's MS JI).

⁹⁹ Wilkins, *Leges*, p. [ix]

¹⁰⁰ The pre-conquest contents in Wilkins is (titles in bold are those listed in the contents; in parentheses are Wilkin's titles where they deviate from the modern): **Abt, HI/Ea, Wi, Hadbot, Ine, Be Blas, Forfang, Ordal, Walreaf, Af, AGu, I-II Ew, EGu, Wer, Æthelstan's laws:** I As, As Alm, II As, V As and IV As 6 (OE fragment), *Pax, Sweirian, Að, Mirna laga, VI As (Judicia civitatis Lundoniae), Gefyncðu, Norðleoda laga, Mirna laga*, fragment of *Að*, **Edmund's laws:** I Em, II Em, *Wifmannes, II-III Eg, IV Eg (Legum Eadgari Supplementum), Canons of Edgar and 'Handbook for the Use of a Confessor' (Canones Editi sub Eadgaro Rege), Nordhymbra preosta lagu (Northumbrensiu presbiterorum leges), Æthelred's laws: I Atr, II Atr (including II Atr app), **V Atr/Grið/VIII Atr (Liber Constitutionum tempore R. Æthelredi), III Atr, Thureth, VI Atr (OE) (Concilium Ænhamense), Dunsæte (Senatus consultum de monticolis Wallia), I-II Cn, extracts from Wulfstan's Institutes of Polity (Liber Constitutionum), Ælfric's letter to Wulfsig (Liber canonum ecclesiasticorum), Ælfric's letters to Wulfstan (Ælfrici Epistola), Anon. homily/Theodulf's Capitula from CCC 201 (Liber Legum Ecclesiasticorum).***

¹⁰¹ For example, the cluster V As, IV As (OE fragment), *Pax, Swer, Að*, and *Mirna laga* found on fols. 37r–39v of *Textus Roffensis* is printed as one text in Wilkins's edition (pp. 62–5). The same is the case for VI As, *Gefyncðu*, and *Norðleoda laga* found on fols. 88r–94r in *Textus* and printed as one text by Wilkins (pp. 65–72). *Textus Roffensis* also accounts for *Hadbot* following Wihtræd's laws (fols. 5r–7v in *Textus*; pp. 12–3 in Wilkins), as well as the running together of the Edward-Guthrum treaty and *Wergeld* (fols. 40r–42r in *Textus*; pp. 51–4 in Wilkins) and the placement of *Be blaserum Forfang, Ordal* and *Walreaf* after *Ine*.

¹⁰² Wilkins printed Nowell's translations of As Alms and I As. For As Alm, which has no surviving Old English original, Wilkins printed the *Quadripartitus* text and Nowell's Old English. For I As, Wilkins printed the Old English version found in Cotton Nero A.i(B) and CCC 201 alongside Nowell's translation.

Legum Ecclesiasticorum). As it did for Whelock, CCCC 201 may have served as a model in combining Anglo-Saxon law with such canonical-homiletic texts.

Wilkins was a prolific editor, though one more interested in compiling as much material as possible than in translating or transcribing texts accurately.¹⁰³ In the words of a later editor of the laws, Benjamin Thorpe, Wilkins's ignorance 'even of the first principles' of Old English was 'perfectly astounding'.¹⁰⁴ His editions marks a significant expansion of the corpus, notably with much more canonical material, which may be related to this (rough and ready) desire for comprehensiveness. His acceptance of canon law as 'Anglo-Saxon law' would later be abandoned, perhaps on account of changing ideas about the divide between laws of the church and the state. However, in other ways, Wilkins's adherence to both Anglo-Saxon and Anglo-Norman manuscript contexts was followed by his successors.

1.3.4 Schmid (1832/58)

About a century later, Reinhold Schmid took further editorial decisions that contributed to shaping the modern corpus. In terms of content, Wilkins's selection was at the foundation of Schmid's *Die Gesetze der Angelsachsen*, published first in 1832 and reissued in 1858.¹⁰⁵ Schmid excluded the canon laws which Wilkins had included, stating in the preface that they belonged instead in a 'Conciliensammlung'.¹⁰⁶ He added texts that had only survived in *Quadripartitus*.¹⁰⁷ This selection was maintained in Schmid's second edition, which also saw the addition of a complete set of the *Quadripartitus* translations of the laws and the Latin version of *VI Æthelred*.

Schmid was thus the first of our editors to accept medieval Latin versions of the laws. Five additional decisions on Schmid's part brought the texts and corpus closer to today's. Firstly, Schmid numbered the chapters and clauses contained in each individual text.¹⁰⁸ Secondly, he assigned numbers to all the royal decrees, giving them their familiar

¹⁰³ This point is made in reference to Wilkins's other editions by Hamilton, 'Wilkins, David', *Oxford DNB*.

¹⁰⁴ B. Thorpe, *Ancient Laws and Institutes of England: Comprising Laws Enacted under the Anglo-Saxon Kings from Æthelbirht to Cnut*, vol. i (London, 1840), p. ix.

¹⁰⁵ R. Schmid, *Die Gesetze der Angelsachsen*, 1st ed. (Leipzig, 1832); *Die Gesetze der Angelsachsen*, 2nd ed. (Leipzig, 1858). The following references are to the first edition.

¹⁰⁶ Schmid, *Gesetze*, p. ix.

¹⁰⁷ As Alms, IV As, III Em, VII Atr, AGu App.

¹⁰⁸ This numbering does not always make sense and usually has no basis in the manuscripts. Liebermann chose to adopt it for ease of cross-reference (Liebermann, *Gesetze I*, p. vi). It is used almost universally still today, albeit with the occasional warning that it can be misleading, see e.g. R. Dammery, 'Editing the Anglo-Saxon

names of *III Edmund*, *II Edward* and so on. Thirdly, he translated the laws into a modern language, German, rather than Latin. Fourthly, he gave descriptive names (in German) to the anonymous laws, explicitly marking them out as discrete texts. Fifthly, he abandoned Wilkins's manuscript-based structure in favour of a bipartite division between laws with royal attribution (printed chronologically in the main part of the edition) and the anonymous texts (printed in an appendix).¹⁰⁹

Schmid's edition is thus characterized by systematization and enumeration. This may have to do with his day job as professor of law at the University of Jena, which would presumably have given him an idea of the appropriate and most user-friendly form of law texts. Indeed, in his preface he makes it clear that he was not primarily an historian: he stated that the start of his six-year long editorial project involved learning Old English from Jacob Grimm's *Deutsche Grammatik* and Rasmus Rask's Anglo-Saxon grammar, before turning to works on Anglo-Saxon history and literature.¹¹⁰ Features of Schmid's academic context may also have influenced his editorial choices. The nineteenth century saw a major effort to codify German law, which culminated in the enactment of the German civil code in 1900. His century's focus on the textual representation, codification and systematization of law may have prompted him to present the Anglo-Saxon laws in a more systematic and ordered fashion. These were also the days of the earliest *Monumenta Germaniae Historica* editions, the first of which was published in 1826 and the first containing law in 1835. It is possible that this new and more scientific approach to editing and presenting medieval texts influenced Schmid. In fact, even though he was never able to consult the actual manuscripts, Schmid expressed an interest in textual criticism and noted its importance for medieval law, and he lamented the numerous errors in previous editions of the Anglo-Saxon laws (though in politer terms than Thorpe).¹¹¹

Textual criticism was of great concern in legal studies in Schmid's day, primarily in the scholarly movement known as the *Historisches Rechtsschule*, which we shall meet again

Laws: Felix Liebermann and Beyond', in D. Scragg and P. Szarmach (eds), *The Editing of Old English: Papers from the 1990 Manchester Conference* (Cambridge, 1994), pp. 251–62, at pp. 259–60 and Wormald, *MEL*, p. 22.

¹⁰⁹ The pre-conquest content of Schmid's edition is as follows (with Schmid's numbering in parentheses where it differs from the modern): Abt, Hl/Ea, Wi, Ine, Af, AGu, AGu Appendix [from *Quad.*], I–II Ew, EGu, I As, II As, V As (=III As), III As (=IV As), IV As (=V As), VI As, Hu (=VII As), I Em, II Em, III Em, II–III Eg (=I Eg), IV Eg (=II Eg), I Atr, III Atr (=II Atr), II Atr (=III Atr), VI Atr (=IV Atr), V Atr, VIII Atr (=VI Atr), VII Atr, I–II Cn(=I Cn). Appendix: *Northu*, *Dunsate*, *Grið*, IV Atr (=Londonder Statut), *Wifmannes*, *Gefhyncðu*, *Wergeld*, *Norðleoda*, *Myrcna lage*, *Hadbot*, *Að*, *Swerian*, *Ordal*, *Be blaserum*, *Walreaf*, *Pax*, *Forfang*.

¹¹⁰ Schmid, *Gesetze*, p. vii.

¹¹¹ Schmid, *Gesetze*, p. ix.

shortly. Schmid appears to have ascribed to their fundamental thinking, which is clear, for example, when he says that he sought to understand Anglo-Saxon legal and administrative institutions through ‘related monuments of Germanic origin’ and that the Anglo-Saxon laws were vital to understanding German law.¹¹² His use of the grammar written by Grimm – a key figure in the *Rechtsschule* – may have convinced him that there were deep connections between Anglo-Saxon law and language and that of other Germanic peoples. Schmid’s edition thus marks the start of a lasting influence of nineteenth-century German legal thinking on our modern idea of the corpus of laws.

1.3.5 Thorpe (1840)

Schmid’s *Die Gesetze* was followed by an English edition, *Ancient Laws and Institutes of England*, started by Richard Price (d.1833) and completed in 1840 by the scholar and prolific editor of Old English texts, Benjamin Thorpe. This edition would later be used by Schmid in his second edition of 1858 to make emendations and corrections; Thorpe had access to manuscripts and Schmid did not. Thorpe was indebted to Schmid too, in that he copied Schmid’s selection of texts. He included only two new texts: the Old English version of *Hundred* – which Schmid had published in the twelfth-century *Quadripartitus* version – and the text known as *Rectitudines singularum personarum*.¹¹³ Thorpe was also the first to associate *Hundred* with King Edgar, which has had lasting influence particularly through the later naming of this text as *I Edgar*.¹¹⁴

Both *Hundred* and *Rectitudines* (in their Old English versions) are uniquely preserved in the manuscript CCC 383, which was used by Lambarde and Nowell, but not Wilkins.¹¹⁵ Lambarde and Nowell may have left *Hundred* behind due to its form and lack of association with a king or assembly. *Rectitudines* would not have fit their selection criteria either: it is a manual for running an estate and, in Thorpe’s words, a ‘curious text’.¹¹⁶ Thorpe explained its

¹¹² Schmid, *Gesetze*, p. viii.

¹¹³ Thorpe, *Ancient Laws*, pp. 109–11, 185–90.

¹¹⁴ Schmid placed the Latin version of *Hundred* under Æthelstan’s laws. This is probably because he used a version of the text which deviates from the standard in mentioning King Edward (the king preceding Æthelstan) in place of King Edmund (the king succeeding Æthelstan). This text is a version of the *Quadripartitus* translation copied into a fourteenth-century chronicle falsely attributed to John Brompton (Wormald, ‘*Quadripartitus*’, pp. 82 fn 4, 90 fn 35). This mistake was corrected in the second edition of *Die Gesetze*, where *Hundred* was designated as one of Edgar’s laws (Schmid, *Gesetze*, 2nd ed., pp. 182–4).

¹¹⁵ Wilkins did not use CCC 383, relying instead on Lambarde for the text of *Dunsate*. Wilkins, *Leges*, p. [ix].

¹¹⁶ Thorpe, *Ancient Laws*, p. iv.

value in terms of the information it provides on ‘the several classes of persons employed on a domain, of the services to be rendered by each, and of the reciprocal duty of the lord to those engaged on his land’.¹¹⁷ While that would have seemed irrelevant to Lambarde in his book of royal statutes, perhaps Thorpe embraced it because he was of the opinion that most Anglo-Saxon law would have been unwritten and customary.¹¹⁸ A text revealing underlying personal relationships and customary arrangements may have been considered as valuable a source to Anglo-Saxon law as surviving royal statutes.

Thorpe’s *Ancient Laws and Institutes* was published in two volumes, with the second dedicated to ecclesiastical texts. Like his contemporary Schmid, therefore, he did not include any of the ecclesiastical canons among the secular Anglo-Saxon laws. But Thorpe deviated from Schmid in abandoning the structural divide between the royal and anonymous laws. Instead he reverted to Wilkins’s methods, printing the anonymous texts among the royal ones seemingly based on their manuscript placement.¹¹⁹ Manuscript placement also prompted Thorpe – as the first editor since the twelfth-century collectors – to move *Ine* back to its placement after *Alfred*.

1.3.6 Liebermann (1898–1903)

As has become clear, the editions follow each other closely in terms of content and structure. This did not end with latest full edition of the Anglo-Saxon laws, Felix Liebermann’s *Die Gesetze der Angelsachsen*. Commissioned by the German Royal Academy at the end of the nineteenth century, the edition and apparatus were published in three volumes between 1903 and 1916, with the first (containing texts and translations) published in instalments between 1898 and 1903.¹²⁰

Liebermann included everything found in Schmid and added thirty new pieces.¹²¹ The rationale behind this expansion seems to be expressed in Liebermann’s description of these texts as ‘innerlich verwandte Stücke’ (‘internally related pieces’), perhaps signalling that

¹¹⁷ Thorpe, *Ancient Laws*, p. iv.

¹¹⁸ Thorpe, *Ancient Laws*, p. iii.

¹¹⁹ *Ordal* is placed with Æthelstan’s laws, which could be influenced by the *Quadripartitus* manuscripts. *Be wifmannes* is placed with Edmund’s laws, also reflecting the *Quadripartitus* structure. There is some hint of chronological arrangement too, for example in grouping *Hundred* with Edgar’s laws.

¹²⁰ Liebermann’s *Die Gesetze der Angelsachsen* has three volumes: I: *Text und Übersetzung* (1903), II: *Wörterbuch. Rechts- und Sachglossar* (1906) and III: *Einleitung zu jedem Stück: Erklärungen zu einzelnen Stellen* (1916).

¹²¹ F. Liebermann, *Die Gesetze der Angelsachsen vol. I: Text und Übersetzung* (Halle, 1903), p. vi.

it was subject matter that guided his selection. Among these new texts were some which Liebermann had been the first to print elsewhere (including formulas, *Gerefa*, *Iudex*, *Romscot*, *IV Edgar Latin*, and Anglo-Norman material) and some which had been printed by others, but not necessarily classified as laws (including formulas, a coronation oath, *IX and X Æthelred*, Cnut's letters, *Episcopus*, and Anglo-Norman material).¹²² Such additions brought the corpus closer to some of the manuscripts: for example, some of the texts he printed as *Iudicia Dei* – liturgy, rituals and formulas in Latin related to excommunication and ordeals – are found in *Textus Roffensis*.¹²³ He also printed rituals and formulas from manuscripts which otherwise do not contain legislative texts, perhaps inspired by *Textus*' collocation of such formulas and Old English royal laws.¹²⁴ In this way, Liebermann let the manuscript context guide his selection in a way seemingly rejected by earlier editors such as Wilkins, who kept close to *Textus*, but only as far as the more clearly legislative texts went and only those written in Old English. Liebermann did, however, reject the canon law extracts found in *Textus*: he edited and published them, not for inclusion in *Die Gesetze*, but rather for an article in *Deutsche Zeitschrift für Kirchenrecht*.¹²⁵

Apart from canon law, Liebermann clearly intended for his edition to be as exhaustive as possible. This is suggested, for example, by his inclusion of the 'laws' of Eorcenberht, a seventh-century Kentish king. According to Bede's *Historia ecclesiastica*, Eorcenberht banned idols and commanded the keeping of the Lenten fast upon becoming king.¹²⁶ Liebermann printed the relevant passage from Bede, placing it in its chronological order between *Æthelberht* and *Hlothhere*.¹²⁷ All in all, Liebermann included everything from oaths to letters to royal enactments. Liebermann's additional texts are perhaps best described with the words of one of his reviewers: 'They are valuable as affording glimpses of that vast body of customs, doctrines and traditions which lay behind the positive law of the Anglo-

¹²² Liebermann specified what he excluded, including the so-called *Wetherlagsret* (household (or court) regulations attributed to Cnut by a later Danish historian), some material from Domesday Book, and penitentials and canons (*Gesetze I*, p.vi).

¹²³ *Textus Roffensis*, fols. 98r-100r. Liebermann, *Gesetze I*, pp. 401–41.

¹²⁴ These formulas and manuscripts are discussed in E.M. Trehearne, 'A unique Old English formula for excommunication from Cambridge, Corpus Christi College 303', *Anglo-Saxon England* 24 (1995), pp. 185–211, at pp. 201–5.

¹²⁵ F. Liebermann, 'De accusatoribus aus Ps-Isidore', *Deutsche Zeitschrift für Kirchenrecht* 11 (1902), pp. 1–5.

¹²⁶ B. Colgrave and R.A.B. Mynors (eds), *Bede's Ecclesiastical History of the English People* (Oxford, 1991), pp. 236–7 (III.8).

¹²⁷ Liebermann, *Gesetze I*, p. 9.

Saxon period, and which must have profoundly influenced the minds of those by whom the law was interpreted and applied.¹²⁸

Liebermann's desire for comprehensiveness is reflected in the number of sources he consulted: he used around 180 manuscripts, against Thorpe's 23 and Schmid's nil.¹²⁹ Structurally, however, he was less reliant on manuscripts and more on Schmid. He stated that advances in palaeography, constitutional history and Germanic legal history mean that 'my arrangement must deviate from Schmid's, but never without need, never from mere desire for innovation'.¹³⁰ This presumably accounts for why he reverted to the manuscript order of *Ine* after *Alfred*. But he must not have seen any legal, constitutional or palaeographical reason to give up Schmid's division between the royal and anonymous laws, which he kept.

Liebermann's editorial choices can be better understood when seen in the context of nineteenth-century German legal scholarship. Historically, the fact that Liebermann was German has mattered a great deal, at least to some. F.W. Maitland's review of Liebermann's *Die Gesetze* is – while positive – largely a discussion of the study of Anglo-Saxon law in Germany and a lament of the fact that no English scholar had taken on the task of reediting the laws.¹³¹ Maitland rather dramatically concluded that 'We have lost the Anglo-Saxon laws.'¹³² We do not need to be as concerned with editors' nationality, though we do need to consider Liebermann's edition in light of the *Historisches Rechtsschule*.¹³³ This term hides a long and complex tradition, intricately tied up with movements of nationalism and codification of law.¹³⁴ For the purposes at hand, it is enough to note a central tenet of this school, namely

¹²⁸ H.W.C. Davis, 'The Anglo-Saxon Laws', *The English Historical Review* 28 (1913), pp. 417–30, at p. 421.

¹²⁹ Liebermann, *Gesetze I*, p. vii. A large part of Liebermann's manuscripts contain post-conquest material, though Liebermann's inclusion of the previously unknown texts IX and X Atr are down to the discovery of new manuscripts, and the Latin formulas are from liturgical manuscripts previously not drawn on for editions of the laws.

¹³⁰ Liebermann, *Gesetze I*, p.vi.

¹³¹ Maitland, 'The Laws of the Anglo-Saxons', pp. 447–73. Maitland expressed a similar feeling before Liebermann began his project, in a 1888 lecture entitled 'Why the History of the English Law is not Written': 'It gives us no surprise when we hear that a new edition of our earliest laws will be published by the Bavarian Academy: who else should publish the stupid things?'; printed in *The Collected Papers of Frederic William Maitland, Vol I*, ed. H.A.L. Fisher, pp. 480–97, at p. 485.

¹³² Maitland, 'The Laws of the Anglo-Saxons', p. 472.

¹³³ For more on Liebermann in his context, see D. Fruscione, 'Liebermann's Intellectual Milieu', in S. Jurasinski, A. Rabin, and L. Oliver (eds), *English law before Magna Carta: Felix Liebermann and Die Gesetze der Angelsachsen* (Leiden, 2010), pp. 15–26; A. Rabin, 'Felix Liebermann and *Die Gesetze der Angelsachsen*', in Jurasinski et al., *English law before Magna Carta*, pp. 1–8; P. Wormald, 'Liebermann, Felix', in J. Cannon, W. Doyle, and R.H.C. Davis (eds), *The Blackwell Dictionary of Historians* (New York, 1988), pp. 245–7.

¹³⁴ For a useful introduction to a large field, see S.G. Gale, 'A Very German Legal Science: Savigny and the Historical School', *Stanford Journal of International Law* 18 (1982), pp. 123–46 and K. Shoemaker, 'Germanic Law', in Heikki Pihlajamäki, Markus D. Dubber, and Mark Godfrey (eds), *The Oxford Handbook of European Legal History* (Oxford, 2018), pp. 249–61.

the notion that law grew out of and was part of a people's consciousness, their *Volksgeist*. The Anglo-Saxon laws were seen as an expression of a shared Germanic law and spirit, written in a Germanic language to boot.¹³⁵ Several important figures in this movement were closely connected to Liebermann and his editing project, including Georg Waitz (his doctoral supervisor), Heinrich Brunner and Konrad Maurer.¹³⁶ The last two were dedicatees of volumes of *Die Gesetze* and had been responsible for securing Liebermann the commission.¹³⁷ They had apparently been impressed by Liebermann's work as an editor at MGH, where he had learned something the *Rechtsschule* placed great value in, namely textual criticism and editing.¹³⁸

Liebermann's patrons and teachers were therefore closely connected to the *Rechtsschule* and *Die Gesetze* reveals that Liebermann shared some of their ideas. Wormald detected a static view of law – à la Jacob Grimm – in Liebermann's *Sachsglossar*, which has almost no emphasis on the ways in which the laws changed over time.¹³⁹ While he followed the manuscripts and their historical context to a degree, Liebermann showed very little interest in how and why manuscripts or texts looked the way they did. What is more, Wormald also noted Liebermann's tendency to use Icelandic or Scandinavian laws for comparison rather than Carolingian capitularies, reflecting a view of the shared Germanic customary character of these laws.¹⁴⁰ Liebermann's expansive view of what belongs in an edition of 'Gesetze' can also be seen in light of the project of the historical school. Unlike Lambarde, the focus was not on the king and parliament and their ability to issue enactments. Instead, Liebermann's aim seems to have been to present as much as possible of the Anglo-Saxon share of the Germanic legal past. This he did by editing all normative documents reflecting the laws, customs, legal principles and legal practices that existed.

1.3.7 After Liebermann

In the 1920s, the royal laws were edited (with a heavy reliance on Liebermann) and translated into modern English in two volumes prepared by F.L. Attenborough (from Æthelberht to

¹³⁵ Fruscione, 'Liebermann's Intellectual Milieu', pp. 20–3; Shoemaker, 'Germanic Law', pp. 251–2.

¹³⁶ Wormald, *MEL*, pp. 21–3.

¹³⁷ See e.g. Wormald, *MEL*, p. 21.

¹³⁸ Fruscione, 'Liebermann's Intellectual Milieu', pp. 23–4.

¹³⁹ Wormald, *MEL*, p. 23.

¹⁴⁰ Wormald, *MEL*, pp. 23–4.

Æthelstan) and A.J. Robertson (from Edmund to Henry I).¹⁴¹ Almost a hundred years later, a new large-scale editing project was started and is still underway. *The Early English Laws Project* aims to publish ‘new editions and translations of all English legal codes, edicts, and treatises produced up to the time of Magna Carta 1215’.¹⁴² When finished, this will represent the most extensive version of the corpus, with over 150 texts included, just over half of which are pre-conquest.¹⁴³ Like this chapter, the project lists the question ‘What are the early English law texts?’ as one of its research problems. It too calls for a reassessment of Liebermann’s understanding of the texts and corpus, though no statement about the form of a corpus or the criteria on which it should be based has been published. For the time being, it seems that the project maintains an expansive view of what makes ‘a law’, and it includes references to Eorcenberht’s ‘laws’ as well as liturgy and formulas based on Liebermann’s selection.

1.3.8 From Lambarde to Liebermann

In many ways, Liebermann took into account the spirit of all his manuscripts. His corpus represents an amalgamated view of what different compilers and scribes at different times had considered relevant, from Wulfstan in the early eleventh century to the *Quadripartitus* compiler in the twelfth to his editorial predecessors in the centuries since. The one thing he did not adopt was canon law without association to a king, in keeping with ideas of his own time about the separation of the laws of the church and of the state. His project resulted in the largest (completed) expression of the Anglo-Saxon legal corpus: the pre-conquest laws in Liebermann’s edition include 45 individually named royal texts and 55 separate items of anonymous laws.¹⁴⁴ That is an extraordinary expansion on Lambarde’s twenty texts. Yet, there have not been many other significant quantitative changes to the corpus. After the great expansion between Whelock (23 texts) and Wilkins (50), Schmid (48) and Thorpe (42) merely refined the selection.

¹⁴¹ F.L. Attenborough (ed. and trans.), *The Laws of the Earliest English Kings* (Cambridge, 1922); A.J. Robertson (ed. and trans.), *The Laws of the Kings of England from Edmund to Henry I* (Cambridge, 1925). Of the non-royal laws, they only printed *Ordal* and *Be blaserum* (Attenborough) and *Promissio regis* (Robertson).

¹⁴² The texts included in this project, as well as the project’s aims, are set out at earlyenglishlaw.ac.uk/about/project [accessed March 2020].

¹⁴³ 26 entries contain rituals and liturgy printed by Liebermann, while 52 are Liebermann’s pre-conquest laws.

¹⁴⁴ There are 27 anonymous texts if all formulas for ordeals and excommunication are counted as one.

The premise of this section has been that changes to the corpus express different editors' views of what counts as Anglo-Saxon *laws*, *leges* or *Gesetze* (which has, in one language or another, been in the title of all their works). After the *editio princeps*, none of the editors started their construction of a corpus from scratch, but explicitly used those of previous editors as a starting point.¹⁴⁵ The formation of the corpus is therefore marked by some continuity, though there have been several developments too. From the accounts given above, we can detect four underlying reasons for change: firstly, manuscript access and adherence to their content and structure; secondly, ideas of the divide between ecclesiastical and secular law; thirdly, perceived relevance of texts expressing underlying practices and customs; and finally, acceptance of Latin versions. Such changes were influenced by the scholarly and political currents of editors' own time. This was as clear in the case of Lambarde living in post-Reformation England as it was for Liebermann living in a century marked by legal codification and an interest in the shared past of Germanic law.

1.4 The new corpus

This implicit corpus could do with some explicit adjustment. The aim of this adjustment should be to create a corpus which reflects what seems to have been a distinct body of texts to Anglo-Saxon eyes. Importantly, a new corpus should also bring out the varieties of texts, and – as I will argue more fully in the next chapter – contribute to the abandonment of the blanket use of the term 'law code'.

Taking Liebermann's selection as the starting point, I propose that some texts should be removed, namely *Rectitudines singularum personarum*, *Gerefa*, *Promissio regis*, *Iudex*, *Episcopus*, *Sverian*, *Hit becwæð* and rituals and formulas for ordeals and excommunication. *Episcopus* is excluded following the case made by Wormald, who argued that its manuscript context reveals that it was not perceived of as a legal text, a proposition supported by its content.¹⁴⁶ *Rectitudines* and *Gerefa* are omitted on the basis of the argument set out by Paul Harvey.¹⁴⁷ He concluded that *Rectitudines* is a local instructional manual for an estate and *Gerefa* a literary

¹⁴⁵ All editors explicitly acknowledge their debt to their predecessor(s), with Whelock and Wilkins even printing the prefaces of previous editions.

¹⁴⁶ Wormald, *MEL*, p. 392 fn 584.

¹⁴⁷ This argument is the focus of Harvey's article 'Rectitudines singularum personarum and Gerefa'. Wormald supports Harvey's conclusions, though he still included a section on *Rectitudines* in *MEL* (pp. 387–9).

text based on a Roman model, and that neither were composed as legislation or regulation. In addition, they are not copied, referenced or even remotely paralleled in other law texts. That is also the case for *Iudex*, a translation of a chapter from Alcuin's *De virtutibus et vitiis*. It is sandwiched between the chapter list and prologue to Alfred's law-code in an eleventh-century manuscript (Cotton Nero A.i(A)), and it appears to have been part of a now-lost manuscript used by Nowell.¹⁴⁸ As chapter 4 argues, it should be included in the corpus as a part of Alfred's code, but I see little reason to grant it independent status in the corpus.

Oaths, formulas and charms (including *Swerian*, *Hit becwæð* and the coronation oath known as *Promissio regis*) represent text versions of legal speech acts, (presumably) intended to be the words spoken as part of a proceeding. These texts do not self-represent as legislative acts and they are never drawn on, paralleled or referenced in other laws nor are they used in codifications. The same goes for liturgy and rituals. Some such texts are found in CCCC 383 and *Textus*, which led Andrew Rabin to argue that they should form part of the corpus, given that they reflect contemporary ideas of law.¹⁴⁹ However, as the previous section made clear, the Anglo-Norman manuscripts are not a good guide to Anglo-Saxon views. All in all, there does not seem to be sufficient reason to include charms, oaths, liturgy and rituals in the corpus.

The bulk of the remaining corpus is made up of texts that self-represent as legislative acts issued by kings or local agencies, a majority of which, as we saw above, parallel, cross-reference or refer to each other. These are set out in table 1 below. This includes *Cnut 1018*, which is absent from Liebermann as an independent text.¹⁵⁰ In addition, most of the so-called anonymous laws warrant inclusion in the corpus. The longer texts *Ordal*, *Wer* and *Hundred* should be included, and not just because they correspond thematically to many other law texts. *Hundred* references previous royal legislation explicitly, while several parts of *Ordal* and *Wer* are paralleled – sometimes verbatim – in other royal legislation, as chapter 3 will show. Therefore, they seem to have been seen as part of that same body of law texts. The same argument holds for *II Æthelred Appendix* and *Alfred-Guthrum Appendix* which partly copy, partly parallel other texts, as chapter 3 will show. The tracts *Grîð*, *Norðgrîð* and the *Gedyncðu*

¹⁴⁸ For the lost codex, see Wormald, *MEL*, pp. 176, 382. In Nowell's transcript, it is printed after *V Æthelstan*.

¹⁴⁹ Rabin, 'A Charm against Theft'.

¹⁵⁰ The independence and context of *Cnut 1018* (which Liebermann printed as a version of *I-II Cnut*) was established by Whitelock, who argued that it was issued in connection with a meeting between Danes and the English at a meeting at Oxford recorded in the *Anglo-Saxon Chronicle* for the year 1018: see D. Whitelock, 'Wulfstan and the Laws of Cnut', *The English Historical Review* 63 (1948), pp. 433–52, at pp. 439–43. *Cnut 1018* is discussed in chapter 3, section 3.1.2.

group, all penned by Wulfstan, also have many parallels in other texts and sometimes refer to and rely on other laws (especially *Grið*).¹⁵¹ The same argument holds for *Norðhymbra preosta lagu*, which both parallels and uses other law texts.¹⁵²

The group of much shorter anonymous texts, namely *Be blaserum*, *Forfang*, *Romscot*, *Pax*, *Walreaf* and *Ymb anbricas* should also be included. The last would be an addition to Liebermann's corpus, as it only survives in a manuscript transcript unknown to Liebermann.¹⁵³ As Wormald argued, these texts seem likely to have been 'conceived as supplements to official legislation', indicated by their manuscript context as well as content, as chapter 3 will show.¹⁵⁴ One caveat about their inclusion is that they may never originally have been seen as discrete texts, since they are almost always attached to (the same) longer texts. For example, *Romscot* – which is only 25 words long – exists in one manuscript (Cotton Nero A.i(A)), where it seems to add information to a particular chapter in Ine's laws. It may have originated as a gloss which later made its way into the text.¹⁵⁵ These short notes should perhaps be included in the corpus only as parts of other texts, although this is practically challenging. The first step could be to remove Liebermann's made-up Old English editorial names. They arguably create a potentially unjustified impression that such notes were conceived of as distinct texts when they were written. A reversion to descriptive names in modern English, such as those given by Thorpe (e.g. 'Of oaths'), might be the simplest solution.

Some texts should gain more of an independent existence in our corpus, namely the texts known as *IV Edgar Latin* (or Liebermann's *versio*) and *VI Æthelred Latin* (or Liebermann's *Paraphrase*). These two texts often get less attention than others, perhaps due to Liebermann's layout: they are printed in the column usually set aside for *Quadripartitus* versions and it is an easy mistake to assume that these two are also twelfth-century Latin

¹⁵¹ This is set out in A. Rabin, 'Archbishop Wulfstan's "Compilation on Status" in the *Textus Roffensis*', in B. Bombi and B. O'Brien (eds), *Textus Roffensis: Law, Language, and Libraries in Early Medieval England* (Turnhout, 2015), pp. 175–92.

¹⁵² The best overview of these correspondences are found in D. Whitelock, M. Brett, and C.N.L. Brooke (eds), *Councils & Synods: with other Documents Relating to the English Church. 1: A.D.871-1204*, part 1 (Oxford, 1981), pp. 450–1.

¹⁵³ *Ymb anbricas* only survives in Nowell's transcript of Cotton Otho B.xi. The text is printed in R. Flower, 'The Text of the Burghal Hidage', *London Medieval Studies* 1 (1937), pp. 60–4, at p. 62. Wormald gives a full translation in *MEL*, p. 372.

¹⁵⁴ Wormald, *MEL*, p. 372.

¹⁵⁵ Wormald, *MEL*, p. 368.

translations.¹⁵⁶ They are not. As chapter 3 shows, the Latin version of *VI Æthelred* is not just written in a different language from its Old English counterpart, but it is also written in a different legislative style, seemingly by Wulfstan himself. *IV Edgar Latin* also has differences in content and style from its Old English counterpart, and this translation might also have been made by Wulfstan. *IV Edgar Latin* and *VI Æthelred Latin* therefore offer unique insights into the production of written law in Anglo-Saxon England, particularly the potential role of Latin in secular legislation.¹⁵⁷ Perhaps a name change is the right measure in these cases too.

The same goes for the unfortunately named texts *II Æthelred Appendix* and *Alfred-Guthrum Appendix*. As chapter 3 discusses, these are discrete texts in their manuscript contexts, and they both represent unusual forms of legislation. Therefore, they ought to be granted an existence and more attention. A name-change might also be beneficial for some of the texts currently known under a royal name, such as *III* and *VI Æthelstan*.¹⁵⁸ These are local responses to royal law rather than royal laws in themselves, but they have earned their association with Æthelstan through referring to and confirming decrees in his name. Counting them among Æthelstan's laws usefully marks their dependence on his laws, but it is misleading. Again, changing the names of the texts is practically challenging, something which Liebermann gave as one of his reasons for keeping many of Schmid's designations.¹⁵⁹ Nevertheless, it matters enormously for our interpretation and mental categorization of these texts and bears consideration.¹⁶⁰

The aim of the proposed adjustment to the corpus is not to restrict what an edition of Anglo-Saxon laws should contain. After all, editors are not necessarily seeking to create a corpus, but rather to make material accessible for a range of reasons. However, given that the corpus presented in the editions seem to have been uncritically adopted for all purposes, an actual

¹⁵⁶ This seems to have happened, for example, in the *Dictionary of Medieval Latin from British Sources*, which attributes a quotation under 'justificatio' sense 6 to *Quadripartitus*, when in fact, it is from the Latin version of IV Eg contained in the mid eleventh-century manuscript CCC 265.

¹⁵⁷ On this topic, see I. Ivarsen, 'A Vernacular Genre? Latin and the Earliest English Laws' *The Journal of Medieval History* (forthcoming).

¹⁵⁸ Keynes, 'Royal Government', p. 239 argued that IV As should also be seen a local text responding to royal legislation; the same is argued in Roach, 'Law Codes', pp. 472–3.

¹⁵⁹ Liebermann, *Gesetze I*, p.vi.

¹⁶⁰ A suggestion for new names could be: AGu App= 'A compilation on theft', II Atr App= 'A tract on vouching to warranty', III As= 'a decree of the people of Kent', VI As= 'the London peace guild's decree'.

discussion of what we mean by ‘an Anglo-Saxon law’ has proven necessary. Perhaps the lack of a differentiation in English between the concepts *lex* and *ius* or *Recht* and *Gesetze* is partly to blame: using Liebermann’s corpus as the basis for studies of the practices, customs and rules of Anglo-Saxon law is less problematic than it is to use his corpus to talk about law texts, their content and their promulgation. In other words, the best source for ‘Anglo-Saxon law’ may well be Liebermann’s broad selection, but his edition does not reflect what ‘an Anglo-Saxon law’ is. However, as I showed above, his selection is used as a basis for studies both of law and of law texts. My proposed new corpus consists of the texts we can call ‘the Anglo-Saxon laws’, and it is constructed using evidence from the texts themselves, whether it is self-representation, citations, cross-references or a mix. It should thereby represent a corpus of texts that appear to have been seen as a distinct body at the time, and it allows us to base our studies of the characteristics, transmission, text, content and production of law texts on more stable foundations. As the following chapters will show, it clears the way for a better understanding of where, when and by whom surviving texts were made.

Table 1: Texts included in the manuscripts and editions

	CCCC 383	<i>Textus Roffensis</i>	<i>Quadripartitus</i> ¹	Lambarde (1568)	Whelock (1644)	Wilkins (1721)	Schmid (1832/58)	Thorpe (1840)	Liebermann (1903)	New corpus
Æthelberht		x				x	x	x	x	x
Hlothhere/Eadric		x				x	x	x	x	x
Wihtræd		x				x	x	x	x	x
Alfred-Ine	x	x	x	x	x	x	x	x	x	x
Alfred/ Guthrum	x (x2)	x	x	x	x	x	x	x	x	x
I Edward	x	x	x	x	x	x	x	x	x	x
II Edward	x	x	x	x	x	x	x	x	x	x
Æthelstan Alms			x	x	x	x	x	x	x	x
I Æthelstan			x	x	x	x	x	x	x	x
II Æthelstan	x	x	x	x	x	x		x	x	x
III Æthelstan			x					x	x	x
IV Æthelstan			x				x	x	x	x
IV As (OE fragm.)		x				x	x	x	x	x
V Æthelstan		x	x	x	x	x	x	x	x	x
VI Æthelstan		x	x			x	x	x	x	x
I Edmund	x	x	x			x	x	x	x	x
II Edmund	x	x	x			x	x	x	x	x
III Edmund			x				x	x	x	x
II-III Edgar			x	x	x	x	x	x	x	x
IV Edgar						x	x	x	x	x
IV Edgar Latin									x	x
I Æthelred	x	x	x	x	x	x	x	x	x	x
II Æthelred	x		x	x	x	x	x	x	x	x
III Æthelred		x	x			x	x	x	x	x
IV Æthelred			x				x	x	x	x
V Æthelred						x	x	x	x	x

¹ All *Quadripartitus* manuscripts have variations in their selection; the list given here is a combined version. For the content of individual manuscripts, see Wormald, *‘Quadripartitus’*, pp. 92–5.

VI Æthelred OE						x	x	x	x	x
VI Æthelred Latin							x ²		x	x
VIIa Æthelred									x	x
VII Æthelred			x				x	x	x	x
VIII Æthelred						x	x	x	x	x
IX Æthelred									x	x
X Æthelred									x	x
Cnut 1018										x
I-II Cnut	x		x	x	x	x	x	x	x	x
Cnut's letter 1020									x	x
Cnut's letter 1027									x	x
AGu App			x				x	x	x	x
II Æthelred App	x		x	x	x	x			x	x
<i>Að</i>		x	x	x	x	x	x	x	x	x
<i>Be blaserum</i>	x	x	x			x	x	x	x	x
<i>Dunsate</i>			x	x	x	x	x	x	x	x
Edward-Guthrum	x	x	x			x	x	x	x	x
<i>Episcopus</i>			x						x	
<i>Forfang</i>	x	x	x			x	x	x	x	x
<i>Gerefa</i>	x								x	
<i>Gefyncðu</i>		x	x			x	x	x	x	x
<i>Grîð</i>						x	x	x	x	x
<i>Hadbot</i>		x	x			x	x	x	x	x
<i>Hit becnæð</i>	x	x							x	
<i>Hundred</i>	x		x				x(Lat.only)	x	x	x
<i>Index</i>			x						x	
<i>Mircna lage</i>		x	x	x	x	x	x	x	x	x
<i>Norðleoda lage</i>		x	x	x	x	x	x	x	x	x
<i>Norðhymbra preosta lagu</i>						x	x	x	x	x
<i>Ordal</i>		x	x			x	x	x	x	x
<i>Pax</i>		x	x			x	x	x	x	x

² This was added in Schmid's second edition of 1858.

<i>Rectitudines singularum personarum</i>	x		x					x	x	
<i>Romscot</i>									x	x
<i>Sverian</i>	x	x	x			x	x	x	x	
<i>Walreaf</i>		x	x			x	x	x	x	x
<i>Wergeld</i>	x	x	x			x	x	x	x	x
<i>Wifmannes</i>	x	x	x		x	x	x	x	x	x
<i>Ymb awbricas</i>									x	x
Rituals, liturgy, formulas		x							x	
Canons of Edgar					x	x				
Ælfric letters					x	x				
Anglo-Norman texts ³		Inst. Cn, Wl art, CHn cor, Wl lad	Wl lad, [Wl art], CHn cor, Hn com, [Inst. Cn]	Wl art, E Cf	Hn, Leis Wl (French and Latin), Wl art, E Cf	Hn, E Cf, and <i>leges</i> of William I, William II, Henry I, Stephen, Henry II, Richard I, John, Henry II.	Hn, E Cf, Lib Lond, Ps Cn For, Leis Wl, Wl lad, Wl art, Wl ep	Hn, E Cf, Lib Lond, Ps Cn For, Leis Wl, Wl lad, Wl art, Wl ep	Wl lad, Wl ep, Wl Lond, Wl art, Wl art Frz, Wl art Lond retr, Leis Wl, Wl, Edmr, CHn, Hn mon, Hn com, Hn Lond, Hn, In Cn, Cons Cn, Ps Cn For, E Cf, Lib Lond.	
Misc.	Charm	Canon law extracts (Ps-Isidore), charm, genealogies, lists of popes, charters	Historical commentary in 'London group' MSS			'Handbook for the Use of a Confessor', Thureth (poem), extracts from Wulfstan's <i>Institutes of Polity</i> , anon. homily/Theodulf's <i>Capitula</i> from CCC 201	Full set of <i>Quadripartitus</i> texts (in 2 nd ed.)	Canons etc. in Vol II	Earconberht's 'laws', <i>Promissio Regis</i> , rituals, formulas and liturgy, full set of <i>Quadripartitus</i> texts	

³ The abbreviations used are those given in Liebermann, *Gesetze I*, pp. ix-x.

2 The Categories of Anglo-Saxon Law

“The word “code” has many misleading connotations. I will not use it.”¹

As Charles Donahue observed, the term ‘law code’ is problematic in the Anglo-Saxon context. One reason is that there are, in fact, only two Anglo-Saxon law codes and neither looks much like the codes we know from other periods. Another reason – surprising in light of the first – is that ‘law code’ is the standard designation for *all* Anglo-Saxon law texts. This is particularly the case for the royal laws, but it is almost as common to find all texts, alone or collectively, referred to as law codes.² This is not just a semantic quibble. The indiscriminate use of one label for all texts has made it all too easy to take features of one ‘law code’ and apply them to others, without acknowledging that these texts may have been produced by different people, for different purposes and through different processes.³ Distinguishing between two main types – law codes and decrees – allows us to recognize these differences and make more sense of the production and use of written law. In fact, the whole Anglo-Saxon legislative system looks less haphazard if we acknowledge the existence of different kinds of text.

In this chapter, I give an overview of how modern editors and scholars have talked about formal and generic differences between the laws – or failed to do so. As will become clear, only a few distinctions have been made, and these have been based on content. I will argue that distinctions based on text, self-representation and use of sources allow us to make better sense of the laws. Towards the end, I will give an overview of the characteristics of my main categories, law codes and decrees.

¹ C. Donahue, ‘The Status of Women in the Laws of Æthelberht’, in S. Jurasinski and A. Rabin (eds), *Languages of the Law in Early Medieval England: Essays in Memory of Lisi Oliver* (Groningen, 2019), pp. 3–25, at p. 3 fn 1.

² This is such standard practice that it would be nearly impossible to cite enough examples to give a good impression. A look at practically any work on the laws will confirm the tendency.

³ In addition to the examples given in the historiographical overview in the introduction, I can give a brief and randomly selected illustration of the problem: Mary Richards argued that most writers of law must have had access to older legal texts because Alfred states in his code that he did, ignoring the differences between a text like Alfred’s and those of other kings; ‘Written Standard’, p. 5. Similar – though more implicit – assumptions appear often, see for instance A. Rabin, ‘The Reception of Kentish Law in the Eleventh Century: Archbishop Wulfstan as Legal Historian’, in A. Rabin and S. Jurasinski (eds), *Languages of the Law in Early Medieval England: Essays in Memory of Lisi Oliver* (Groningen, 2019), pp. 225–40, at p. 232.

2.1 Old categories

2.1.1 In editions

There are two main indications of how editors conceived of the laws, namely their labelling of texts and the structure of their editions. In terms of labels, two dominate the scene, namely one designating ‘law’ (*lex/Gesetz/law*) and one designating ‘treaty’ (*foedera/Vertrag/Friedensschluss/peace*). Lambarde used the two labels *leges* and *foedera*: *leges* was applied to most of the texts, while *foedera* (‘treaty’) was used for the two treaties with Guthrum (*Alfred-Guthrum* and *Edward-Guthrum*). The only exception is *Dunsate*, which is called a *senatusconsultum*, as the previous chapter discussed. The same labels were broadly preserved by Whelock and Wilkins. Wilkins also made use of a few sub-categories. He listed *canones* (for the canonical texts of Edgar and Ælfric), *concilium* (VI Atr), *judicia* (VI As) and *liber canonum/constitutionum* (Ælfric’s letter/*Institutes of Polity*). Such labels were used by Schmid as well, though only in cases where there was more than one text associated with a king. For the most part, Schmid used the overarching label *Gesetze* for the royal laws (e.g. *Edgars Gesetze*) and *Friedensschluss* (‘peace treaty’) for *Alfred-Guthrum* and *Edward-Guthrum*. Where a king had more than one text to his name, each text was given a number and label based on what type of text they represent. *Concilium* was applied to all the royal laws that state that they were made with a *witan*. *Hundred* was called a *constitutio*, perhaps because Schmid did not think *concilium* would do for a text which does not mention a *witan* or an assembly. In Schmid as in Wilkins, *judicia* was attached to VI *Æthelstan*, based on its heading in *Textus*: ‘Iudicia Civitatis Lundoniae’. Schmid gave the laws without extant royal attachment descriptive names in German, such as *Vom Eide* ‘Of oaths’.

More diversity – as well as an explicit comment on categorization – is found in Thorpe’s edition. Thorpe made use of some of the labels of his predecessors, such as *decretum* (III, IV As), *council* (II As, III, VI Atr) or *concilium* (for texts only surviving in Latin: III Em, VII Atr). Like Schmid, he only applied these where there was more than one text associated with a king, though sometimes he described such texts based on their content (‘ecclesiastical’, ‘secular’) instead of giving a label. The majority of royal texts were, however, listed simply as ‘laws’. Most of the non-royal texts were given descriptive names in modern English (e.g. ‘Of

oaths’).⁴ Thorpe also stated his thoughts on categories more explicitly, proposing that Anglo-Saxon law (written or otherwise) can be divided into three groups: *æ* (‘customary, common law’), *arædnyssa* (‘statutes’), and *domas* (‘adjudged cases or precedents’).⁵ Yet, this division is not noticeable in his labelling of actual texts, perhaps because – as we shall shortly see – such distinctions are near impossible to make based on the content of the laws. Another division Thorpe explicitly discussed is that between secular and ecclesiastical texts, stating that ‘All ordinances proceeding from the king and ‘Witena-gemot’ [a meeting of the *witan*], whether of a secular or ecclesiastical character, are considered as LAWS.’⁶ Ecclesiastical texts ‘without such sanction’ were placed in a separate volume. Stated or perceived issuer and content thus seem to have guided Thorpe’s ideas.

Liebermann’s system is broadly similar to his predecessors’, giving the label *Gesetz* to most texts. Each text is listed under a heading of *Gesetze* and the name of a king (e.g. ‘*Die Gesetze der König Eadweard I*’). Underneath these headings, texts appear with a numerical title (e.g. *II Æthelstan*) and a location (if applicable) and date (usually an estimate). Only four texts are given an additional classifying name: *Æthelstan Alms* is a *verordnung* (‘regulation’), *III Æthelstan* is a *Brief* (‘letter’), *I Edmund* is a *synode* (‘synod’) and *VIIa Æthelred* is a *Poenitenedict* (‘penitential edict’). One hitherto unused – and, as I will argue below, significant – distinction was also introduced: the laws of Alfred and Cnut were called *Gesetzbücher* (‘law codes’). Like Schmid and Thorpe, Liebermann gave each anonymous text a name based on their opening lines or content, but he was the first to invent names in Old English, such as *Romscot*, *Hit becnæð* or *Grið*. As I argued in the previous chapter, the use of Old English – rather than Schmid’s modern German or Thorpe’s modern English – may have contributed to the impression that these were distinct and separate texts in the Anglo-Saxon period.

Our editors were more or less unified in their structuring. Every editor is primarily guided by chronology, starting their editions with either *Æthelberht* or *Alfred-Ine* and ending with *I-II Cnut* and Anglo-Norman material. Laws without royal attribution are placed in the clusters in which they appear in the twelfth-century manuscripts, primarily *Textus*, as chapter 1 showed. The only real difference is introduced by Schmid, who placed such ‘anonymous’

⁴ The only exception is the text now known as *Ordal*, which Thorpe called ‘Doom concerning hot iron and hot water’, reflecting its manuscript title in *Textus Roffensis*, namely ‘Dom be haten isene an[d] wætre’.

⁵ Thorpe, *Ancient Laws*, p. iii fn 1.

⁶ Thorpe, *Ancient Laws*, p. vi fn 2.

laws in an appendix. This division was not taken up by Thorpe, but Liebermann's adoption of it has ensured its influence on the scholarship.

In conclusion, it appears that the early editors were primarily guided by texts' self-representation and content. Distinctions were made between treaties and laws, as well as between *constitutio* ('statute') and *concilium* ('council') based on mentions of assemblies or the *mitan* in prefaces. Chronology and manuscript clustering of texts overrode differences between royal and non-royal law until Schmid. Liebermann made two main distinctions: one between royal and non-royal law, the other between *Gesetze* and *Gesetzbücher*. However, only the first is marked out structurally. The *Gesetzbücher* are printed in their chronological order among the royal laws rather than in a separate section. Indeed, this chronological focus exacerbates the impression of uniformity created by editorial naming practices, especially those of Liebermann. The long list of royal laws makes *I Edmund* (a short ecclesiastical text associated with a synod) look much the same as *VI Æthelstan* (a long and discursive text representing a local response to royal legislation). As the next section will show, the influence of Liebermann's 'neatly serried ranks' of texts still persists.⁷

2.1.2 In historical scholarship

Many of the distinctions and categories imposed by the editions are encountered in the scholarship, for instance the distinction between royal and non-royal texts and the emphasis on chronology. Most of the secondary labels, such as *constitutio* and *concilium*, are rarely found. Historians have also made another classification which is mostly lacking from the editions, namely one between primary and secondary legislation. It varies what is meant by each category, as will become clear here and in the next section on Old English terminology. But in general, such a distinction is based on content and at best tenuous guesses as to what is customary, old, new or royal law.

As we saw in the introduction, Wormald's article '*Lex Scripta* and *Verbum Regis*' has become the starting point for virtually all debates on written law in Anglo-Saxon England. It is also where Wormald discussed the basic distinction between 'primary' and 'secondary' legislation for continental law texts, while noting its usefulness for the Anglo-Saxon laws

⁷ This is Wormald's description in *MEL*, p. 264.

too.⁸ He described primary legislation (*lex*) as ‘the original statement of a people’s law in writing, taking the form of a code covering a wide range of eventualities’ and secondary (*capitulare*) as ‘legislation, concerned either to amend, reinforce or supplement the first statement, or with merely administrative matters’.⁹ By way of illustration, he compared Ine’s laws – ‘the basic *lex* of the West Saxons’ – and Alfred’s, which look like additions to Ine (*à la capitularia legibus addenda*).¹⁰ However, he noted that both types seem to consist in laws made by kings, as opposed to primary legislation being an expression of custom.

Wormald mostly maintained this view in *The Making of English Law*, discussing the seventh-century laws of Æthelberht as long-established custom-based laws.¹¹ In the later iteration of the idea, Wormald swapped the Latin *lex* for the Anglo-Saxon label *æ*, denoting ‘accepted law’ and forming a counterpart to *domas* (‘judgments’ or new law).¹² The distinction between the two terms is to a degree borne out by Anglo-Saxon usage, as will be discussed in the next section, though this evidence does not indicate how firmly we should draw the line between the two. The most recent substantial study based on the Anglo-Saxon laws – Tom Lambert’s *Law and Order in Anglo-Saxon England* – makes much of these two words, to the extent that Lambert proposed that we can make inferences about the exact legal content of *æ* and what status it would have had in relation to other parts of customary law, as we shall see below.¹³

Wormald’s work references what may be one of the earliest expressions of this view, namely Pollock and Maitland’s 1895 *The History of English Law*. Here, Pollock stated that all extant Anglo-Saxon laws are ‘mere superstructures on a much larger base of custom’.¹⁴ He compared the relationship between the written Anglo-Saxon laws and custom to Acts of Parliament and ‘the indefinite mass of the common law’, stating in effect that no (existing) Anglo-Saxon text was primary legislation. Like Wormald, Pollock compared the Anglo-

⁸ Wormald, ‘*Lex Scripta*’, p. 7.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Wormald, *MEL*, pp. 95–7, 101–3. In *MEL*, he seems no longer to place Ine in the role of primary legislation. He is more committed to the idea that Æthelberht’s laws are customs being recorded – albeit with adjustments in compensation payments and so on – than he was in ‘*Lex Scripta*’.

¹² Wormald, *MEL*, p. 95.

¹³ Lambert, *Law and Order*, esp. pp. 36–7, 69–72.

¹⁴ F. Pollock and F.W. Maitland, *The History of English Law Before the Time of Edward I*, 2nd ed. (Cambridge, 1968), p. 27. Pollock was responsible for the chapter on the Anglo-Saxon laws, and Maitland was apparently not too pleased with it; see P. Wormald, ‘Maitland and Anglo-Saxon Law: Beyond Domesday Book’, *Proceedings of the British Academy* 89 (1996), pp. 1–20, at pp. 2–3.

Saxon laws to capitularies, though he was referring only to those Anglo-Saxon laws issued after King Edward.¹⁵

Furthermore, Pollock distinguished between ‘laws and ordinances of Saxon and English princes’ and ‘semi-official or private compilations’, the latter expressing customary law but lacking official authority.¹⁶ There is no mention of precisely which texts belong in each of these two groups, but it seems to be a statement of the royal and non-royal distinction observed in some of the editions. A more detailed expression of that idea is found in Wormald’s *The Making of English Law*. In fact, the very structure of the book is influenced by this distinction: the section ‘Legislation as Legal Text’ is a chronologically ordered discussion of the royal codes, followed by a part on the ‘Anonymous Codes’. This division between the royal and anonymous texts is found elsewhere too.¹⁷ Jürg Schwyter’s linguistic study of the development of the language of the laws excludes the non-royal laws because they cannot be dated and therefore give no useable information about development over time.¹⁸ Schwyter, Wormald and the editors may have made the distinction as a practical response to the impossible task of dating the anonymous texts. However, if we free ourselves from the idea that chronology is the only framework within which we can interpret the laws, the anonymous texts would not pose a problem and would not need to be omitted or relegated to appendices.

2.1.3 In Old English

None of the distinctions made by editors and historians are apparent in the manuscripts. As became clear in the previous chapter, Anglo-Saxon laws may originally have been transmitted on single sheets, in booklets or in folders. As to the origins of these groups, nothing is known, though they do not seem to be based on any distinction between, say, royal and non-royal law. If anything, they would seem to have been made up of thematically linked laws; that is at least the case for some of Wormald’s proposed groupings.¹⁹

¹⁵ Pollock and Maitland, *History of English Law*, p. 27. Maitland expresses a similar view in ‘Outlines of English Legal History’ in *The Collected Papers of Frederic William Maitland*, vol. II, ed. H.A.L. Fisher (Cambridge, 1911), p. 422.

¹⁶ Pollock and Maitland, *History of English Law*, p. 27.

¹⁷ A similar idea might be evident in Roach’s designation of royal laws as ‘formal’ and non-royal laws as ‘informal’ in Roach, ‘Law Codes’, pp. 467–9.

¹⁸ Schwyter, ‘Syntax and Style’, p. 190 fn 3.

¹⁹ Wormald, *MEL*, pp. 248, 391–4.

The language offers more evidence for Anglo-Saxon views. There are five relevant terms roughly referring to ‘law’ or ‘legislation’ in Old English: *riht*, *æ*, *dom(boc)*, *gerædness* and *lagu*. *Lagu* (‘law’) is the only survivor (in the relevant sense) into modern English and the only foreign import.²⁰ It had a relatively restricted meaning of ‘law, statute, decree’ when it began to be used in the late tenth century, initially only with reference to the laws of the Danes.²¹ Only one surviving text describes itself as *lagu*, namely the Danelaw decree *III Æthelred*. In the earlier texts, the general sense of ‘law’ seems to be expressed with *æ*, though the meaning of this word shifted to ‘divine law’ later in the Anglo-Saxon period.²² No text contains a ‘hypertheme’ describing itself as *æ*, that is to say that no text opens by stating that ‘this is the *æ* decreed by...’.²³ That is also the case for another term, *riht*, which has a variety of meanings, most of which are adjectival, including ‘law’, ‘what is in accordance with law’, ‘right’, ‘what is due from someone’ and so on.²⁴

Such is not the case for *gerædness*, which is used for self-description by many of the Anglo-Saxon laws from the tenth century onwards. Its fifty occurrences in the Old English corpus reveal a relatively restricted usage, overwhelmingly confined to the laws and, to a lesser degree, charters. The referent seems to be the ‘outcome of deliberations’, as the word is derived from *radan* (‘to decide, to give/get advice or counsel’). Thirty-five occurrences of *gerædness* are found in the laws,²⁵ seven in charters,²⁶ four in guild and bishops’ regulations²⁷ and two in the translation of Gregory the Great’s *Dialogi*.²⁸ An additional occurrence is found in the ‘Canons of Edgar’, which states that churchmen must bring ink and parchment to synods ‘for their decrees (*gerædnessum*)’.²⁹ This explicit link to writing seems to fit with many of its other occurrences, since *gerædness* often appears to be referring to an actual text and not

²⁰ It stems from Old Norse **lagu* (*Oxford English Dictionary*, s.v. ‘law’; hereafter *OED*).

²¹ A. Fischer, ‘Lexical Change in Late Old English: from *æ* to *lagu*’, in A. Fischer (ed.), *The History and the Dialects of English: Festschrift for Eduard Kolb* (Heidelberg, 1989), pp. 103–14, at pp. 104–7.

²² Wormald, *MEL*, p. 95 n 330. DOE s.v. *æ*. OED s.v. *e* (n2).

²³ A hypertheme is a topic sentence, that is a sentence which tells you what the following text is. In the Anglo-Saxon laws, a hypertheme is usually a sentence like ‘these are the laws issued by...’. Hyperthemes are discussed in more depth in the appendix, section 7.2.1.

²⁴ D. Fruscione, ‘*Riht* in earlier Anglo-Saxon legislation: a semasiological approach’, *Historical Research* 86 (2013), pp. 498–504.

²⁵ DOE Corpus s.v. *gerædness*.

²⁶ S1215, 1280, 1292, 1381, 1394, 1446. Charters are cited by their number in P. H. Sawyer, *Anglo-Saxon Charters: an Annotated List and Bibliography* (London, 1968), in its revised form available online as the ‘Electronic Sawyer’ (www.esawyer.org.uk), abbreviated S + number.

²⁷ See below p. 189 fn 22.

²⁸ H. Hecht, *Bischofs Wærferth von Worwester Übersetzung der Dialoge Gregors des Grossen* (Leipzig, 1900), pp. 264, 266.

²⁹ ‘Canons of Edgar’, §3, edited in Fowler, *Wulfstan’s ‘Canons of Edgar’*, p. 1. The *gerædness* chapter is only included in the CCCC 201 version and not in Oxford, Bodleian Library, Junius 121.

just the content of a text.³⁰ Indeed, sixteen law texts describe themselves as *gerædnys*,³¹ usually in the opening line of the text and frequently in a phrase like that which opens *II Edgar*: ‘Dis is seo gerædnys þe Eadgar cyng mid his witenas geðeahte gerædde’ (‘This is the decree which King Edgar has determined with the counsel of his *witan*’). It is also used in texts without royal attribution, as the appendix shows.

Dom (‘judgment’) is different from *gerædnys* in that no law text describes itself as *dom*. The *Textus Roffensis* scribe used it in its plural, *domas*, in the headings to the early Kentish laws, but in general the word *dom* is used to refer to individual provisions not complete texts.³² *Dom* also features in the word *domboc* (‘judgment book, written law’). This word occurs a total of ten times.³³ Six of these occurrences are in the laws of Edward, Æthelstan and Edgar, where the word appears to refer back to provisions in Alfred’s code.³⁴ This has earned Alfred’s code the nickname ‘the *domboc*’. However, remaining attestations suggest that the word could denote written law in general, whether a specific text or not. Two occurrences are in reference to Old Testament law.³⁵ Another instance is found in the translation of a saint’s life in the phrase ‘callswa seo domboc be swilcum mannum tæcð’ (‘as the *domboc* instructs about such men’).³⁶ As discussed at length by Katy Cubitt, this appears to be a reference to written law, though it need not be a reference to a specific text: it could be a catchphrase meaning that a judgment would be made in accordance to written law.³⁷ A similar referent seems to fit the final attestation of the word, namely that found in Alfred’s own code. It appears in the code’s prologue, in a passage which gives a version of the Golden Rule before stating ‘of ðissum anum dome mon mæg geðencean þæt he æghwelcne on ryht gedemeð; ne ðearf he nanra domboca oþerra’ (‘from this one judgment one can think that he judges everyone justly, he does not need any other *domboc*’; AfEl 49.6). In fact, this is the

³⁰ Its use not just for ‘outcome of deliberations’ but the actual written product of that outcome seems implied by its occurrence not as an abstract noun but as a concrete noun with a verb in the present tense, e.g. in IV Eg 1.4: ‘swa seo gerædnys tæce þe mine witan æt Andeferan geræddon’, ‘as that *gerædnys* shows that which my council decided at Andover’.

³¹ I As, II As, VI As, I Em, Hu, II Eg, (III and IV Eg), I Atr, V Atr, EGu, VI Atr, VIII Atr, IX Atr, X Atr, I Cn, (II Cn), *Dunsæte, Northu*.

³² These headings are printed for Abt, Hl and Wi in Liebermann. The heading to *Ordal* in *Textus Roffensis* is the only occurrence of *dom* in the singular in a heading. It reads ‘Dom be haten isene and wætre’.

³³ These and the remaining three occurrences are discussed in Cubitt, “As the Lawbook Teaches”, pp. 1032–3.

³⁴ I Ew 1, II Ew 5, 5.2, II As 5, II Eg 3, II Eg 5.

³⁵ These are discussed in Cubitt, “As the Lawbook Teaches”, p. 1033.

³⁶ H. Magennis, *The Anonymous Old English Legend of the Seven Sleepers*, Durham Medieval Texts 7 (Durham, 1994), p. 54.

³⁷ Cubitt, “As the Lawbook Teaches”, esp. pp. 1046–8.

first numbered item in Alfred's code and the first entry in the code's chapter list.³⁸ We shall come across this passage again in chapter 4 in the discussion of Alfredian conceptions of justice. For now, it is enough to note that the sentence in question seems to suggest that a *domboc*, i.e. any kind of written law, could be rendered irrelevant by true justice (as represented by the Golden Rule).

Of all these Old English words, *æ* (accepted or enduring law) has been given most attention. Most recently, Tom Lambert has suggested that *æ* refers to more 'formalized and prestigious' customary law.³⁹ He also suggested that a related term, *þeaw* ('custom'), refers to a legal rule or custom less prestigious than *æ*, which was never formalized and memorized.⁴⁰ Others, for example Wormald, have placed *þeaw* and *æ* side by side as denoting existing law, placing both in opposition to *dom* or newly made law.⁴¹ Parallel phrases exist on the continent, but in the Anglo-Saxon context the distinction between *æ* and *dom* is made on the basis of the prologues to some of the seventh-century laws. The laws of Hlothhere and Eadric and those of Wihtræd specify that *æ* or *þeaw* is 'increased' by *domas*.⁴² The notion that there is an existing body of law or custom to which more can be added seems clear in these two instances. Yet, the fact that *æ* increases with *domas* does not imply that they are essentially different: if *domas* are added to the *æ*, then perhaps they might just also become part of the *æ*. *Æ* could refer to any law made previously, whether ancient custom or last year's royal decree.

That this is the case seems to be indicated by a third seventh-century prologue, that to King Ine's laws. Here *æ* and *domas* are paired on two occasions ('ryht æw 7 ryhte cynedomas' and 'ealles folces æw 7 domas').⁴³ Unlike the Kentish laws, the text gives no indication of the nature of the relationship between the pair of words. What is more, the second occurrence of the couplet in *Ine* seems like a clear indication that Ine's laws contained

³⁸ See chapter 4, especially section 4.2.2, for a discussion of the numbering and chapter list in Alfred's code.

³⁹ Lambert, *Law and Order*, p. 70.

⁴⁰ Wormald, *MEL*, p. 95; Lambert, *Law and Order*, pp. 69–70 (see also p. 36 fn 35).

⁴¹ Wormald, *MEL*, p. 95; Hudson, *History of the Laws*, p. 244; Fischer, 'Lexical Change', p. 105.

⁴² Hl prol: 'Hlophære 7 Eadric Cantwara cyningas ecton þa æ þa ðe heora aldras ær geworhton, ðysson domum þe hyr efter sægeþ', Wi prol.3: 'Ðis synd Wihtrædes domas Cantwara cyninges... Þær ða eadigan fundon mid ealra gemedum ðas domas 7 Cantwara rihtum þeawum æcton, swa hit hyr efter segeþ 7 cwyp...?'

⁴³ Ine prol. and Ine 1.1. As we shall see in chapter 4, I have argued that the surviving form of Ine's laws is a ninth-century translation from Latin into Old English, which means that its language cannot be relied on for evidence of seventh-century law. See I. Ivarsen, 'The Latin Law-Code of King Ine', *Anglo-Saxon England* 48 (forthcoming). However, in a sense, the precise words themselves are not vital in this particular case, as it is mainly the fact that two different terms for legislation/law are used. It could reflect the translation of two Latin terms with equivalent meanings (for example, *lex* and *statutum*).

both *æ* and *domas*: ‘Æfter þam we bebeodað þætte ealles folces æw 7 domas ðus sien gehealdene’ (‘After that we command that the *æ* and *domas* of the whole people are kept in this way [*ðus*]; Ine 1.1). This phrase is followed by the laws themselves: over sixty different clauses on a variety of topics, from theft and damage caused by animals to church peace and baptism. There is very little scope for interpreting *ðus* (‘thus, in this way’) to signify anything other than that what follows are the *æ* and *domas* to be kept. The fact that *Ine* could record both (parts of) *æ* and *domas* could indicate that *æ* need not refer to a particular type of long-standing custom, but could simply refer to law that had been made at some earlier point.⁴⁴

This goes against Lambert’s theory. He argued that there is an essential difference between the laws of Æthelberht on the one hand and the laws of Ine, Wihtræd and Hlothhere and Eadric on the other. Those of Æthelberht are a codification of prestigious ‘existing law’ (*æ*) covering ‘affronts and compensation’, while the remaining seventh-century laws are records of new royal decrees (*domas*) adding to existing law (oral or written).⁴⁵ In addition, he argued for the existence of local and less prestigious customs, namely *þeaw*, based on the one occurrence of this word in a legal preface. In his view, the distinctions between *æ*, *domas* and *þeaw* explain, for example, *Ine*’s silence about personal injuries, since this is a concern only of prestigious *æ*.⁴⁶ He interpreted the injury list in *Alfred* as a West Saxon equivalent to the traditional *æ* that Æthelberht’s code represents for Kent, even though, as chapter 4 argues, that does not fit the evidence provided by Alfred’s code.⁴⁷ Lambert suggested that the new laws (*domas*) found in, for example, *Ine*, consist in provisions working within this system of traditional law without explicitly stating it. In Lambert’s view, therefore, *æ* is not any kind of old law, but a very specific type of old law. Not only does this argument rest on a very tenuous premise – namely the assumption that the surviving record from the seventh century is more or less complete⁴⁸ – but it also fails to take into account Ine 1.1, which clearly suggests that the text contains both *æ* and *domas*.⁴⁹

⁴⁴ For continental laws, a somewhat similar point is made by Thomas Faulkner, who suggested that references in capitularies to *leges* need not be to the ‘barbarian *leges*’, but could be to any written legislation; see T. Faulkner, ‘Carolingian kings and the *leges barbarorum*’, *Historical Research* 86 (2013), pp. 443–64, at p. 445 and *Law and Authority*, p. 105.

⁴⁵ Lambert, *Law and Order*, p. 72.

⁴⁶ Lambert, *Law and Order* chapter 2, esp. pp. 69–79.

⁴⁷ Lambert, *Law and Order*, p. 73.

⁴⁸ See for instance Lambert, *Law and Order*, pp. 36–7 and fn 35, 70–71 and fn 19.

⁴⁹ Lambert cited Wormald (*MEL*, p.104), who rightly suggested that *Ine*’s laws dealt with both *æ* and *domas*, though Lambert rejected this (*Law and Order*, p. 72 fn 27). Lambert’s argument rests on the occurrence of the couplet in *Ine*’s prologue: he did not mention the implication of its use in Ine 1.1. Lambert argued that the first mention of *æw* and *cyndomas* in *Ine*’s preface draws ‘the distinction between *æ* and royal judgements

2.2 New categories

From Lambarde's to Lambert's, previous classifications have been made based on content, and the boundary between law and written law is sometimes blurry. That is the case for the distinction between primary and secondary legislation, long-established primary law (*æ*) and newly made law (*dom*) and that between royal and anonymous texts. Only Liebermann appears to have made a distinction based on form, namely that between *Gesetz* and *Gesetzbuch*. Unfortunately, this distinction has not been properly adopted in the scholarship, where it is at best implicit and never articulated or explored.⁵⁰ In fact, Liebermann's division is spot on. As the following sections will demonstrate, a division between 'law codes' and 'decrees' can be made both formally and in terms of process. It proves immensely useful for our understanding of Anglo-Saxon law, as chapters 3, 4 and 5 will explore in more detail.

2.2.1 Codes

Liebermann was in the process of preparing his edition when the German civil code, *Bürgerliches Gesetzbuch*, was enacted in 1900. Perhaps this led him to label the laws of Alfred and Cnut as *Gesetzbücher*. While nothing like the German project in scale, both Alfred's code and *I-II Cnut* codify, reorganize and supplement existing law. As we shall shortly see, this distinguishes them from the remaining corpus.

The codes are in fact different in numerous ways. They are long: despite being only two texts, they account for more than a third of the total word count of the corpus. They cover more distinct legal topics than other Anglo-Saxon laws and there is some systematization in their overarching structures. For example, the code of Cnut pairs exhortative sections on the inner duties of Christians and the importance of God in secular justice with sections of regulation on related topics.⁵¹ Alfred's code opens with a long prologue which sets out the

(*cynedomas*)...explicitly' (*Law and Order*, p. 72 n 27). While it does list them as two separate elements, the sentence does not state that only one is a concern of the law code, which seems to be confirmed by the second occurrence of the couplet in Ine 1.1.

⁵⁰ Occasionally, it is pointed out that there is a degree of variety between the laws – and that Alfred and Cnut's texts stand out – but the scale and implications of this difference are very rarely brought up. This is the case in e.g. Wormald, *MEL*, p. 349; Keynes, 'Church Councils', p. 32; Pratt, 'Written Law', p. 335.

⁵¹ See chapter 5 (section 5.2.1) for this argument.

historical and juridical underpinning for his own laws, and it may have been intended as necessary background reading for judges. What is more, both Cnut and Alfred's codes eventually became foundational texts on which other laws built: in Alfred's case, this is indicated by mentions of the *domboc* in other legislation, which refer back to his laws. For Cnut, it is evident from the fact that his code not only survived long past the conquest, but was enlarged and rewritten.⁵² It seems at least that Alfred envisaged this programmatic role for his text, as evidenced by his prologue, where he comments on his hopes for the future life of the code. Both codes are also better attested in the manuscript record than any other law texts. Alfred's survives in ten (full or fragmentary) manuscripts, in up to half a dozen textual lines with relatively few major variations.⁵³ *I-II Cnut* is attested in Old English in three manuscripts (perhaps with as many textual lines), with three different Latin versions circulating in a number of manuscripts.⁵⁴

These differences may not mean much; the codes' manuscripts and afterlives do not say anything about their production. And in terms of the other differences – in comprehensiveness, length and systematization – the codes are only quantitatively different from other laws. However, these features can be supplemented by a more fundamental difference, which can be characterized as a temporal difference. This means two things. Firstly, the codes must have been the products of a process that took considerable time. Secondly, they look backwards to older law and, in Alfred's case, forwards to the future life of the text. In short, these texts are less anchored in a specific time than the decrees, in terms of their self-representation, material and the process that produced them.

Unlike most other Anglo-Saxon laws, both codes compile and copy older laws. Alfred made a point of this borrowing in his preface, listing the names of the kings whose laws he copied. Wulfstan did not name names in *I-II Cnut*, but his faithfulness to older written laws is abundantly clear, as chapter 5 will demonstrate. The codes' use of old law gives us an idea of what the process of their making looked like. It must have involved compilation of older texts, exclusion, abbreviation, adjustment, composition and systematization of material.⁵⁵ In addition, Alfred's code has a long prologue containing a translation of several chapters from

⁵² The role of codes as programmatic statements of law is discussed in M. Ryan and E. Conte, 'Codification in the Western Middle Ages', in J. Hudson and A. Rodriguez (eds), *Diverging Paths?: The Shapes of Power and Institutions in Medieval Christendom and Islam* (Leiden, 2014), pp. 75–97, at p. 79.

⁵³ Wormald, *MEL*, p. 266.

⁵⁴ Wormald, *MEL*, p. 349.

⁵⁵ This is then much like the process described in J. Harries, 'How to Make a Law Code', in J. Harries, C. Smith, and M. Austin (eds), *Modus Operandi Essays in Honour of Geoffrey Rickman* (London, 1998), pp. 63–78.

the book of Exodus. The planning, research, writing and translation of the codes must have taken time.

That might sound like an obvious observation, though as I demonstrated in the introduction, there is an assumption in the scholarship that ‘law codes’ were produced at assemblies. Given the process just described, that cannot have been the case for Alfred and Cnut’s codes. The fact that they precisely reproduce (and translate) sources shows that written text must have been part of the process of their composition: they are not records of proceedings at a meeting or old law recited from memory. What is more, the fact that both codes rely on a large number of texts – and that these are reorganized and adapted in complex and systematic ways – would suggest that the codes were produced in writing as complete texts. The codes may at some point have been spoken aloud at an assembly – for example to get approval by the *witan* – but that recital must have depended on a text prepared in writing.⁵⁶ Indeed, such a process is described by Alfred in the prologue. He mentions getting advice from his advisors (*minra witeana*) during the compilation process (which need not refer to an assembly), and he also states that he showed (*geownde*) the finished product ‘to all my wise men’ (*eallum minum witum*), who then said it pleased them (AfEl 49.10).

The fact that the codes reproduce older material also reveals some of the intentions behind the making of such texts. The codes do not seem to be written down just because of a need to communicate the king’s instructions to a local agent, because they contain much material that already existed in writing. What the code form made possible was for various strands of the law to be put into a new framework and for kings to consolidate and possibly appropriate older law. The codes provide access to the king’s instructions in the law and would in theory be useful for citation and enforcement in court, at the same time as they make a statement about the king’s authority, allowing him to claim the text of older laws for himself. What is more, as chapter 4 and 5 will demonstrate, the code form also allowed their makers to offer instructions in justice and legal principles and in the relationship between earthly and heavenly law. Such juristic thinking is expressed in structure and choice of written material, and this kind of second order legal thinking is unique to the codes in the Anglo-Saxon context. All in all, the *textual form* of the codes is part of their message in a way that it is not necessarily for other texts.

⁵⁶ *I-II Cnut* states that it was the *geradness* that the king and his councillors decided at Winchester at midwinter, which would presumably refer to the ratification (vel sim.) rather than its making. Indeed, this statement in *I-II Cnut* is a direct copy of the introduction to *II-III Edgar*. See chapter 5 for more on this point.

2.2.2 Decrees

The second category, the decrees, is a composite group. It is made up of most of the laws in the corpus and includes some formally different types of texts. Their difference from the codes is to be found in a combination of their length, scope and self-representation. In general, they are short compared to the codes (their average length is 600 words) and they are limited in scope. In their surviving form, decrees place themselves within a specific time, in that their prefaces state that they are responses to specific events. Some of the decrees react to previous legislation, for example a local group reacting to a royally issued law (e.g. *III Æthelstan*) or a royal decree confirming or changing a previous royal decree (e.g. *I Edward* or *IV Edgar*). Some react to legal practice needing to be changed (e.g. *VI Æthelstan*). Other decrees respond to events, such as unrest (e.g. *V Æthelstan, II Edmund*), a plague (*IV Edgar*), an invasion (*VII Æthelred*) or peace being established between invaders and the invaded (e.g. *Alfred-Guthrum, Cnut 1018*). Most of the decrees specify that they were made by the king and the *witan*, and many of them specify a place at which they were established.⁵⁷ A common feature is therefore actual or presented immediacy, expressed through reaction and connection to a specific time and context, whether that is a meeting, an event, previous legislation or a combination of these.

The decrees rarely rely on other written texts as sources, unlike the codes. This fact, combined with their length and scope, suggests that the decrees could feasibly be records of what went on at assemblies. Thus, not only do the decrees self-represent as immediate reactions and outcomes of deliberations, but they could also be so. As the next chapter argues, some decrees may have been produced outside of this context, but for now the important point is that this correspondence between self-representation and content holds true for a large number of the decrees. The decrees' self-professed attachment to a specific time and context sets them apart from the codes, which, as we just saw, are more detached from a particular event or time and show signs of being the products of longer 'code-making' processes. Finally, surviving decrees are also characterized by what they are not. In terms of content, the decrees are not a codification of pre-existing materials nor are they treatments of a single topic of procedure.

⁵⁷ These are listed below on pp. 77–8. See the introduction (section 0.4.3) and chapter 3 for discussions of '*witan*' and its meanings.

The texts included under the decree heading are *Hlothbere & Eadric*, *Wihtræd*, *Alfred-Guthrum*, *I Edward*, *II Edward*, *Æthelstan Alms*, *I*, *II*, *III*, *IV*, *V* and *VI* *Æthelstan*, *I*, *II* and *III* *Edmund*, *II-III* and *IV* *Edgar* (*Old English* and *Latin*), *I*, *II*, *III*, *IV*, *V*, *VI* (*Old English* and *Latin*), *VII/VIIa*, *VIII*, *IX* and *X* *Æthelred*, *Cnut 1018*, *Hundred*, *Dunsæte*, Cnut's letters and *Norðhymbra preosta lagu*. The decrees can be divided into subgroups, including agreements and writs, and as the next chapter will show, there is a great deal of diversity among the decrees. For instance, a few decrees stand out in terms of being longer and more comprehensive, namely *II* *Æthelstan*, *II-III* *Edgar* and *III* *Æthelred*. Other decrees are distinguished in appearing to be reworked versions of other texts (e.g. *IV* *Æthelstan* or *VI* *Æthelred*). Such features and their significance will be dealt with in chapter 3. The separate group of tracts will also be dealt with in that chapter, as many of them have a connection to decrees and some may even represent parts of decrees. The tracts include *Gefyncðu*, *Norðleoda laga*, *Mircna laga*, *Að*, *Hadbot*, *Alfred-Guthrum Appendix*, *II* *Æthelred App*, *Ordal* and *Wer*. Chapter 3 will also discuss the short anonymous notes, *Be wifmannes*, *Be blaserum*, *Forfang*, *Romscot*, *Pax*, *Walreaf*, *Ymb æwbricas*, given that – as argued above – they can be seen as part of the longer texts.

2.3 Conclusion

Much more has been written on categorization and its issues in the context of continental legislation. The currency of the continental distinction between *lex* and capitularies is perhaps why *Æthelberht*'s laws sometimes get singled out as a distinct kind of text, the *lex* (or *æ*) of an early Anglo-Saxon kingdom, as we saw above. Within my arrangement, *Æthelberht* is similar to the codes, in that it might be seeking to place older law (oral, customary) in a new framework (written, possibly royal). In a sense, it is therefore also a kind of royal 'appropriation' of existing law, though the text itself contains no mention of King *Æthelberht*. There are perhaps grounds for comparing *Æthelberht* to continental *leges*. However, that must not overshadow the fact that there are differences between texts produced after *Æthelberht* too, as it seems to have done. As the following chapters will demonstrate, the corpus of Anglo-Saxon laws looks less messy and arbitrary in form and function when texts are considered individually and in appropriate groups. It makes it easier to discern a system where writing was put to multiple uses, and where it was sometimes used to disseminate oral announcements and sometimes played a role in the making of law.

3 The decrees and their contexts

The definition of the decrees in the previous chapter emphasized their difference from the codes. Decrees place themselves in a specific time and context and they self-represent as being the result of (and/or a reaction to) that context. They do not codify pre-existing material nor cover a wide variety of topics and they do not show indications of second order legal thinking. All in all, then, the decrees appear to fit with the standard view of the production of written law, namely that it was done in relation to meetings between the king and his advisors. However, as this chapter will argue, surviving decrees may have been produced in different contexts. Some decrees may have been produced prior to an assembly, some at or shortly after an assembly and some at several removes from an assembly.

As I explained in the introduction, there is an assumption in much of the scholarship that law and law texts were made at assemblies. This idea partly stems from the texts themselves: many laws seemingly tell us that they represent assembly deliberations. *Witan* ('wise men, advisors, councillors') are mentioned in the prefaces of twenty-three law texts, including both codes and twenty-one decrees.¹ A further seven make it clear that there were gatherings of nobles or churchmen either present with the king or who were legislating on their own.² Until the late tenth century, most texts state that the laws were made by the king *mid geþeahhte his witenas* ('with the consultation of his councillors'), a phrase also found in charters. Æthelred and Cnut's legislation is more liable to say that the king decreed (*gerædan*) something alongside his *witanas*. Such phrases pose two problems. One is whether *geþeahhte* ('advice, deliberation') and *gerædan* ('to decide, give/get counsel') should be taken as references to formal assembly deliberations or other forms of advice. The second is how to interpret *witanas*. After all, *witanas* is just the plural adjective of *wita* ('wise') and there is no clear way to ascertain whether it refers to a fixed body or an ad hoc group of 'wise men'. In the scholarship, it has been seen as everything from a proto-parliament, as we saw in the case of Lambard in chapter 1, to the king's private council.³ These days, the standard translation is

¹ Af-Ine, AGu, EGu, IEw, IIEw, IIAAs (*sapientes*; survives in *Quadripartitus* only), VAs, IVAAs (*sapientes*; survives in *Quadripartitus* only), *Dunsate*, IIEm, IIIEm (*sapientes*; survives in *Quadripartitus* only), II-III Eg, IV Eg, I, II, III, V, VI OE, VII (*sapientes*; survives in *Quadripartitus* only), VIII, IX Atr, Cn 1018, I-II Cn.

² Wi, IAs/As Alms, IIIAs, VIAs, IEm, VIAtr Lat.

³ The historiography of 'the *witanas*' is discussed in Roach, *Kingship and Consent*, pp. 1–6. Roach's understanding of *witanas* is that it is the collective term for those who on any given occasion took on a leading role in

simply ‘the witan’ (with or without italics), which may perhaps predispose us towards seeing it as a particular body.⁴

While not as common as mentions of a *witan*, place-names are also often given in laws’ prefaces. In addition, place-names are sometimes the means by which decrees refer to previous legislation, as for instance in *VI Æthelstan*, which sets out to add to ‘the judgments established at Grately, Exeter and Thunderfield’.⁵ All told, thirteen decrees associate themselves with a place.⁶ This is a significant number considering how rarely texts mention other circumstances of their production, such as the year of their making, which is given only once.⁷ This might then be further evidence of the importance of some kind of assembly setting in decrees’ self-representation.

It is beyond the scope of this chapter to decide what ‘*witan*’ means or what a place-name signifies. What is more, the combined evidence of charters and some laws suggests, as Roach has pointed out, that some activities necessitated the involvement of not just the king or his court, but also *witan*, whatever meaning is ascribed to the word.⁸ I will, however, raise two issues. One is whether we have to equate the mention of *witan* with an event, a meeting. Only three laws use words denoting a gathering in their prefaces.⁹ As Roach points out, the charters do not contain many instances where *witan* is mentioned in collocation with a word denoting ‘meeting’ either, though charters do – unlike the laws – have lists of witnesses that possibly reveal the individuals constituting *witan*.¹⁰ While the charters and these three texts could be evidence of a wider practice of composing law at gatherings, it is not enough to allow us to automatically equate the mention of *witan* to a meeting. In some sections below

deliberations, i.e. that it was not an institutionally defined group: Roach, *Kingship and Consent*, pp. 24–5. See also J.R. Maddicott, *The Origins of the English Parliament, 924-1327* (Oxford, 2010), pp. 1–56.

⁴ Roach chose ‘(the) *witan*’ as his preferred designation, seeking to avoid the imposition of ‘modern bureaucratic precision’: Roach, *Kingship and Consent*, pp. 24–5. Maddicott took a different approach, seeking to avoid the ‘prejudgement’ that comes with the word ‘*witan*’, and instead he used ‘assembly’; *Origins*, p. 4.

⁵ VI As Prol: ‘þam domum þe æt Greatanlea 7 æt Exanceastre gesette wæron 7 æt Þunresfelda’.

⁶ Wi (Berghamstede), II Ew (Exeter) II As (Grately), V As (Exeter), VI As 11-12 (Whittlebury), I-II Em (London), III Em (Colyton), I Atr (Woodstock), III Atr (Wantage), VII Atr (Bath), IX Atr (Woodstock), X Atr (Enham), I-II Cn (Winchester). IV As gives a summary of decrees enacted at Exeter, Faversham and Thunderfield. III As and VI As do not give a precise place, but they specify that the people involved belong to respectively Kent and London.

⁷ *Wibtræd* gives precise dating information with indiction and regnal year, while three other decrees specify the time of year: *I Edmund* at Easter and *VI Æthelred Latin* at Pentecost, *V Æthelstan* at midwinter.

⁸ Roach, *Kingship and Consent*, p. 25.

⁹ I discuss these three texts below on pp. 190–1. The texts are Wi (*ymcyme* ‘an assembly’), I Em (*seonod* ‘synod’), VI Atr Lat (*conventus synodalis* ‘synodical gathering’). One of these texts, *Wibtræd*, also contains the sole mention of a lawmaking meeting in an actual provision: ‘If something of this kind happens to a nobleman after this meeting (*gemot*)...’ (Wi 5).

¹⁰ Roach, *Kingship and Consent*, pp. 20–1.

(as well as in chapter 4), I will therefore raise the possibility that *'witan'* could refer to ad hoc groups of advisors outwith an assembly context.

The other question – the more important one for present purposes – is whether we have to assume that the mention of *witan* or a place implies that a law text represents the deliberations of an assembly. As this chapter will show, some decrees contain textual clues suggesting that they are the records of events, which could well be lawmaking assemblies.¹¹ However, other texts appear to have been produced outside such a context. A text might mention a *'witan'* because advisors had ratified its contents either at an assembly or elsewhere or because it was made by the king and a few advisors at court. As I will argue below, we must distinguish between texts made by and texts ratified by an assembly or advisors.

The main point is thus that there is not just one method of production of decrees. To show the variety, this chapter is divided into sections based on time of composition in relation to assemblies. Decrees that appear to have been produced in advance of a meeting are dealt with first, followed by decrees which in their surviving form could be records of oral proceedings. The final section will consider decrees that have been significantly reworked, seemingly at some remove from assembly proceedings. In the conclusion, I use the evidence provided by all the different kinds of decrees to explore who might have been involved in making these texts. Throughout, I will draw on textual and formal aspects of the texts as evidence – which offer hints rather than outright conclusions – as well as the texts' self-representation in their prefaces.

3.1 Decrees produced before a meeting

3.1.1 Legislative writs

'Legislative writs' are decrees, but as we shall shortly see, they may represent a formally distinct type of text. This group is made up of *I Edward*, *II Edward*, *I Æthelstan* and *Æthelstan Alms*. These texts are in a sense letters, characterized by their greeting clause, as we shall shortly see. All surviving examples are found in manuscripts – all codices – which post-date their issue by at least a century, so we do not know how they were originally put on the page.

¹¹ It is unclear precisely how we should imagine an assembly. It may have been a fairly informal meeting between advisors and the king or a more formal and staged affair; see the discussion in C. Insley, 'Assemblies and Charters in Late Anglo-Saxon England', in P.S. Barnwell and M. Mostert (eds), *Political Assemblies in the Earlier Middle Ages* (Turnhout, 2003), pp. 47–59.

It is possible that they were originally written on single sheets, and they may have been a subset of the larger group of Anglo-Saxon ‘sealed writs’, that is royal letters of appointment and bestowal of gifts and rights, which survive on single sheets from the eleventh century onwards.¹²

Whilst *I Edward*, *II Edward*, *I Æthelstan* and *Æthelstan Alms* have not previously been grouped together, some of their characteristics have been noticed. Wormald considered *I Edward* to approximate a Carolingian *capitulare missorum*, that is instructions from the emperor to local delegates, and noted some of its similarities to *I Æthelstan*.¹³ Keynes called *I Æthelstan* and *Æthelstan Alms* – as well as *VI Æthelstan* 11, about which we will hear more shortly – ‘injunctions’ or royal orders issued to officials.¹⁴ As this suggests, the characteristic features of the legislative writs lie in their audience and issuer as well as their scope and content. An important textual generic feature is their protocol or greeting clause.¹⁵ The legislative writs are phrased as commands from the king, usually in the king’s voice in the first person, and they are addressed to a group of officials. This formally distinguishes them from the remaining decrees and their prefaces, as the appendix shows. In terms of content, they are characterized by setting forth instructions in enforcement, and some contain penalties only for officials who fail to fulfil their enforcement role. They contain two kinds of content: orders of specific tasks to be carried out by officials (*I As*, *As Alms*) and instructions to officials on their judicial duties (*I*, *II Ew*, *I As*).

3.1.1.1 *I Æthelstan*, *Æthelstan Alms* (c. 920s)

Looking at the two clearest examples of legislative writs – *Æthelstan*’s two texts on tithes and almsgiving – will put more flesh on the bones of these general observations. Both texts – known in Liebermann’s titles as *I Æthelstan* and *Æthelstan Alms* – are commands in the king’s voice addressed directly to the king’s reeves, perhaps issued in the late 920s.¹⁶ *I Æthelstan* opens:

¹² The main introduction to and edition of sealed writs is F.E. Harmer, *Anglo-Saxon Writs* (Manchester, 1952). A useful overview of the characteristics of sealed writs is given in L. Oliver, ‘Legal Documentation and the Practice of English Law’, in C.A. Lees (ed.), *The Cambridge History of Early Medieval English Literature* (Cambridge, 2012), pp. 499–529, at pp. 517–21.

¹³ Wormald, *MEL*, pp. 287, 302, 311.

¹⁴ Keynes, ‘Royal Government’, pp. 240–1.

¹⁵ This is also the case for the sealed writs, see Harmer, *Writs*, p. 25.

¹⁶ All the dates provided for the decrees are based on Wormald’s estimates, which are set out in *MEL*, pp. 238–44.

Ic Æðelstan cyngingc mid geþeahhte Wulfhelmes arcebiscopes 7 eac minra oþerra
biscopa cyþe þam gerefan to gehwylcere byrig 7 eow bidde...

I King Æthelstan with the advice of Archbishop Wulfhelm and also my other
bishops make it known to reeves of every burgh and bid you...

This preface – as well as that of the charity writ¹⁷ – clearly positions the main content as instructions from the king to his enforcers. Each writ then sets out a specific order for a specific task to be carried out on the king’s behalf, arguably just once. The charity writ contains a command for the king’s reeves to ensure that poor people are given food and clothes from the king’s estate, and there is nothing of explicit general application.¹⁸ The tithes writ opens with the king commanding his reeves to make sure tithes are paid from his royal estates and their own estates. He then goes on to command bishops and reeves to extract tithes from those in their charge (I As prol, 1). The text thus presents a general imposition of a payment, but it is phrased as a command from the king to the enforcers, not directly to the people who would pay. This makes it different from other decrees, where such laws are (textually) directed at everyone. What is more, the original version of *I Æthelstan* appears to be a call for a one-off charitable donation of ‘tenths’ of produce, not legislation instituting tithes as an ongoing legal obligation.¹⁹ Neither of Æthelstan’s writs therefore represents general legislation in the sense that most decrees purport to be. They are one-off injunctions.

Æthelstan’s writs are also distinct in having textual connections to charter proems. Both writs specify that tithes and alms are given to earn eternal rewards in heaven, using patristic language commonly found in royal diplomas.²⁰ The tithes writ also uses external quotations from the Bible and a sermon to back up its message, offering the kind of religious motivation clause which characterizes the proems of royal diplomas.²¹ It is thus possible that

¹⁷ The charity writ survives in *Quadripartitus* only, though based on its phrasing in Latin, it seems that it would have read much like I As. See below on p. 190 for more on the prefaces to the writs.

¹⁸ Ivarsen, ‘Æthelstan, Wulfstan and a Revised History of Tithes’.

¹⁹ This argument is based on the two surviving versions of *I Æthelstan*: one version survives in two Wulfstan manuscripts and one survives in *Quadripartitus*. These two diverge legally and linguistically. I argue that the version underlying the *Quadripartitus* translation is the original text, and the surviving Old English version is Wulfstan’s rewriting of the original. The original appears to call for a one-off charitable donation, and I argue that Wulfstan tweaked the text to make it read like a general and ongoing imposition of regular tithes. This argument is set out in full in Ivarsen, ‘Æthelstan, Wulfstan and a Revised History of Tithes’.

²⁰ This is discussed at length in Ivarsen, ‘Æthelstan, Wulfstan and a Revised History of Tithes’. Keynes noted some topical similarities between Æthelstan’s alms writ and charters, namely the condition of feeding poor people attached to two grants of land from the king (S418, S379): Keynes, ‘Royal Government’, p. 236 fn 42.

²¹ For the elements and characteristics of the proems of royal diplomas, see J.M. Kemble, *Codex diplomaticus aevi saxonici*, 1 (London, 1839), pp. ix–xxxv.

the writ form was perceived to have some connection to diplomas, though our sample size is too small to say this with any confidence.

These motivation clauses are enlightening in other ways too. In *I Æthelstan*, the patristic and biblical material is quoted seemingly verbatim from other written texts, including the Bible, liturgy, sermons and exegetical commentary.²² Using the same argument given for the law codes in chapter 2, it follows that *I Æthelstan* might have been composed, at least partly, in writing. It is possible that the verbatim quotations were added at some later point, but there are reasons to think that these quotations were part of the command as it was first presented: the text calls for a voluntary alms-payment of a tenth of produce, and so the point of the scriptural and exegetical quotations may have been to increase the likelihood of the command being carried out. There are no punitive clauses in the original version of the text, and perhaps such scriptural admonitions stood in place of earthly penalties.²³ The exhortative aspects of the text would be meaningless had they only been added after the command had gone out to reeves and bishops.

I Æthelstan's self-representation, content and use of sources may suggest that Æthelstan's writs were prepared not through the deliberations of a council but perhaps through more informal advice or as part of normal day-to-day court business. Such advice would seem to have come from Archbishop Wulfhelm of Canterbury, who is mentioned in the preface as the king's advisor, alongside the king's 'other bishops'. Perhaps Wulfhelm was also the mind behind the extant text. The written sources listed above would certainly fit with an archbishop's authorship.

If we imagine that *I Æthelstan* was produced in this way, we are left with two options. The first is that Æthelstan's writs had nothing to do with a meeting at all. They could have been produced centrally and distributed in written form. At first sight, this might seem unlikely given their sparse manuscript survival: the charity writ has not survived in its original Old English form at all, and it is possible that this is the case for the tithes writ too: the original content of the writs has only survived as translated in *Quadripartitus*, and a rewritten (Old English) version of *I Æthelstan* made it into one of Wulfstan's collections.²⁴ However, this manuscript situation might not mean much. The writs may have been outdated as soon

²² These are set out in Ivarsen, 'Æthelstan, Wulfstan and a Revised History of Tithes'.

²³ Ivarsen, 'Æthelstan, Wulfstan and a Revised History of Tithes'.

²⁴ As Alms survives in *Quadripartitus* only. The two surviving Old English copies of *I Æthelstan* might be, as I said above, Wulfstan's rewritten version, and it could thus be that no copy of the Old English original has survived. See Ivarsen, 'Æthelstan, Wulfstan and a Revised History of Tithes'.

as their commands were seen through, so they may not have been preserved to the same degree or in the same places as other texts.

The second alternative is that these writs were read out at an assembly, where they were taken down in writing by an attendee or scribe. The possibility of such a scenario is suggested by two reports which were at some point added to the composite text *VI Æthelstan*. *VI Æthelstan* 11 records a command from the king to his bishops, ealdormen and reeves to keep the peace as he has commanded. *VI Æthelstan* 12 records a command issued at Whittlebury, where Æthelstan made it known to his *witan* that he wanted to raise the minimum age for the death penalty (to 15 years) and the minimum value of stolen goods that would incur the death penalty (to 12 pence). It is specified that the king reached these decisions with ‘þam þe he hit wiðrædde’ (‘those he consulted with’; VI As 12), but the text is presented as a unilateral announcement from the king to the *witan* of a measure to be implemented. As they survive, *VI Æthelstan* 11 and 12 are descriptive reports rendering direct speech and they therefore do not represent a distinct type of text like the tithe and charity writs. Their preservation seems to point in the direction that they are records of an oral notification by the king.²⁵ The writs contained in *VI Æthelstan* may therefore be evidence of run-of-the-mill royal injunctions issued orally at meetings, which may not have survived to the same extent as other law texts – if they were written down at all.²⁶ While two of Æthelstan’s writs appear to have survived in written form, others may have been lost or they may have been subsumed into other decrees or codes, as suggested by a writ issued by William I in the 1070s, the content of which is detectable also in a church council decree.²⁷

3.1.1.2 *I Edward, II Edward (pre-916)*

Both surviving law texts from Edward the Elder’s reign should also be classified as writs. Both are framed as a command in the king’s voice addressed to group of officials. The preface to *I Edward* commands reeves to judge as justly as they can and in accordance with the *domboc*, seemingly Alfred’s laws. *II Edward* states that ‘the peace’ suffers because of lack of correct procedure and the king ‘admonishes’ (*myngian*) his *witan* to be loyal and to maintain

²⁵ Keynes, ‘Royal Government’, p. 241.

²⁶ As suggested in Hudson, *History of the Laws*, p. 28.

²⁷ This is referring to William’s writ on church courts and decrees of council of Winchester 1076; see D. Whitelock, M. Brett, and C.N.L. Brooke (eds), *Councils & Synods: with other Documents Relating to the English Church. 1: A.D.871-1204*, part 2 (Oxford, 1981), p. 618.

the peace better than they have done (II Ew 1–1.1).²⁸ Both texts go on to set out details of judicial procedure, including suretyship, witnessing and oath swearing. Both texts are textually presented as unilateral royal decisions, reached without deliberation, addressed to reeves and the *witan*. Therefore, it is entirely possible that the content was devised by the king (and perhaps unmentioned advisors) and prepared in writing by someone at court before a meeting, either as notes or as a full text. Given that *II Edward* mentions a place (Exeter) in its preface, it could be that it was declared at an assembly.

One manuscript copy of *II Edward* seems to suggest that it is not just modern scholars who have overlooked the Anglo-Saxon legislative writs, but that this form was also unfamiliar to a post-conquest scribe or reader. This is suggested by the opening sentence of *II Edward* in CCC 383, where two erasures are introduced: ‘Eadweard cyning mid [erasure] his witan, þa hy æt Exanceastre wæron, [erasure of ‘þæt hy’] smeadon ealle hu...’.²⁹ This can be compared to *Textus* version: ‘Eadweard cyning myngode his wytan, þa hy æt Exanceastre wæron, þæt hy smeadon ealle hu...’.³⁰ The *Textus* reading is a command from the king to his *witan*. The two erasures in CCC 383 transform the opening line, so that its version states that the king and his *witan* deliberated together. *Textus* and CCC 383 seem to be copying from the same exemplar, which implies that CCC 383 originally had something like *Textus*’ reading.³¹ The upshot is that the text appears to have been deliberately changed to read more like other decrees, perhaps indicating that a scribe or reader found this pre-conquest writ form unfamiliar.

Legislative writs became more frequent after the Anglo-Saxon period.³² From the surviving evidence, it could seem as though royal commands were only occasionally written down in the Anglo-Saxon period. Among the several possible explanations is that the writ form was a flash in the pan in the trends of law-writing. Edward seems to have issued nothing but writs, and two of the four royal laws from Æthelstan’s reign are writs. Perhaps the form simply stopped being seen as an effective or appropriate way to convey law in writing after

²⁸ I Ew prol.: ‘Eadwerd cyning byt ðam gerefum callum ðæt ge deman swa rihte domas swa ge rihtoste cunnon 7 hit on ðære dombec stande...’; II Ew prol.: ‘Eadweard cyning myngode his wytan, þa hy æt Exanceastre wæron, þæt hy smeadon ealle hu...’.

²⁹ ‘King Edgar with his *witan*, when they were at Exeter, all considered how...’; CCC 383, fol 53v. In the space left by the second erasure, it is just possible to make out an abbreviation for ‘þæt’ followed by ‘hy’. The text of the first erasure is impossible to make out from images. It is tempting to think that ‘myngode’ was changed to ‘mid’, and the space taken up by the erasure would fit this scenario.

³⁰ ‘King Edgar admonished his *witan*, when they were at Exeter, that they should all consider how...’.

³¹ The textual families of *II Edward* are discussed in Wormald, *MEL*, pp. 229, 232, 239–42, 287.

³² Hudson, *History of the Laws*, p. 867; Wormald, *MEL*, pp. 398–402.

the early tenth century. Royal commands of the sort contained in the writs were surely issued throughout the period, but their failure to survive could be because they were not written down; or they may have been incorporated into other law texts without trace of the original form; or they were copied in manuscripts to which the Norman legal collectors did not have access or in forms that they considered irrelevant for preservation.³³

3.1.2 Cnut 1018

Another text which appears to have been produced prior to an assembly at which it was announced is that known as *Cnut 1018*. It was penned by Wulfstan and presents itself as part of a settlement process between the English and the Danes issued a couple of years after Cnut started his conquest in 1016. Its preface reads:

Dis is seo gerædnes þe witan geræddon 7 be mangum godum bisnum asmeadon.
And þæt wæs geworden sona swa cnut cyng mid his witena gēpahte frið 7
freondscipe betweox denum 7 englum fullice gefæstnode 7 heora ærran saca ealle
getwæmde.

This is the decree which the witan decided and considered with many good examples. And that was done as soon as King Cnut – with consultation from his *witan* – firmly established peace and friendship between the Danes and the English and settled all their previous disputes.³⁴

Unlike other surviving peace treaties, discussed below, *Cnut 1018* does not self-represent as a peace agreement, but rather as part of the process of coming together. Also unlike the other peace agreements, the text does not deal explicitly with the co-existence of the two groups. In fact, the content of *Cnut 1018* consists in verbatim selections from *V* and *VI Æthelred*, indicating that it must have been composed using copies of these two decrees.³⁵ *Cnut 1018* therefore seems to have been prepared in writing before an assembly. There is external evidence suggesting that (something like) the surviving text may have been presented at an assembly in Oxford in 1018.³⁶ This period marked the start of a more stable period of

³³ Hudson, *History of the Laws*, p. 28; J. Hudson, 'L'écrit, les archives et le droit en Angleterre (IXe-XIIe siècle)', *Revue historique* 637 (2006), pp. 3–35, at pp. 12–3; Wormald, *MEL*, p. 414.

³⁴ Text, translation and authorship argument is found in Kennedy, 'Cnut's law code of 1018'.

³⁵ Kennedy set out the relationship between the clauses in *V/VI Atr*, *Cn 1018* and *I-II Cn* in 'Cnut's law code of 1018', pp. 58–9.

³⁶ This suggestion was first made in Whitelock, 'Wulfstan and the Laws of Cnut', p. 443. See also Wormald, *MEL*, pp. 346–7.

Cnut's rule, in which he sought to consolidate and forge more stable relations.³⁷ Perhaps the aim of the Oxford meeting was to agree to the same laws rather than to make new law – 'a meaningful gesture' in Bruce O'Brien's words – and the meeting served only to endorse and ratify a pre-written text.³⁸

3.1.3 II-III Edgar (c. 960s/970s)

The following text, *II-III Edgar*, is a borderline case, given that there is some indication that it was produced before a meeting, though it is not conclusive. This text is unusual in many ways. It survives in six manuscripts (though not all are complete texts), which is more than any other decree and is only matched by Alfred's code.³⁹ What is more, as chapter 5 shows, it was adopted wholesale by Wulfstan when he wrote *I-II Cnut*, which ensured the survival of its content long into the post-conquest period with the extensive copying of Cnut's laws.⁴⁰

This extended life does not come as a surprise when reading *II-III Edgar*: it is the most neatly structured, carefully phrased of all surviving Anglo-Saxon laws. It is divided into two clearly marked sections, one secular and one ecclesiastical, each introduced by similar prefaces. Within these two sections, the text systematically sets out a number of obligations for the population in relation to the church and the justice system. The most remarkable feature, however, is its grammar. Its chapters are systematically made up of statements followed by conditionals, setting out a rule and the complications or conditions arising from it. Wormald likened this structure to 'a title with sub-clauses in the Visigothic or Roman manner'.⁴¹ This is unusual for an Anglo-Saxon law text, most of which – as the appendix shows – do not display any such systematic patterns. It appears that someone had thought about how *II-III Edgar* should read, not just what its message was. As Wormald argued, the

³⁷ T. Bolton, *Cnut the Great* (New Haven, 2017), pp. 105–8.

³⁸ B. O'Brien, 'Conquest and the Law', in L. Ashe and E.J. Ward (eds), *Conquests in Eleventh-Century England: 1016, 1066* (Woodbridge, 2020), pp. 41–64, at p. 48. I would like to thank Professor O'Brien for sharing this chapter with me before publication.

³⁹ Wormald, *MEL*, p. 313. Strangely, as chapter 1 showed, II-III Eg is not found in any of the two twelfth-century Old English collections, though it is translated as part of *Quadripartitus*. It is found in Old English in Cotton Nero A.i(A), which seems to date to the mid/late-eleventh century.

⁴⁰ For some background on Anglo-Norman adaptation and copying of Anglo-Saxon law, see O'Brien, *God's Peace*.

⁴¹ Wormald, *MEL*, p. 315.

text was probably continuous in its original manuscripts, though this grammatical structure would have served to highlight the capitular structure of the text.⁴²

Another consideration is the preface to *II-III Edgar*. It mentions *witan* but contains no mention of a place. The text's traditional association to Andover (and thus a meeting) is based on a reference contained in *IV Edgar*. However, the identification is not watertight: *IV Edgar* states that people 'should give God his tithes...as it is instructed in the decree which my *witan* decided at Andover' (IV Eg 4). *II-III Edgar* does indeed cover tithes, but we cannot rule out the possibility that *IV Edgar* was referring to a separate command or writ on tithes. There is thus no entirely secure association between *II-III Edgar* and a specific place. We should be cautious about reading too much into this, though it could be another hint pointing in the same direction, namely that *II-III Edgar* is not the record of what happened at an assembly.

All in all, the structure and grammar of *II-II Edgar* seems too deliberate, careful and organized for the text to be a record taken down from oral proceedings. Both in content and in language, most of the texts between Alfred and Edgar appear to be more ad hoc, as we will shortly see. However, this is not enough evidence to draw decisive conclusions about the making of Edgar's laws. It is possible that *II-III Edgar* was composed in writing in advance of a meeting, but the surviving text could also be the result of someone reworking notes taken down at an assembly. In the latter case, we should probably imagine that a single official copy was made from notes, from which other copies were subsequently made. That can be inferred from the manuscript evidence, which shows that its three textual lines have very few variations.⁴³ Had surviving versions been copies made from oral proceedings taken down by different people, we would expect many more variants.

3.2 Decrees produced at or shortly after a meeting

3.2.1 IV Edgar (970s)

The surviving text of the only other law in Edgar's name, *IV Edgar*, appears to have been made under different circumstances. Its legal content is not too different from *II-III Edgar* –

⁴² Wormald, *MEL*, p. 315.

⁴³ Wormald, *MEL*, p. 313. The only major variations between manuscripts are those interpolations made by Wulfstan in two manuscripts (see Wormald, *MEL*, pp. 314–5).

it concerns tithes, witnessing, cattle sales and tracing animals – but it has some textual quirks which suggest that it is the record of an oral declaration, presumably at an assembly.

One such feature is its opening line. It opens with a sentence (a hypertheme) otherwise found almost only in charters: ‘Her is geswutelod on þisum gewrite..’ (‘It is declared here in this document...’).⁴⁴ One manuscript version of *IV Edgar* contains another feature normally associated with administrative documents, namely crosses that mark the start of the document and its second section. Such crosses are commonly found in charters as well as at the start of some sealed writs.⁴⁵ This copy of *IV Edgar* is found in Cotton Nero E.i, which dates to a generation or two after the text was probably composed.⁴⁶ The correspondence between documentary phrases and documentary signs (in a near-contemporary manuscript) could indicate that *IV Edgar* was drawn up following a different standard from most other surviving decrees.

Another unusual feature is the entire first section of the text (IV Eg 1–1.8), which is on the topic of tithes. Here, Edgar is reported to have pondered about the reasons for the plague currently afflicting his people, which he and his advisors found was the withholding of tithes. Edgar came up with a ‘worldly example’ (rent owed to a landlord) which he could use to illustrate the importance of paying the church. This anecdote is followed by a forceful reminder of the ‘sudden death’ and ‘eternal hell’ earned by those who withhold what is owed to God (IV Eg 1.4). In addition to this atypically exhortative opening, the section contains an unusual form of address: the king speaks in the first person directly to an audience, using the second person plural (IV Eg 1.4). This form of address is repeated at the end of the text (IV Eg 16), where the king (in the first person) makes a promise to *eow* (‘you’) that he will be a loyal lord. Such direct address in the second person is not found in any other law text.

Perhaps the most unusual aspect of *IV Edgar* is the inclusion of the king’s instructions for the copying and circulation of the text:

...7 write man manega gewrita be þisum 7 sende ægþer ge to Ælfhere ealdormen
ge to Æþelwine ealdormen 7 hy gehwider, þæt þes ræd cuð sy ægþer ge earmum
ge eadigum. (IV Eg 15.1)

⁴⁴ See below on pp. 188–91 for more on hyperthemes, including that of IV Eg.

⁴⁵ Harmer, *Writs*, p. 25.

⁴⁶ Wormald, *MEL*, pp. 182–4. *IV Edgar* is now found on two originally loose leaves in Nero E.i. However, given that the first page contains parts of another text with *IV Edgar* on the following verso, recto and verso, these leaves seem to be taken from another book (perhaps liturgical). It thus cannot be one of Wormald’s hypothetical single-quire laws.

...and many copies of this [/these] should be written and sent to both Ealdorman Ælfhere and Ealdorman Æthelwine, and they [should distribute it/them] widely, so that these measures will be made known to both poor and rich.

This has been seen as tantalizing evidence of what may have been the standard process for communicating newly made or newly written law, though such explicit instructions are entirely unparalleled in the corpus.⁴⁷

Finally, *IV Edgar* has a different manuscript context than other laws. It is not found in any of the twelfth-century collections. As mentioned, one copy is preserved in Cotton Nero E.i, though the sheets on which it appears in this codex seem to have been taken from a different liturgical book.⁴⁸ The second copy is found – alongside a Latin translation – in one of Wulfstan’s collections of legal and ecclesiastical materials (CCCC 265).⁴⁹ Both Old English copies seem to represent a single textual line, perhaps from a common Worcester copy.⁵⁰ This sparse and unusual survival context is especially odd given the explicit instructions for its circulation in *manega genwrita* (‘many copies’).

What can we make of this evidence? The impression given by the narrative clauses is that Edgar and his *witan* had decided a number of things concerning tithes and procedure connected to sales and stolen goods, perhaps at *Wihthordesstan*, the unidentifiable place mentioned in the text (IV Eg 1.4). However, given that the text is phrased as an address from the king to an audience – using the first and second person pronouns throughout – it could be that the surviving text of *IV Edgar* represents the declaration of these decisions, perhaps on the same occasion. *IV Edgar* might therefore be an example of what Hamilton Hess identified as ‘not so much a listing of regulations enacted by a council as a report of the decisions reached’.⁵¹ While *IV Edgar* is not reporting the actual deliberations, it is reporting the session in which they were announced. The audience for such an announcement would include reeves, who are addressed directly in the text, and possibly also bishops, who are mentioned (IV Eg 1.8).

⁴⁷ Keynes, ‘Royal Government’, p. 242.

⁴⁸ Wormald, *MEL*, pp. 182–4.

⁴⁹ This is one of the manuscripts containing Wulfstan’s canon law collection. Its inclusion of *IV Edgar* is perhaps on account of Wulfstan’s interest in tithes; see Ivarsen, ‘Æthelstan, Wulfstan and a Revised History of Tithes’ and the discussion of *I Æthelstan* above (section 3.1.1.1) and of *I-II Edmund* below (section 3.2.4).

⁵⁰ Wormald, *MEL*, pp. 182–4.

⁵¹ Hess, *Early Development of Canon Law*, p. 70. For an example of how such reports could diverge, thus producing two different versions of the same assembly, see C. West, ‘“Dissonance of Speech, Consonance of Meaning”: The 862 Council of Aachen and the Transmission of Carolingian Conciliar Records’, in C. West and E. Screen (eds), *Writing the Early Medieval West* (Cambridge, 2018), pp. 169–82.

The instructions for copies to be made – *manega gewrita be þisum* (‘many copies of this/these’) – would also fit into this scenario. This phrase is usually taken as a reference to the document as a whole (*be þisum* = ‘of this’), but it could just as well refer to the rules set out in the main part (*be þisum* = ‘of these’). Such instructions for dissemination of the laws decided may have been routinely announced at the end of assembly proceedings, though they may not have been routinely recorded. Perhaps the surviving version of *IV Edgar* was the work of an inexperienced scribe, who wrote down more than was generally considered necessary. It is possible that this scribe was someone familiar with charter diplomatics, given that the opening sentence is a standard feature of charters written in Old English. In any case, there is little reason to suppose that such instructions for circulation and copying would have been composed in writing and included in a document in writing.

The surviving version of *IV Edgar* therefore appears to be a written record of a whole lawmaking session, not just a record of the actual provisions decreed. This scenario could perhaps also explain why *IV Edgar* seems to contain two rather different kinds of legal statements. *IV Edgar* is essentially a compound of two distinct texts, corresponding to the sections marked by crosses in Cotton Nero E.i. The second part (IV Eg 2–16) is on secular matters relating to sales, witnessing and more. It lists a set of short and discrete regulations, textually directed at everyone. The first part (IV Eg 1–1.8) is different. Despite covering only one issue, namely tithes, it takes up more than a third of the text. It does not list separate regulations but it is instead a continuous and discursive text which logically progresses from one aspect of the issue to the next. It says five things: it sets out a problem (plague caused by withholding tithes); admonishes payment with a simile; gives a direct command (addressed at *ge* ‘you’) not to withhold tithes; commands reeves that they must enforce payment or be punished; and it commands those who receive tithes to live pure lives. While it warns tithe dodgers about a future in eternal hell, it does not specify any earthly penalties for them.⁵² However, it does specify what will happen to those who do not enforce payment. Thus IV Eg 1–1.8 looks, in more ways than one, like Æthelstan’s tithes writ. The prose of this part is also more off-the-cuff than the rest. This is partly on account of the anecdote at the start and its narrative phrasing, and partly the very personalized style, with the king speaking in the first person throughout and addressing his audience in the second person.⁵³

⁵² The text does, however, refer to another decree for penalties for non-payment of tithes (IV Eg 1.4). This reference might be to *II-III Edgar*, though see above on p. 85.

⁵³ Wormald, *MEL*, p. 318–9.

It could be that the first part of *IV Edgar* represents a royal injunction announced at the start of an assembly. It is exhortative instead of prescribing concrete penalties, and it appears to be directed at enforcers. Such an announcement may have functioned as a kind of preamble to the rest of the proceedings (which are contained in the second half of the text). Evidence from the eleventh-century text *VI Æthelred Latin* indicates that a legislative synod involved admonitions delivered before the start of the deliberations.⁵⁴ It has also been argued that some of Wulfstan's 'legalistic' homilies were made to be performed before the king and *witan* made or announced laws.⁵⁵ The first part of *IV Edgar* is more focused on a single topic than these homilies, though it may nevertheless have served a similar function. The fact that such an admonitory announcement was recorded in a text could perhaps be ascribed to the inexperienced scribe again, though it is also possible that it was intended to be recorded and circulated alongside the other regulations.

If these were the circumstances of production of *IV Edgar*, we could clear up another peculiarity of the text as well: as Wormald argued, it seems that the surviving version of *IV Edgar* was directed at the Danelaw. There are several references to laws for Danes – not always with a counterpart for the southern English – and a reference to a Danelaw earl.⁵⁶ In light of the situation set out above, the extant text could be a record made by a Danelaw representative – whether from notes or transcribed at the assembly – who took down only such things as were relevant for his district. Perhaps a record made by a southern English bishop at the same assembly would have looked different. Alternatively, it is possible that the existing text is the result of a Danelaw representative copying from an official transcript of the session, only transcribing what he needed. This fits into the procedure stated by the decrees from the ninth-century church council held at Chelsea, which specifies that bishops should record the decrees relevant for their districts.⁵⁷ The tenuous manuscript context of

⁵⁴ VI Atr Lat prol. See M.K. Lawson, 'Archbishop Wulfstan and the Homiletic Element in the Laws of Æthelred II and Cnut', *The English Historical Review* 107 (1992), pp. 565–86 for this argument and a longer discussion of the role of admonitions in Wulfstan's legislative writing.

⁵⁵ This is argued in e.g. J.T. Lionarons, 'Napier Homily L: Wulfstan's Eschatology at the Close of his Career', in M. Townend (ed.), *Wulfstan, Archbishop of York: the proceedings of the second Alcuin Conference* (Turnhout, 2004), pp. 413–28, at pp. 418–9 and in Lionarons, *The Homiletic Writings of Archbishop Wulfstan* (Woodbridge, 2010), pp. 170–3. A similar point was made by K. Jost, *Wulfstanstudien* (Bern, 1950), pp. 105–6.

⁵⁶ Wormald, *MEL*, pp. 126–7, 317, 441–2.

⁵⁷ Council of Chelsea, chapter 9: 'sancimus in ilia praefata sinodo, ut unusquisque Episcoporum debeat describere iudicium illum, qui in qualicumque synodo constitutum est vel ad illius parochiam pertineat.' Printed in A.W. Haddan and W. Stubbs, *Councils and Ecclesiastical Documents Relating to Great Britain and Ireland*, iii (Oxford, 1871), p. 583. Cubitt discussed this chapter and other aspects of council diplomacy in *Church Councils*, pp. 77–95.

the surviving version of *IV Edgar* might account for the lack of an extant southern English counterpart. The fact that *IV Edgar* does not exist in any of the places where most other law texts survived could indicate that its original form was perhaps more ephemeral or recorded somewhere where it was less likely to be copied. The extant version could have survived by complete accident and a hypothetical southern version might not have been as lucky. In general, we expect southern texts to survive where Danelaw texts did not; however, if it was indeed a Worcester text which underlay both surviving copies, the survival of the archetypal text may have had something to do with Wulfstan.

3.2.2 II *Æthelstan* (c. 930s)

The next text lacks such reportative traces, though it contains other clues to its making. As Wormald observed, the only explanation for the order of *II Æthelstan* is thought-association, and he concluded that it is best understood as ‘matters brought to a legislator’s attention’.⁵⁸ This haphazard thematic structure is to a degree counteracted by textual strategies perhaps intended to create order in a record of an oral declaration. These strategies are found in two grammatically and topically distinct sections.⁵⁹ One is a group of clauses introduced by ‘in-text headings’.⁶⁰ There is a concentration of this construction in the first part of the text, where a number of clauses are introduced with a phrase like this one: ‘we cwædon be wiccecræft...’ (‘we declare about witchcraft...’).⁶¹ Such serves as a way to progress from one topic to the next, while also drawing attention to the change of theme. The other strategy is found in the middle of *II Æthelstan*, where each clause opens with a number spelled out in letters, starting with *ofer* (‘secondly’) ending at *seofode* (‘seventhly’; II As 13.1–18), again clearly marking the change from one thought to the next. This section is also distinct in form and content. Most of its clauses are very short dependent statements, thus differing from the preceding section of longer and more syntactically complex sentences. It does not deal with major offences and procedure, as the previous section did, but rather miscellaneous and

⁵⁸ Wormald, *MEL*, p. 305.

⁵⁹ In fact, II As may be seen as a composite text; see Wormald, *MEL*, pp. 291, 307–8.

⁶⁰ In-text headings are discussed in the appendix; see below on p. 198.

⁶¹ It is used in various forms at II As 2, 4, 5, 6, 7, 8, 11, 12, 13.

often restricted issues, some seemingly case-based.⁶² Yet, this section is present in all versions and seems to be part of the text ‘as issued’.⁶³

The consistent use of these two syntactical strategies may have been an attempt to create a way to follow a text which otherwise wanders aimlessly. This may represent the way in which such instructions were announced at an assembly, or, perhaps more likely, it could be a retrospective attempt to make sense of oral proceedings that had been recorded as notes. The drafter behind the extant version of *II Æthelstan* may have wanted to preserve the order in which laws were declared, but chose to create some system through such textual forms. All in all, the lack of structure and these textual features could suggest that *II Æthelstan* was not planned out in writing and it may reasonably be seen as something derived from assembly proceedings.

3.2.3 VI Æthelstan (c. 930s)

Another indication of a text made at a meeting is the main part of the composite text *VI Æthelstan*. Its composite nature has already been discussed – it contains the two writ reports mentioned above – and it will be discussed further below; for now only its core part is relevant. This part of the text presents itself as the decrees made by the bishops and ealdormen of London and confirmed with a pledge by ‘our peace guild’. It states that it seeks to adjust and *ecan þam domum* (‘add to the provisions’) set down at Grately (*II Æthelstan*), Exeter (*V Æthelstan*) and Thunderfield (partially contained in *IV Æthelstan*). It is mainly the text’s long first chapter on theft (VI Atr 1–1.5) which engages directly with the contents of these decrees, while the remaining chapters of the core part set out the peace guild’s communal measures for protection against theft (VI As 2–8). A conspicuous feature of the first chapter is the lack of verbatim citation of the decrees to which it is written in response. The order of topics would suggest that it was made in reference to a written version of *II Æthelstan*, though it never follows *II Æthelstan*’s wording.⁶⁴ Perhaps this indicates that the surviving version of *VI Æthelstan* is a record of what was said at a meeting, rather than a text

⁶² The clauses on shield-makers (II As 15) and selling horses (II As 18) may be examples of matters with a basis in real cases.

⁶³ Keynes, ‘Royal Government’, p. 237 n 47. Wormald and Liebermann proposed that the middle section could have been a previously independent text that became absorbed (Wormald, *MEL*, p. 294, Liebermann, *Gesetze III*, p. 100), while Roach has suggested it might represent a different stage of the meeting proceedings (‘Law Codes’, p. 468).

⁶⁴ Roach, ‘Law Codes’, p. 477.

made in a scriptorium with the text of *II Æthelstan* as reference. This process can be contrasted with the Carolingian capitularies known as *capitula legibus addenda*, some of which present additions or changes to laws found in the Frankish *leges*. For example, one such capitulary from Louis the Pious's reign amends clauses from *Lex Salica*.⁶⁵ Textually, this is done by citing the relevant clause from *Lex Salica* verbatim before giving a discussion of the changes.⁶⁶ The finished text version of this capitulary must have been made using a written copy of the *Lex*, either read out loud at a meeting or supplied in a scriptorium. The finished version of *VI Æthelstan* does not appear to have been made in the same way.

3.2.4 I-II Edmund (c. 945/6)

I and *II Edmund* are usually taken as two separate texts, but, as I will argue here, they are better understood as two parts of the same text. Combined, these two parts appear to reflect underlying assembly proceedings. The two texts come as a pair in *Textus*, CCCC 383 and *Quadripartitus*. Nevertheless, they have been taken as two separate text in editions and scholarship since Schmid, who introduced the division based on the fact that one manuscript, the Wulfstan manuscript CCCC 201, contains only *I Edmund*.⁶⁷

However, the fact that just *I Edmund* was copied by Wulfstan can be explained: the only older Anglo-Saxon laws copied by Wulfstan into his manuscripts are those that treat the topic of tithes.⁶⁸ Perhaps he did not see the need to include the part of *I-II Edmund* that does not deal with this topic. In fact, this theory is supported by the heading to *I Edmund* in CCCC 201: 'her gebiraþ nu to Æþelstanes gerædnes hu he teoðunge gerædde' ('here it now pertains to Æthelstan's law how he decreed on tithes').⁶⁹ Not only does this heading read as indicating an extract, but it also makes it clear that *I Edmund* was relevant because of its treatment of tithes. In addition, this heading serves to connect *I Edmund* to the preceding text in the manuscript. For in CCCC 201, *I Edmund* follows directly on from Wulfstan's own text *VIII Æthelred*. The final passage of *VIII Æthelred* lists Æthelstan, Edmund and Edgar as model

⁶⁵ For a discussion of Louis' capitulary, see Faulkner, 'Carolingian kings and the *leges barbarorum*', pp. 454–5.

⁶⁶ 'Capitula legi salicæ addita' (no. 142), in MGH Capit. 1, ed. A. Boretius (Hannover, 1883), pp. 292–3.

⁶⁷ See Schmid, *Gesetze*, p. lxxxix. The first few lines of I Em is also found in the Wulfstan manuscript Cotton Nero A.i(B). A few pages are missing from the manuscript after the opening to I Em (Wormald, *MEL*, p. 199), so we do not know whether it contained both I and II Em or not.

⁶⁸ See Ivarsen, 'Æthelstan, Wulfstan and a Revised History of Tithes'. These four are I As, I Em, II-III Eg and IV Eg.

⁶⁹ CCCC 201, p.96.

kings, especially for the way in which they ‘honoured God, observed God’s law and rendered God’s taxes’ (VIII Atr 43). By including such a heading to *I Edmund*, the manuscript scribe made it absolutely clear that this text is an illustration of the way in which Edmund was a model legislator, while also reminding readers that Æthelstan had legislated on the same topic (in a text which appears earlier in the same manuscript). All in all, it seems that the inclusion of *I Edmund* in CCC 201 should be seen in connection to Wulfstan’s interest in tithes. Given that Wulfstan did not seem to mind making changes to older texts – or indeed rewriting them, as we saw above in the case of *I Æthelstan* – he may well have split up a bipartite text because he was only interested in the first part.

There is textual support for this theory. Combined, the prefaces to *I* and *II Edmund* tell a coherent story of how a meeting underlying both texts would have proceeded. *I Edmund* states that Edmund gathered a great ‘synod’ of both secular and ecclesiastical orders, where archbishops and bishops deliberated (*smeagan*) about what would benefit the soul.⁷⁰ This statement is followed by a list of ecclesiastical regulations, which presumably represent the outcome of these deliberations. *II Edmund* starts by stating that the king had deliberated (*smeagan*) with his *witan* of both seculars and ecclesiastics. It goes on to say that *arest* (‘first(ly)’) they discussed what the king should do to maintain proper faith. This is followed by: ‘Then it seemed to us that above all we should keep our peace’ (‘Donne ðuhte us ærest mæst ðearf ðæt we ure gesibsumnesse...heoldan’; II Em prol). Most translations and interpretations take the sentence starting *þonne* to be an elaboration on the sentence starting *arest*, i.e. that keeping the peace is one of the things the king should do to maintain proper faith.⁷¹ However, the wording of the Old English does not support this interpretation. The word order suggests that the sentence starting *þonne* introduces a new (albeit related) thought.⁷² Thus, *þonne* (‘then, thereafter’) marks a temporal shift from *arest* (‘first’). The story told by this preface is thus:

⁷⁰ Old English *seonop* (‘synod’) could refer to councils in general, not just ecclesiastic ones (BT, s.v. *seonop* and Roach, *Kingship and Consent*, pp. 22–3). For the use of *synodus* to refer to ‘assembly’ in some Carolingian capitularies, see R. McKitterick, *Charlemagne: The Formation of a European Identity* (Cambridge, 2008), p. 40.

⁷¹ Wormald translated the sentence starting with *þonne* as ‘first then it seemed to us...’. This would imply that the following statement on keeping the peace was among the things discussed in relation to maintaining the faith (Wormald, *MEL*, p. 311 and ‘Giving God and King their Due: Conflict and its Regulation in the Early English State’, in his *Legal Culture in the Early Medieval West*, pp. 333–58, at p. 337). The same interpretation is given in H. Vollrath, *Die Synoden Englands bis 1066* (Paderborn, 1985), p. 223 and Robertson *Laws*, p. 9.

⁷² The meaning that Wormald and others proposed is always phrased: subject + verb + *þonne* ‘then’ + *arest* ‘first’ (e.g. ‘Ðæt is þonne ærest’). This construction is found in VI As 1.1., II Eg 1, IV Eg 1, V Atr 1, VI Atr 1, VIII Atr 2, X Atr 1, I Cn 1, 2.4, II Cn 1, 69.1. Wormald’s preferred meaning would have been expressed *‘Ðuhte us ðonne ærest...’. The fronting of *þonne* clearly gives it a much stronger temporal sense (as it would in modern English).

there was a meeting with an ecclesiastical portion (represented by *I Edmund*), which deliberated about how the faith should be maintained. Then there was a secular portion (represented by *II Edmund*), which broadly speaking dealt with how the peace should be kept. The secular section referenced the ecclesiastical section in its preface. This meeting as a whole was represented in the bipartite decree *I-II Edmund*.

This scenario could clear up one of the other arguments levelled against the unity of these two texts. Liebermann and Wormald claimed that a topical overlap – found at *I Edmund* 3 and *II Edmund* 4 – meant that they were separate texts rather than parts of the same decree.⁷³ However, this does not check out textually. For one thing, while both clauses concern the amends a homicide will have to make to be allowed in the king's presence, they only converge in one punishment (penance) but not the other (compensation). Even more significantly, the clause in *II Edmund* never specifies who is being banned from getting near the king. It reads: 'ic nelle socne habban to minum hirede ær he hæbbe godcunde bote underfangen...' ('I do not wish that [he] has the right to access my household before he has undergone penance...'). There is nothing in the preceding sentences to indicate who the referent is or what 'he' has done. The translation in *Quadripartitus* adds 'eum qui sanguinem fundet humanum', which is the phrase the translator had used in the parallel clause in *I Edmund*. The law would make little sense without the *Quadripartitus* addition.⁷⁴ But the problem could be solved if *I* and *II Edmund* are read as one text. *II Edmund* 4 would then be referring back to *I Edmund* 3. These two clauses would be fairly close when the texts are read as one. There is thus no reason to see this as a duplication; the two clauses are actually complementing each other. This is therefore a strong argument *for* the unity of the two texts, not an argument against it. Perhaps it had been agreed beforehand that both the ecclesiastical and secular parts of the meeting would raise the issue of a homicide getting near the king, but that the texts were meant to reflect the actual meetings rather than a harmonized version. The bipartite text *I-II Edmund* thus seems to reflect some of the underlying process of its making and could perhaps be a record of what happened at a meeting, written there or shortly after.

⁷³ Liebermann, *Gesetze III*, p. 125 and Wormald, *MEL*, pp. 310–1. No one has laid out the case for the unity of *I* and *II Edmund* in great detail, though Cubitt favours seeing them as one text: C. Cubitt, 'Bishops and Councils in Late Saxon England: The Intersection of Secular and Ecclesiastical Law', in W. Hartmann (ed.), *Recht und Gericht in Kirche und Welt* (Munich, 2007), pp. 151–64, at p. 157.

⁷⁴ Robertson included the *Quadripartitus*' additional clause in her translation, and Liebermann considers it a better reading than the Old English original: see Robertson, *Laws*, p. 296 and Liebermann, *Gesetze I*, p. 188.

There are some signs that *I Edmund* was made with reference to another text, namely ‘Constitutions of Oda’.⁷⁵ This Latin text is itself made up of reworked canonical extracts and was written by Archbishop Oda in the 940s.⁷⁶ Oda is also mentioned in the preface of *I Edmund*, along with Wulfstan I, Archbishop of York (d.955/6), and seems to have been in charge of the proceedings. However, nothing seems to be quoted verbatim from the ‘Constitutions’. While this use of sources could signal that the contents of the text was partly pre-prepared, it could also fit within the scenario set out above, given the lack of verbatim citation.

3.2.5 Peace agreements

There are three peace agreements in our corpus: *Alfred-Guthrum* is a peace agreement between the Danes and the English from the 880s, *II Æthelred* is a tenth-century agreement with the Danes, and *Dunsate* is an agreement between a Welsh and an English community.⁷⁷ The surviving agreements present themselves as the outcomes of deliberations, like several of the other decrees, but deliberations between two (equal) parties for the purposes of facilitating co-existence, not between the king and his advisors.

Dunsate covers many standard legislative topics such as cattle tracking, judicial procedure, homicide and compensation, always with a focus on the two different peoples and the relationship between them. The two peace agreements with the Danes also deal with such standard issues with a focus on the two parties and their co-existence, as well as more specific terms of peace settlement, such as tribute payment (II Atr 1) or boundary setting (AGu 1). In all three cases, it would therefore seem as though deliberations between the two parties hashing out the terms of agreement would necessarily have come before the making of the texts. *Alfred-Guthrum* also mentions that oaths were sworn to *gefastnian* (‘confirm’) the

⁷⁵ For the connections between Oda’s ‘Constitutions’ and *I Edmund*, see Wormald, *MEL*, p. 310, Cubitt, ‘Bishops and Councils’, pp. 156–7 and A.A. Trousdale, ‘Being Everywhere at Once: Delegation and Royal Authority in Late Anglo-Saxon England’, in G.R. Owen-Crocker and B.W. Schneider (eds), *Kingship, Legislation and Power in Anglo-Saxon England* (Woodbridge, 2013), pp. 275–96, at pp. 277–83.

⁷⁶ The text of the ‘Constitutions’ is printed in Whitelock et al., *C&S*, pp. 69–74. Oda seems to have used the text of a church council decree from 786 (which is discussed in chapter 4, section 4.1.3) to make this text, see G. Schoebe, ‘The Chapters of Archbishop Oda (942/6) and the Canons of the Legatine Councils of 786’, *Historical Research* 35 (1962), pp. 75–83.

⁷⁷ For a discussion of *Dunsate*’s dating, preface and location, see Molyneux, ‘Ordinance concerning the *Dunsate*’, pp. 249–50 and Wormald, *MEL*, p. 381.

frið ('peace'), allowing us to imagine a meeting where the terms were agreed, written down, announced and then confirmed.

One of these texts offers more clues to its making. *Alfred-Guthrum* exists in two versions, both uniquely preserved in CCCC 383. Based on the textual differences between the two, Keynes proposed that the longer version was more official and 'closer to the issuing authority'.⁷⁸ The shorter version was, according to Keynes, 'intended for or copied by' an external party, that is not the parties involved in making the agreement.⁷⁹ It is possible – as was argued for *IV Edgar* above – that the texts represent versions taken down by two separate parties at the time of announcement. However, the two versions are probably not two separate records taken down from the oral announcement, as they are too close in wording. It is instead possible, as Keynes suggested, that the shorter version is a copy made from the longer version, adapted for or by the recipient.

3.3 Reworked decrees

The next group is decrees that appear to have been reworked from their original form. Several different processes seem to have been behind surviving texts: *VI Æthelred* represents a stylistic and linguistic translation of a decree, *V Æthelstan* appears to be a digest of two or three other decrees, and the compilation *VI Æthelstan* represents a decree which later accreted more material. In this section, I will also deal with a few tracts, some of which can be said to be reworked decrees. Together, the texts explored in this section offer indication of the continued life of some decrees and evidence of a process of composition that took assembly decrees only as a starting point.

3.3.1 VI Æthelred Old English and Latin

Wulfstan has been identified as the author of a number of the decrees in Æthelred and Cnut's names, including *V*, *VI* (OE), *VI* (Latin), *VIIa*, *VIII*, *IX* and *X Æthelred* and *Cnut 1018*. His

⁷⁸ Keynes, 'Royal Government', p. 234.

⁷⁹ This is indicated, for instance, by the replacement of the first-person plural pronouns ('we') in the longer version with third person pronouns ('they') in the shorter. The geographical descriptions also indicate that this text was drawn up for or by someone in a different location than the longer version, as Keynes argued in 'Royal Government', p. 234.

very distinctive literary style – explored in a number of studies – has been at the basis of this identification.⁸⁰ The fact that these laws rely on each other and on further Wulfstan texts for their material also strongly suggests that Wulfstan was behind them all. The method of revision and reuse of material will be explored in depth in the chapter on Cnut’s code. However, it is also a useful framework for understanding Wulfstan’s decrees. Some reveal Wulfstan compiling and reworking material from other decrees, seemingly at some remove in time from the assemblies that may originally have produced their content. The relationship between these texts is complicated and cannot be untangled here. I will, however, give one example that might illuminate some of Wulfstan’s working methods.

VI Æthelred Latin (sometimes the *Relatio* or ‘Paraphrase’) survives in a single manuscript, associated with Wulfstan (Cotton Claudius A.iii).⁸¹ It is the only law text in which Wulfstan names himself as author,⁸² though his authorship would be clear even without this attribution, given its similarities to his other texts. It has long been established that *VI Æthelred Latin* is ultimately based on the same assembly proceedings as *V Æthelred* and *VI Æthelred Old English*, though the exact relationship is debated.⁸³ However, there is broad agreement that *V Æthelred* was the first of these texts and that all of them were ultimately based on an assembly that seems to have taken place at Enham in 1008.

VI Æthelred Latin appears to represent a significant reworking of the original material. This becomes clear when comparing it to *V Æthelred* and *VI Æthelred Old English*. The Latin

⁸⁰ For example, A.P.M. Orchard, ‘Crying Wolf: Oral Style and the *Sermones Lupi*’, *Anglo-Saxon England* 21 (1992), pp. 239–64 and R. Dance, ‘Sound, Fury, and Signifiers; or Wulfstan’s Language’, in M. Townend (ed.), *Wulfstan, Archbishop of York* (Turnhout, 2004), pp. 29–61.

⁸¹ Wulfstan’s hand appears in this manuscript; see Ker, ‘The Handwriting of Wulfstan’, p. 321. The manuscript is discussed in Wormald, *MEL*, pp. 191–5.

⁸² He identifies himself at VI Atr Lat 40.2. For this attribution to Wulfstan, see below p. 187 and fn 16.

⁸³ There are some differences in content between the three, see K. Sisam, ‘The Relationship of Æthelred’s Codes V and VI’, in his *Studies in the History of Old English Literature* (Oxford, 1953), pp. 278–87. Different opinions about the relationship between the three texts are represented by Whitelock, Wormald, Jost and Sisam. Whitelock proposed that VI Atr OE was the version made for the Enham meeting, based on an older text – V Atr – that had been drawn up in 1008 (Whitelock, ‘Wulfstan and the Laws of Cnut’, pp. 433–4). She noted that VI Atr OE and VI Atr Lat agree against V Atr ‘in arrangement, content and some factual differences’, and that they contain more material than V Atr (Whitelock et al., *C&S*, p. 341). Wormald considered X Atr to be the original decree from the meeting at Enham which he placed in 1008 and that V and VI Atr were ‘devolved’ versions made by Wulfstan. He proposed that VI Atr OE and Latin were drafts made for future law-writing (P. Wormald, ‘Æthelred the Lawmaker’, in D. Hill (ed.), *Æthelred the Unready: Papers from the Millenary Conference* (Oxford, 1978), pp. 47–80, at p. 63 and *MEL*, pp. 233–5). Jost thought that VI Atr Lat was made using V Atr and some Latin extracts that had been used in the original making of V Atr, while VI Atr OE was made from V Atr and VI Atr Lat (Jost, *Wulfstanstudien*, pp. 29–30). He also proposed that VI Atr Lat was best seen as Wulfstan’s private text. An opposing view was taken by Kenneth Sisam, who suggested that VI Atr Lat was a translation intended to communicate secular law to the higher clergy (Sisam, ‘Æthelred’s Codes V and VI’, pp. 285–6).

does not simply relate the content in a different language, it communicates it in a different style, namely one familiar from council decrees and canon law. In short, the language of *VI Æthelred Latin* is more verbose, complex and discursive than either Old English text. Its syntax and language appears to be deliberately adapted to make the decree read more like a church council decree, as the appendix shows.⁸⁴ Another conciliar feature is the use of external citations, both from the Bible and from other ecclesiastical normative sources.⁸⁵ These are lacking in the Old English. Wulfstan's treatment of mercy in judgment illustrates the differences:

Delinquentes etiam pro delictis modicis morti minime tradantur. Sed pie cauteque puniantur, ne forte punitionis seueritate Iudicis iram districti prouocent punientes. Dominus enim dicit: 'Nolite condempnare' et reliqua; et item: 'In quo enim iudico iudicaueris, iudicabimini'. Et apostolus dicit: 'Castigate et non mortificate'. Plasmati namque Domini plasmantis, quod proprio sanguine redemit, semper ubique parcat. (VI Atr Lat 10–10.1)

Offenders should not at all be handed over to death for modest misdeeds. But they should be righteously and cautiously punished, so that the punishings do not accidentally – by the severity of punishment – rouse the anger of the strict Judge. For the Lord says: 'Condemn not' and so on, and again 'For with what judgment you judge, you shall be judged'. And the apostle says: 'Castigate and do not kill'. For the creature of the creating Lord, which he redeemed with his own blood, is always and everywhere to be spared.

7 witena gerædnes is þæt man Cristene men for ealles to lytlum to deaðe ne forræde. Ac elles geræde man friðlice steora folce to þearfe 7 ne forspille for lytlum Godes agen handgeweorc 7 his agenne ceap þe he deore gebohte. (VI Atr OE 10–10.1)

And the decree of our lord and his council is that Christian men should not be condemned to death for too little. One should rather mete out peaceable penalties, for the need of the people, and not squander for nothing what is God's handiwork and his own purchase, for which he paid dearly.

The Latin version is backed up by biblical authority – taken from the gospels of Matthew and Luke – of which there is no trace in the Old English.⁸⁶ Elsewhere, the Latin text includes quotations from Ezekiel and several from letters by Peter and Paul, as well as passages closely related to the Benedictine Rule.⁸⁷ *VI Æthelred Latin* also contains the unique occurrence of a

⁸⁴ I have also set out this argument in Ivarsen, 'A Vernacular Genre?'.
⁸⁵ I discuss the issue of scriptural citations in canon law further in chapter 4, section 4.1.3.

⁸⁶ The sentence starting 'Nolite condempnare' is taken from the second part of Luke 6:37, and it is followed by part of Matthew 7:1-2.

⁸⁷ These sources are set out in Jost, *Wulfstanstudien*, pp. 13–43.

verbatim citation (albeit unacknowledged) of a Carolingian council decree provision in Anglo-Saxon secular law. The clause in question was originally decreed by Council of Mainz in 813, though Wulfstan probably accessed it via Ansegis' collection of Carolingian capitularies.⁸⁸ This law was also copied into Wulfstan's canon law collection, which – as we shall see in chapter 5 – may have influenced his royal lawmaking elsewhere too.⁸⁹

Wulfstan had many canons – including church council decrees – at his disposal.⁹⁰ *VI Æthelred Latin* is clearly drafted in imitation of such texts and it is using some such texts as sources. This Latin text may have been made directly from *V Æthelred* or from *VI Æthelred Old English*. Or, as Jost suggested, it could have been made from *V Æthelred* and a document containing Latin passages used (but not quoted) for the making of *V Æthelred*.⁹¹ In either case, the surviving text represents a significant textual reworking of the decree made by the assembly from which it ultimately derived. The sources and stylistic adaptation involved in making the surviving version of *VI Æthelred Latin* is indication that this text was made away from the immediate context of an assembly, even though it ultimately represents its deliberations.

3.3.2 Compilations and accretions

Another process taking place after an assembly is represented by *IV Æthelstan*. This text, which only survives in *Quadripartitus*, was described by Wormald as 'not so much a code in its own right as a summary of resolutions at a series of assemblies'.⁹² It does not copy and compile clauses from these previous assemblies (as far as is possible to tell from its extant

⁸⁸ *Collectio Capitularium Ansegisi*, pp. 556, 563 (book II, chs. 34/45). One manuscript with the 'Wulfstan hand', Bodleian Hatton 42, has a copy of Ansegis' collection, including the clause in question (on fol. 204v).

⁸⁹ See J.E. Cross and A. Hamer (eds), *Wulfstan's Canon Law Collection* (Cambridge, 1999), p. 122 for the relevant law. For more on the influence of the canon law collection, see below pp. 155–7, and, for example, H. Foxhall Forbes, *Heaven and Earth in Anglo-Saxon England: Theology and Society in an Age of Faith* (Abingdon, 2013), pp. 172–89.

⁹⁰ Based on the manuscript associated with Wulfstan and his other writings, it is clear that he had access to a great deal of ecclesiastical legal material, both English and continental. For a summary of his manuscripts and library, see A. Orchard, 'The Library of Wulfstan of York', in R. Gameson (ed.), *The Cambridge History of the Book in Britain. Vol. 1, c.400-1100* (Cambridge, 2012), pp. 694–700. Texts in this 'council decree style' that Wulfstan had access to include: councils of Hertford (672; copied in one of his manuscripts from Bede's *Historia*), Chelsea (816), Aachen (816), possibly the English 786 council, *Admonitio Generalis* (789), *Collectio Canonum Hibernensis*, 'Oda's Constitutions' and more. In addition, his canon law collection included canon law material from a number of continental sources. For a short summary of these, see Cross and Hamer (eds), *Canon Law Collection*, pp. 29–39.

⁹¹ Jost, *Wulfstanstudien*, pp. 29–30. *V Æthelred* does not cite any external sources verbatim.

⁹² These assemblies are Grately (II As), Exeter (V As) and Thunderfield (which has not survived other than as contained in IV As); see Wormald, *MEL*, p. 296.

Latin), but rather gives a digest. It must have been composed some time after all these assemblies, perhaps intended as a summary of Æthelstan's legislation, prone as it is to annulments and amendments.

A similar process is represented by *VI Æthelstan*, which is a compilation based around a decree made at an assembly. This core – the decisions of London ealdormen and bishops discussed above – was supplemented with additional material which suggests that it found its current form after the original assembly.⁹³ The core text ends at *VI Æthelstan* 8. *VI Æthelstan* 9 is a stand-alone clause on thieves, reminiscent of the short notes discussed below, though it has been integrated into the text and is continuously numbered with the previous chapters. The same is the case for the next sections, numbered *teode* ('tenth'), *endlyfte* ('eleventh') and *twelfte* ('twelfth') in the text, though all three chapters seem to be originally separate texts.⁹⁴ The tenth chapter (VI As 10) records the content of a pledge the king had demanded from reeves and others involved in law-enforcement, while *VI Æthelstan* 11 and 12 were discussed above as being records of royal commands. Various theories exist as to why and how the pledge report and the two writ reports have ended up in this context, whether through a local or a central agency.⁹⁵ In either case, the collection as a whole seems to reflect an effort to compile materials on a matter of governance and administration, seemingly related to a pledge concerning the common protection against theft. While broadly concerned with the same topic, then, the purpose of the collection as a whole may have been different from that of the core decree (the London regulations). The collection's compilation could have taken place over time and may not necessarily have been undertaken or completed by same people who were involved in making the core.

Another form of accretion of material is represented by the group of 'notes'. As I argued in chapter 1, these are texts which have gained an independent existence in editions and the corpus, though they look more or less like individual provisions, ranging from 16 words (*Waltraef*) to 124 words (*Forfang*). Notes are identifiable as such because they only appear in some versions of a text. This means that they are further indication of a process of accumulation of material over time. However, it also means that there may be clauses in our

⁹³ The composite and complex nature of *VI Æthelstan* has been dealt with in several studies, primarily Keynes, 'Royal Government', Roach, 'Law Codes' and Pratt, 'Written Law'.

⁹⁴ This and other examples of numbering of clauses are discussed below on pp. 186–7.

⁹⁵ Keynes and Roach proposed that it was compiled by a local agency in London; see Keynes, 'Royal Government', pp. 240–1 and Roach, 'Law Codes', p. 476. Wormald suggested that it was central effort under the king and Archbishop Wulfhelm; see Wormald, *MEL*, p. 289.

texts that originated as notes, but which have been completely absorbed into the text, as we shall see. Therefore, the few identifiable examples of how notes may accrete to other texts – as it happens, mostly to the codes – may be analogous to processes that produced parts of decrees.

One example is *Romscot*, which consists in two sentences on the payment of the Peter's Pence, that is the penny paid to Rome at the end of June.⁹⁶ The wording and topic of *Romscot* aligns closely with Ine's law on *ciricsceatt* ('church-scot'), and the sole appearance of *Romscot* is indeed as part of *Alfred-Ine*, though it is inserted between the rubrics and *Alfred* rather than near *Ine*.⁹⁷ It has been suggested that *Romscot* may have been added to the manuscript in the context of William I's dispute with the papacy over *inter alia* the Peter's Pence and that it found its place because of its topical similarity to one of Ine's laws.⁹⁸ But the fact that it was not integrated into the text of *Ine* could signal an awareness of its separate origins.⁹⁹ The opposite might be the case with one of the coinage laws in *II Æthelstan*. It has been suggested that the list of mints in *II Æthelstan* originated as a marginal note glossing Æthelstan's law on coinage which later became integrated into the main text.¹⁰⁰ This passage is present in all surviving copies of the text.

Alfred-Ine also attracted other short texts, including *Ymb æwbrica*. This note might offer an indication of how such single-issue clauses came to be written down near these longer texts: it is introduced with the phrase 'ymb æwbricas þe þu acsodes' ('about adulterers, as you asked about'). It proceeds to describe – rather than direct or command – the appropriate practice.¹⁰¹ Wormald suggested it was an excerpted part of a letter or tract, though it could also be a note taken down at a meeting or in another legal context where

⁹⁶ For the development of this payment, as well as a discussion of the text *Romscot*, see R. Naismith and F. Tinti, 'The Origins of Peter's Pence', *The English Historical Review* 134 (2019), pp. 521–552.

⁹⁷ *Romscot* was copied into the mid-eleventh-century manuscript Cotton Nero A.i(A) after the rubrics to Af-Ine and before *Index*, the prologue to Alfred, Alfred's laws and Ine's (fols. 45r–57v). Wormald suggested that it had been included as a marginal note near *Ine*'s similar law and later been inserted near other accumulated material; Wormald, *MEL*, p. 368.

⁹⁸ H.R. Loyn (ed.), *A Wulfstan Manuscript Containing Institutes, Laws and Homilies: British Museum Cotton Nero A.i*, Early English Manuscripts in Facsimile v. 17 (Copenhagen, 1971), p. 45.

⁹⁹ The same is not the case for the addition of a punishment to margin of Ine 11 in CCCC 383 (fol. 24r).

¹⁰⁰ M. Blackburn, 'Mints, burhs, and the Grately code, cap. 14.2', in D. Hill and A.R. Rumble (eds), *The Defence of Wessex: the Burghal Hidage and Anglo-Saxon Fortification* (Manchester, 1996), pp. 160–75, at pp. 169–71. His argument is partly based on the fact that the list of mints reads like an administrative list with similarities to the document *Burghal Hidage*.

¹⁰¹ All its verbs are in the indicative and are combined with the temporal adverb *symle* 'always', so that it reads like a description of practice ('the offending woman always goes to the bishopric...') rather than something commanding, forbidding or directing.

issues and petitions were raised.¹⁰² Whilst this evidence is relatively meagre, it could offer a glimpse of how other individual provisions came to be: as reworked answers to petitions, questions or cases.

3.3.3 Tracts

Most of the above has focused on texts that claim to have some connection to deliberations, meetings or acts of issuing (that is, decrees). There is another group of texts that lack such explicit self-representation, namely the group referred to in chapter 1 as ‘tracts’. Not only do they (in their surviving form) lack a preface, but they also, for the most part, concern single issues. However, they often contain material paralleled in extant decrees. In some cases, it is clear that the tracts are copying from decrees (AGu App), and in other cases we do not know whether a tract copied the wording of a decree or vice versa (*Wer*/II Em). Other tracts may contain royal instructions, though their surviving form does not reveal their origins (*Ordal*). Some of the tracts could even be decrees that have lost their prefaces or royal attribution. The tracts are therefore dealt with here alongside the decrees because they reveal some of the processes involved in reworking the decrees themselves.

The tracts *Ordal* and *Wergeld* are narrowly focused on respectively how to perform an ordeal and how to make wergeld payments. Both have connections to royal decrees. As Wormald suggested, *Wergeld* may have been written ‘to fill gaps in Edmund’s laws [II Em]’, and *Ordal* may have been ‘an extended gloss on Æthelstan’s law [II As]...intended for consultation alongside it’, possibly even made at an assembly.¹⁰³ These tracts’ thematic connections – which are sometimes verbatim – to these royal decrees are undeniable, as Wormald’s tabular comparison of *II Edmund* and *Wergeld* immediately shows.¹⁰⁴ Perhaps, as Wormald suggested, these tracts were originally decrees. However, they may also represent someone extracting material initially presented (whether orally or written) as the king’s instructions, and placing them in thematically focused tracts intended to explain a single topic in as much detail as possible.

There are two other tracts that provide further evidence for such processes. One of these, the so-called *Alfred-Guthrum Appendix*, is made up of extracts from royal decrees. The

¹⁰² Wormald, *MEL*, pp. 372–3.

¹⁰³ Wormald, *MEL*, pp. 374, 377.

¹⁰⁴ Wormald, *MEL*, pp. 375–7.

other, the so-called *II Æthelred Appendix*, is a tract on the topic of theft. Both either contain or may contain royal instructions, though their extant forms seem to have been the products of processes that took place away from the context of a meeting.

These uninspiring names might have caused their neglect.¹⁰⁵ In fact, *Alfred-Guthrum Appendix* is perhaps the gravest example of a mismatch between an editorial name and the actual status of a text, because it is not an appendix nor originally associated with Alfred or Guthrum. More importantly, it is a unique example of a tract on a single point of law compiled from various Anglo-Saxon decrees. It contains extracts from the laws of Ine, Edward, Æthelstan and Edmund¹⁰⁶ on the topic of theft and rights and responsibilities in the justice system. The fact that it only survives as a translation in *Quadripartitus* means that the original is hidden from view, but the text is so close in wording to its sources that the original seems to have been made by copying clauses from the actual texts of Ine, Edward, Æthelstan and Edmund's laws.¹⁰⁷ This 'compilation on theft' thereby shares a processual feature with the codes – namely compilation – though on a much smaller scale and it lacks the second order legal thinking that characterizes the law codes, as the next chapters will show.

The text is chronologically ordered and based primarily on *Ine* and *II Æthelstan*. The first half consists mainly in extracts from *Ine*, which are (as far as we can tell) copied almost exactly as they appear in *Alfred-Ine*.¹⁰⁸ The following extracts from *II Æthelstan* are treated more flexibly, with the compiler changing some words, adding detail and combining separate sentences.¹⁰⁹ Lines from *II Edward* and *III Edmund* make occasional appearances, but seemingly only to add detail missing from the other sources. It seems, therefore, that there

¹⁰⁵ Wormald does, of course, give both texts a bit of attention: *MEL*, p. 321, 379–80.

¹⁰⁶ Both Liebermann and Wormald took the laws of Edmund to be the latest included in AGu App (Wormald, *MEL*, p. 380, fn 520 and Liebermann, *Gesetze III*, p. 233). However, it seems to me that the first part of AGu App 5 could be adapted from III Eg 6. The wording is slightly different between the two and so perhaps it is from a lost source, which Edgar later used too, or merely a coincidence. At any rate, I think the III Eg connection (or a lost source) is more reasonable than Liebermann's suggestion of Af 34, which is on a different topic entirely. Regardless, the mid-tenth-century date proposed by Liebermann (*Gesetze I*, p. 394) and Wormald (*MEL*, p. 380) still stands.

¹⁰⁷ The wording of AGu App is usually close – but not identical – to the corresponding clauses in the *Quadripartitus* versions of *Ine*, *II Æthelstan* and so on. This situation could suggest that the *Quadripartitus* translator translated the same passages twice – once for their original settings in *Ine*, *II Æthelstan* etc and once for AGu App – rather than that he copied his own translations from *Ine*, *II Æthelstan* into AGu App (or vice versa).

¹⁰⁸ There are some minor changes, as noted by Wormald, *MEL*, p. 380.

¹⁰⁹ AGu App 5 is made up of a sentence on sureties which could be taken from III Eg (see fn above) and the whole of II As 22.2, but with some added detail not in the original. AGu App 6 is partly the same as II As 22, though II As 22 seems modelled on II Ew 7, and the Edward version is closer to AGu App. The following AGu App clause (6.1) is, however, from II As 22.1, so combined, AGu 6 and 6.1 seem to represent II As 22 and 22.1 but with added detail from II Ew 7. I have been unable to find an exact equivalent for AGu App 7, though its basic content is also covered in III Em 3, in various places in II As and partly in Ine 36.

was a deliberate attempt to keep a connection to royal law and its wording. *Alfred-Guthrum Appendix* is therefore a tract preserving royal decrees, but it represents the reworking of several decrees and was made at a significant remove in time from most of its sources.

The second text, *II Æthelred Appendix*, is not part of *II Æthelred*.¹¹⁰ Again we see a misleading name hide an intriguing text. *II Æthelred Appendix* displays an almost unique concern for principles in the Anglo-Saxon legal corpus, offering a rare combination of procedural rules and juristic maxims. Overall, it is a detailed exposition of the practice of vouching to warranty, covering the basic process (II Atr App 8, 8.3, 9.1), practicalities of getting the warrantor (8.1, 8.3), the location of the process (8.4, 9), cases where a warrantor has died (9.2, 9.3) and other ways of proving ownership (9.4). These run-of-the-mill regulations are often followed by unusually pithy summaries, such as ‘forðam a bið andsæc swiðere ðonne onsagu’ (‘because a denial is always stronger than an accusation’; II Atr App 9.3); ‘swunce mare se ðe þæt unriht gestreon on his handa stode 7 læsse se ðe ðær ariht onspræc’ (‘the trouble [should be] greater for he who stood with the unlawful gain in his hand and less for he who there claimed it rightly’; II Atr App 9); and ‘forðam agnung bið ner ðam ðe hæfð ðonne ðam ðe æftersprecð’ (‘because ownership is nearer to he who has than he who claims’; II Atr App 9.4).¹¹¹ Another chapter summarizes the principle behind the foregoing:

Gif he cenne ofer I scira, hæbbe I wucena fyrst; gif he cenne ofer II scira, hæbbe II wucena fyrst; gif he cenna ofer III scira, hæbbe III wucena fyrst: ofor eallswa fela scira swa he cenne, hæbbe swa fela wycena fyrst. (IV Eg 8.3)

If he can specify the county in which the man whom he vouches to warranty lives, he shall have a week’s adjournment; if he can locate him within two counties, he shall have two weeks; if within three, he shall have three weeks. The number of weeks’ adjournment granted him shall correspond to the number of counties which he names.¹¹²

Such level of detail combined with summaries and maxims may indicate that the composer of this tract had some kind of specialist interest in the topic of vouching beyond practical knowledge of current practice. The attempts at covering all eventualities could be

¹¹⁰ Liebermann noted that II Atr App is a separate text, though he retained the ‘appendix’ name; Liebermann, *Gesetze III*, p. 155. Both Wormald and Liebermann argued that it was a fragment (Wormald, *MEL*, pp. 321, 370 and Liebermann, *Gesetze III*, p. 155), though I don’t see any reason why this must be the case.

¹¹¹ The only similar expressions elsewhere in the corpus are found in *Ine’s* laws on trees, which state that ‘forþamþe fyr bið þeof’ (‘because fire is a thief’; *Ine* 43) and ‘forþon sio æsc bið melda, nalles ðeof’ (‘because an axe is an informer, not at all a thief’; *Ine* 43.1).

¹¹² Translation from Robertson, *Laws*, p. 61.

the result of thinking through the application of a law, and the summaries could be the written manifestation of such thinking. This specialist interest could also be betrayed by a passage that starts *hwilon stod* ('it used to be') and which then goes on to explain 'þa geræddan witan þæt hit betere wære þæt' ('then the *witan* decided that it would be better that'). Such an explicit reference to legal change is almost as rare as the legal maxims.¹¹⁵ These two tracts may be indication of another process of making law texts, namely through collation of royal material and specialist thinking about its meaning and application.

3.4 Who did it?

The formal and textual hints I have presented here take us a bit closer to an understanding of where and when surviving decrees were composed. The evidence, such as there is, suggests that some texts were prepared before a meeting where they were subsequently presented. That might be the case for Edward and Æthelstan's writs, *Cnut 1018* and *II-III Edgar*. Other texts may be more accurately described as records of what happened at an assembly, written down during a meeting or perhaps shortly afterwards from notes. That may be the case for *II Æthelstan*, *IV Edgar*, *I-II Edmund* and the agreements. A few texts may have been produced at several removes from assemblies, such as the compilations, tracts and some of Wulfstan's decrees.

An important aspect of the foregoing analyses has been the relationship between what the decrees' prefaces tell us and what we can discover from other textual features. I have used both as evidence, though always keeping in mind the possibility that texts were following generic prefatory standards (as discussed in the appendix) rather than seeking to explain precisely what happened. What is more, prefaces may have become attached to texts at any stage of their life. Nevertheless, where prefaces and other clues match up, it is tempting to think that there is some truth behind the laws' self-representation.

As I showed at the start, many decrees state that *witan* were involved in their making, and a large number provide the name of the place at which the content was agreed. This tells

¹¹⁵ *Forfang* 2–3 also describes a legal change using similar words. Two Wulfstan tracts make references to old and current law: *Gefyncðu* 1 and *Grîð* 3, 22. There are a number of other tracts attributable to Wulfstan, namely *Norðleoda laga*, *Mirna laga*, *Að* and *Hadbot*, which concern status and compensation, except for *Grîð*, which is on church peace. For the general argument that these texts were the work of Wulfstan, see D. Bethurum, 'Six Anonymous Old English Codes', *The Journal of English and Germanic Philology* 49 (1950), pp. 449–63. For reasons of space, I am not able to discuss these here.

us something important about the presentation of law in writing, namely that it may have needed a context and a statement of consensus. Nevertheless, the premise of the discussion above has been that the mention of advisors and a place-name does not imply that a text was *made* at an assembly. The *witan* may at times only have been an audience, sometimes giving their approval to laws possibly made by the king and a smaller number of advisors in advance.¹¹⁴ *Witan* could potentially also be taken in its most basic meaning of ‘wise men’, which could mean anything from large assemblies to courtly advisors. As it has been argued throughout, it is worth considering whether some of the references to counsel in prefaces could refer to smaller-scale ad hoc advice, rather than an assembly of the king and officials.

This has implications for who we imagine as the minds behind law texts. From the different types of texts identified here, it appears that the minds behind the Anglo-Saxon decrees could include people connected to the king and the court; people connected to local agencies with legislative duties;¹¹⁵ and compilers with a specialist interest. The identifiable individuals – primarily Wulfstan, but also Wulfhelm and Oda – might be clues to wider practices. From the evidence of Æthelstan’s writs and decrees, it seems that Wulfhelm may have been involved in several types of law-making. The sources used in the tithes writ – as well as its tone and style – is not at odds with an archbishop’s authorship. Given that Wulfhelm is the only named advisor in the texts, it could be that he had an active part in the composition of the writs.¹¹⁶ Archbishop Oda likewise seems to have played a role in the making of *I-II Edmund*, as I showed above. And while never named in association with a law text, Archbishop Dunstan could have had a hand in Edgar’s law-making and perhaps the composition of texts.¹¹⁷ The same goes for Archbishop Plegmund of Canterbury. His name is not recorded in surviving law texts, but from the charter record we know that he attended several of Edward’s councils.¹¹⁸ We will meet Plegmund again in the next chapter, since he may have been involved in the making of Alfred’s code too. It is possible, therefore, that he

¹¹⁴ Roach suggested such a ratifying role of the *witan* for texts where the *witan* is said to have been present rather than actively involved, though he does not go into the implications of such an observation: Roach, *Kingship and Consent*, p. 107.

¹¹⁵ Local lawmaking has not been discussed at much length here, as it has been dealt with by others, including in Keynes, Roach and Pratt’s studies of Æthelstan’s legislation; see above p. 19 fn 40.

¹¹⁶ Similar conclusions were suggested by Wormald, *MEL*, pp. 299–300. See also Wormald, ‘The Uses of Literacy’, p. 112.

¹¹⁷ Loyn suggested Dunstan’s involvement in making *IV Edgar*, though I am not certain on what grounds: H.R. Loyn, ‘The Hundred in the Tenth and Early Eleventh Centuries’, in H. Hearber and H.R. Loyn (eds), *British Government and Administration: Studies presented to S.B. Chrimes* (Cardiff, 1974), pp. 1–15, at p. 7.

¹¹⁸ A. F. Wareham, ‘Plegmund [Plegmund] (d. 914), archbishop of Canterbury’, *Oxford Dictionary of National Biography* (2004).

was a seasoned legislative draftsman. We do not know the exact levels of involvement of these ecclesiastics, but, as chapter 5 will show, Wulfstan seems to have had some autonomy in his writing of laws and it is possible that these other archbishops did too. Wulfstan is often seen as unusual – and the extent of his writings suggests that he was – but it is nevertheless possible that there was precedent for such an active role as legislative drafter. The lack of explicit mention of other archbishops in other texts does not need to mean much, considering that – as we saw above – Wulfstan is only named in one of the dozen or so law texts we can attribute to him.

Sometimes there might have been more than just one person behind a composition, which would be the case for texts that appear to have been made at assemblies or from notes taken down at assemblies. In those cases, the composition of the text is based on a variety of people and inputs, including the decisionmakers at the assembly and whoever put the text into its surviving form. Though based on the conclusions about the language presented in the appendix, it appears that such writers would have had some knowledge about legislative writing, given the degree of consistency between texts and periods. This knowledge must presumably have been obtained through acquaintance with other law texts. That could suggest that legislative drafters were not just chosen at random out of the attendants at an assembly, but that they were designated as writers because of such a skill.¹¹⁹ Whether or not such writers were attached to the court in a formal way, for instance as part of a royal chancery, has been a matter of debate in the context of royal diplomas.¹²⁰ Based on the number of surviving documents, it would appear that legislative drafting was a less frequent happening than charter writing, though the same people could have been in charge of several such administrative duties.¹²¹ As suggested above, legislative writs may have been issued more commonly than the extant manuscript evidence indicates, and writing writs may have been the task of royal scribes. Royal scribes may also have been involved in making copies of texts composed by archbishops, or they could have been involved in recording assembly announcements, such as those preserved in *IV Edgar*.

¹¹⁹ This is similar to what Keynes suggests for certain royal diplomas, namely that kings might have brought in people with particular expertise (an abbot, bishop or archbishop) to write things ‘considered for whatever reason to be outside the remit or beyond the competence of the usual agency’: Keynes, ‘Church Councils’, p. 100.

¹²⁰ See introduction p. 20 fn 49 for the relevant literature.

¹²¹ There are about 2000 surviving charters. Keynes concluded that royal government was so reliant on writing (of documents of various kinds, including law) that there must have been a formal royal secretariat (e.g. ‘Royal Government’, pp. 255–7). The involvement of a royal secretariat at assemblies involved in the production of legislation is also suggested in Keynes, ‘Church Councils’, pp. 135–6.

This takes us back to one of the arguments that run throughout this thesis: we should not search for one answer to questions about circumstances of production. Some texts may have been composed by archbishops such as Wulfhelm and Wulfstan. Others may be records of proceedings, which means that surviving texts may be the product of a specialist scribe or an attending bishop. What is more, evidence from local assembly decrees – such as *V* *Æthelstan* – indicates that the knowledge and ability to write legislation in a certain style was not confined to court. As we shall see in the next chapters, yet another process seems to have led to the production of the codes. The picture emerging is of a system that did not have just one process through which laws were proposed, composed and confirmed. Keynes reached a very similar conclusion about the production of charters, which could also happen in several different ways, so we may as well borrow his ultimate conclusion: ‘It was no more than a flexible system working well.’¹²²

¹²² Keynes, ‘Church Councils’, p. 101.

4 The Making of Alfred's Code

One possible context for Alfred's law code, Wormald suggested, was 'the other manifestations of Alfredian eggheadedness'.¹ By this he meant the Alfredian literary project, which is certainly an attractive setting in which to place a code such as Alfred's. The interests revealed by this project – which included translations of Latin patristic texts and the recording of Anglo-Saxon history – are mirrored in the law code: its first section contains a translation of several chapters from Exodus and a statement in the king's own voice about the history of lawgiving. Its compiler(s) drew on laws of the Anglo-Saxon present and past. In its earliest manuscripts, the code is accompanied by the *Anglo-Saxon Chronicle*, genealogies and more, giving the impression of an Old Testament pairing of history and law.

Wormald raised the possibility that a code of this kind was to be expected from a king like Alfred.² He immediately went on to reject such an assumption. In this he was right. The form and content of Alfred's code does not have to be seen as a reflection of the idiosyncratic interests of Alfred and his circle. It can instead be treated as an example of a particular type of legislative text, which did not necessarily find its form purely because of a late-ninth-century effort to record, transmit and translate certain texts.³ As I will argue here, the code form allowed the makers to present the laws of Alfred and some of his predecessors alongside an exposition of the eternal principles that should guide any dispute resolution at any time. The code sought not just to state the appropriate legislative reactions to specific situations, but also to make a statement about the relationship between God's law and man's, Christian law and Anglo-Saxon, and old law and new.

This chapter will examine the research, compiling, synthesizing and juridical thinking that must have gone into the making of such a code. The first part examines the sources used and how this material was handled and adapted. It will become clear that the compiler used the laws of Æthelberht, Ine and perhaps Offa, as well as the Bible, though these four sources are used in different ways. The second part considers the process of compilation, that is, how these sources were structured and combined into a whole. This part also

¹ Wormald, *MEL*, p. 479.

² Wormald, *MEL*, p. 479.

³ Alfred's code is usually dated to late in his reign, probably after the 880s. For a discussion, see M. Lapidge and S. Keynes (trans.), *Alfred the Great: Asser's Life of King Alfred and Other Contemporary Sources* (London, 1983), p. 304.

considers who might have been involved in this work. Some of the wider conclusions will have to await the discussions of Cnut's code in the next chapter, though I will offer some preliminary observations towards the end. In the following discussion, 'the code' refers to the whole text with its four constituent parts, as set out in table 2 below. *Alfred* (or 'Alfred's laws') refers to the portion of laws in Alfred's name, *Ine* (or Ine's laws) to the portion in Ine's name, and 'the prologue' to the first section of Biblical translation and narrative. For simplicity, I will refer to 'the compiler' as the authorial mind behind the text, though I will explore the possibility of an authorial team below.

4.1 Part I: Sources

Any effort to identify the code's sources must start with its own account of its making:

Then I, king Alfred, gathered together [judgements] and commanded that many of those that our predecessors kept – those that pleased me – should be written down. With the counsel of my wise men I discarded many of those that did not please me and commanded that they should be kept in other ways. Therefore, I did not dare to presume to set down in writing all that many of my own [judgments], because it was unknown to me which one of them would please those that came after us. But those that seemed the most just to me, those I came across either from the days of my kinsman Ine or from those of Offa, the king of Mercia, or from those of Æthelberht, who was the first of the English to receive baptism, I gathered those herein and left the others as they were. Then I Alfred, King of the West Saxons, showed them to all my wise men and they then said that it pleased them all to keep.⁴

As will become clear below, it is relatively certain that the compiler of the code used the laws of Æthelberht and Ine and – while not mentioned – the Bible too. There is no reason to doubt the claim that laws in Offa's name were consulted, though it remains uncertain exactly what the code owes to these now-lost laws, as we shall see. These sources are treated in two different ways. One treatment is represented by the Bible and *Ine*, and the other by *Æthelberht* and *Ine* (and possibly *Offa*). The first involves the inclusion of whole blocks of text in

⁴ AfEl 49.9–10: 'Ic ða Ælfred cyning þas togædere gegaderode 7 awritan het monege þara þe ure forengan heoldon ða ðe me licodon; 7 manege þara þe me ne licodon ic awarep mid minra witenas geðeahhte, 7 on oðre wisan bebed to healdanne. Forðam ic ne dorste geðristlæcan þara minra awuht fela on gewrit settan, forðam me was uncuð, hwæt þæs ðam lician wolde ðe æfter us wæren. Ac ða ðe ic gemette awðer oððe on Ines dæge, mines mæges, oððe on Offan Mercna cyninges oððe on Æþelbryhtes, þe ærest fulluhte onfeng on Angelcynne, þa ðe me ryhtoste ðuhton, ic þa heron gegaderode, 7 þa oðre forlet. Ic ða Ælfred Westseaxna cyning eallum minnum wutum, þas geeowde, 7 hie ða cwædon þæt him þæt licode eallum to healdanne.'

Alfred's law code		
Rubrics/list of chapter titles	Total words: 512	
AfRb 1–47		Alfred's laws: I–XLIII
IneRb 1–76		Ine's laws: XLIII–CXX
Prologue	Total words: 1967	
AfEl 1-48	c.1400 words	Translation of Exodus 20:1–3, 20:7–17, 20:23, 21:1–36. 22:1–13, 22:16–31, 23:1-4, 7–9, 23:13.
AfEl 49		Original composition on the coming of Jesus + a version of Matthew 5:17.
AfEl 49.1		Original composition on the time of the apostles and their teaching of 'Christ's law'.
AfEl 49.2–5		Translation of Acts of the Apostles 15:23–24 + a version of the Golden Rule (Matthew 7:12).
AfEl 49.6		First numbered law/first item in list of chapters: a longer passage based on a version of the Golden Rule (Matthew 7:12).
AfEl 49.7		Original composition on lawmaking among newly Christianized peoples, including the English. Account of how neither God nor Jesus accepted disloyalty and could not show mercy to those who betrayed them + a version of Matthew 22:37/39.
AfEl 49.8		Original composition on how synods had judgements and compensations for offences written down.
AfEl 49.9–10		Account of how Alfred made his own laws, including gathering laws of his predecessors and showing the results to his advisors.
Alfred's laws	Total words: 3317	
1–11		Areas of special interest, including oath and pledge, treason, protection of the church, breach of peace and protections.
7–43		Miscellaneous, including most of the borrowings from <i>Ine</i> , covering issues such as: damage and injuries caused by animals, sexual offences, procedural regulations, feast days.
44–77		List of bodily injuries based on <i>Æthelberht</i> (see Dammary, 'Law Code', pp. 248–52 for a list of the injuries included).
Ine's laws	Total words: 2756	See Wormald, 'Inter cetera', pp. 189-90 for a list of sections and thematic clusters in <i>Ine</i> .

Table 2: The content of Alfred's code

translation from Latin into Old English, including more than two chapters of Exodus and, as I have argued elsewhere, the whole text of Ine's laws.⁵ The other involves copying individual provisions for inclusion into *Alfred*, as the compiler does to many of the laws found in *Ine* and *Æthelberht*.

It is only the second set of sources (*Æthelberht*, *Ine*) and the second process (copying individual judgements) that are described in the passage above. The Anglo-Saxon preference for pronouns over nouns makes this account somewhat unclear. Nevertheless, it seems that it describes a process in which Alfred gathered and wrote down *domas* – individual judgments or provisions – from the laws of *Æthelberht*, *Ine* and *Offa*.⁶ Note that this description does not refer to Old Testament chapters or the whole *Ine* text. This is an important preliminary point to keep in mind as it frees us from having to assume that the compiler's use of *Æthelberht* and *Offa* needs to match the use of *Ine* – an assumption which seems to have constrained previous interpretations of the code's sources.

4.1.1 *Æthelberht*

The portion of Alfred's code most clearly indebted to *Æthelberht*'s laws is the list of compensations to be paid for various injuries, which takes up a significant portion of the code in Alfred's name (Af 44–77). The compiler included over 70 separate injuries and 29 of

⁵ Ivarsen, 'The Latin Law-Code of King Ine'.

⁶ AfEl 49.8–10: 'In many synods, they [holy bishops and other distinguished wise men] then decided the compensation for many human offences and they wrote them down in many synod-books [*senoðbec*], here one judgment [*dom*], there another. Then I, king Alfred, gathered them [*þas*] together and commanded that many of those [*þa*] that our predecessors kept – those [*þa*] that pleased me – should be written down, and with the counsel of my wise men I discarded many of those [*þa*] that did not please me and commanded that they [*þa*] should be kept in other ways. Therefore, I did not dare to presume to set down in writing all that many of my own, because it was unknown to me which of them [*þas*] would please those that came after us. But those [*þa*] that seemed the most just to me, those [*þa*] I came across either from the days of my kinsman Ine or from those of Offa, the king of Mercia, or from those of *Æthelberht*, who was the first of the English to receive baptism, I gathered those [*þa*] herein and left the others [as they were]. Then I Alfred, King of the West Saxons, showed them [*þas*] to all my wise men and they then said that it pleased them all to keep [*to bealdenne*]'. Wormald was of the opinion that the prologue was describing Alfred's gathering of *senoðbec* ('synod-books'); see Wormald, *MEL*, pp. 277–80 and P. Wormald, 'In Search of King Offa's "Law-Code"', in his *Legal Culture in the Early Medieval West*, pp. 201–24, at p. 223. Strictly grammatically, this could be the referent of the relevant pronouns. However, contextually it cannot be, since 'synod-books' would not make sense in place of the demonstrative pronoun *þa* and *þas* in sentences such as 'those [*þa*] that our predecessors observed' and 'I commanded that they [*þa*] should be observed in other ways' (AfEl 49.9). A more reasonable suggestion is that the pronouns in question are referring to *dom* 'judgment', that is, individual laws. That works both grammatically (as the notional referent of the first demonstrative pronoun) and contextually.

these are shared with *Æthelberht* (which covers 63 injuries in total).⁷ It is tricky to assess the code's reliance on the text of *Æthelberht*. Each law in both texts consists in naming an injury (e.g. Af 53 'Gif mon bið on eaxle wund...' or Abt 38 'Gif eaxle gelæmed weorþeð...') and the appropriate sum of money to pay in compensation (e.g. Af 53 '...gebete mid XXX scillingum' or Abt 38 '...XXX scillinga gebete').⁸ The trouble is that Alfred and *Æthelberht* may coincidentally have included the same body parts. In addition, there are several changes to the compensatory values prescribed.⁹

The difficulties are exacerbated by the fact that *Alfred* does not copy *Æthelberht*'s language directly, neither its conciseness nor its vocabulary. In terms of syntax, *Alfred* is more or less consistent in always including both subject and verb, whereas *Æthelberht* is not.¹⁰ Another consistent difference is the verb used for the description of the injuries in the if-clauses: *Æthelberht* consistently uses *weorðan* ('to become'), and *Alfred* uses *wesan* or *beon* ('to be'). Their then-clauses are different too. *Æthelberht* almost exclusively relies on *gebetan*, which has the basic sense 'to make good' or 'to amend, pay compensation'.¹¹ *Alfred* uses three different verbs: *gesellan* ('to give'; 24 times),¹² *sculan* ('to owe'; 12 times)¹³ and *(ge)betan* (8 times).¹⁴ *Gesellan* and *sculan* are nearly always accompanied by the phrase *to bote* ('as compensation'), which has the same root as the verb *betan* and expresses the same idea as *betan* in collocation with verbs of giving.¹⁵ From this linguistic description, it might appear as though *Alfred* is not reliant on *Æthelberht* at all. This is indeed what some have concluded, seemingly because the supposed borrowings from *Æthelberht* are not close enough in wording to match the code's verbatim inclusion of *Ine*.¹⁶

⁷ For a table of injuries covered by *Alfred* and *Æthelberht* side-by-side, see R. Dammery, 'The Law-Code of King Alfred the Great', unpublished PhD thesis (University of Cambridge, 1990), pp. 248–52.

⁸ Af 53: 'If someone's shoulder is injured, pay with 30 shillings'. Abt 38: 'If the shoulder becomes lamed, pay 30 shillings'.

⁹ The differences in compensation values are listed in Dammery, 'Law-Code', p. 255.

¹⁰ E.g. Abt 54 'Gif þuman ofaslæhð, XX scillingas' ('If [he] cuts off the thumb, 20 shillings').

¹¹ There are also about a dozen clauses that use *forgyldan* ('to pay') in *Æthelberht*.

¹² Af 44, 44.1, 45, 46, 46.1, 47, 49.1, 50.1, 61, 62, 63.1, 64, 64.1, 64.4, 67.1, 69, 70, 70.1, 73, 74, 75, 75.1, 76, 77.

¹³ Af 54, 56, 56.1, 59, 60, 63, 64.2, 64.3, 67, 67.2, 69.1, 72. One clause has no verb (Af 45.1). Most translations render *sculan* as the auxiliary verb meaning 'must' or similar, a meaning it can have. However, I do not see that this is (or can be) the case in Alfred's injury list, and so the meaning 'to owe' is more likely.

¹⁴ Af 49, 49, 50, 51, 53, 65, 66, 68.

¹⁵ All clauses with *sellan* and *sculan* except 44 and 64.4 have *to bote*.

¹⁶ This is the case for e.g. Stefan Jurasinski, who states that: 'Certainly none of the laws of *Æthelberht* survives in Alfred's code, and this alone has cast doubt on whether the *domboc* preserves any earlier legislation excluding that of *Ine*...': S. Jurasinski, 'Sanctuary, House-Peace, and the Traditionalism of Alfred's Laws', *The Journal of Legal History* 31 (2010), pp. 129–47, at p. 130. Lisi Oliver's claimed that the assumption that Alfred used *Æthelberht* was 'facile', since 'all early medieval Germanic laws include personal injury tariffs': L. Oliver, 'Who Wrote Alfred's Laws?', in B.R. O'Brien and B. Bombi (eds), *Textus Roffensis: Law, Language, and Libraries in Early Medieval England* (Turnhout, 2015), pp. 231–54, at p. 237. Tom Lambert seems to reject the idea that the code

However, since we have freed ourselves from that constraint, we can more clearly assess the situation. Firstly, the prologue states that Alfred used Æthelberht's laws, and I have not seen any good evidence for why we should reject such a claim. Secondly, we must not forget the many similarities. For one thing, both are long lists of injuries, which have no parallels in Anglo-Saxon legislation.¹⁷ And, as Lisi Oliver has shown, the order in which different body parts are covered is roughly similar in both *Alfred* and *Æthelberht*.¹⁸ What is more, the vast majority of all sentences in both lists are simple conditionals, constructed according to the same syntactic model. This model is not followed in the remainder of *Alfred*, nor in *Ine*, where the syntax is more complex. In terms of vocabulary, there is, as I said, more variation in *Alfred*'s compensation clauses, but every then-clause in both *Alfred* and *Æthelberht* use the same root (*betan/to bote*) to express the payment of compensation. There are also a few shared words, such as *brifwund* ('belly wound'; Abt 61, Af 61) and *þurbþirel* ('pierced through'; Abt 61.1, 64.1, Af 67.2).¹⁹ What is more, there are other possible Æthelberhtian influences elsewhere in the code, including the law prescribing the compensation for binding a freeman (Abt 24/Af 25) and possibly a law on lending weapons (Abt 18/Af 19).²⁰ A final consideration is that *Æthelberht* only survives in *Textus Roffensis*, which was copied some five centuries after Æthelberht's lifetime. The version of *Æthelberht* used by Alfred may have been from a different textual line than the surviving copy, which means that we cannot place too much weight on the lack of verbatim parallels.

However, even if Alfred's version of *Æthelberht* was the same as ours, there is no reason to assume that the prologue was referring to verbatim copying of the language and compensation values of a nearly three-centuries old text. As we shall see later, one general message of the code as a whole is that the specifics of earthly law can and should change according to circumstance. The compiler of the code appears to have taken the idea of an

drew on Æthelberht's laws, given that he takes the injury list in *Alfred* as an expression of the West Saxon equivalent to Æthelberht's 'prestigious' *æ*; Lambert, *Law and Order*, p. 73 fn 59 and p. 79 fn 86. See also above on pp. 68–9. Lambert does not explain his reasons for rejecting the connection between the claim made in the prologue and the injury list.

¹⁷ Though, as Lisi Oliver showed, such lists are not unknown on the continent; see L. Oliver, *The Body Legal in Barbarian Law* (Toronto, 2011).

¹⁸ Oliver, *Beginnings*, pp. 37–9.

¹⁹ These are suggested in M.P. Richards, 'The Laws of Alfred and Ine', in N.G. Discenza and P.E. Szarmach (eds), *A Companion to Alfred the Great* (Leiden, 2014), pp. 282–312, at p. 303. Less convincing suggestions made by Richards include the use of the word *ceas*, which she sees as a Kentish influence on the language of Alfred's laws (p. 302). The trouble is that the only occurrence of the word in Alfred's code is in the prologue where it is part of the phrase that translates the Latin *rixari* (AfEl 18/Ex 21:22), and does not then constitute a Kentish influence on Alfred's laws.

²⁰ Dammary, 'Law-Code', p. 256.

injuries list from *Æthelberht*, as well as those injuries he considered necessary to include. He also borrowed the basic form and construction from *Æthelberht's* list. But he updated both the language and the compensation values, as well as adjusted the body parts included. Therefore, the compiler seems to have used the text of *Æthelberht*, but changed it to bring it up to date legally and linguistically to a ninth-century West Saxon situation. In fact, it appears that unity in form and language was important to the compiler of the code. This will become clear below, when we consider the changes made to the biblical source material and possibly to *Offa* and *Ine*.

4.1.2 Ine

Ine had a profound influence on Alfred's laws, and not just because it was included as a complete text. Clauses from *Ine* are also interspersed throughout Alfred's portion of the code. Alfred's significant debt to his predecessor led David Pratt to conclude that *Ine* was at the basis of the making of the code, providing the compiler with a core that he complemented with Alfred's own laws and those of Offa and *Æthelberht*.²¹ Wormald reckoned that about a third of the clauses in *Alfred* before the injury list were prompted by *Ine*.²²

A few laws are included more or less as they appear in *Ine*. There are some linguistic discrepancies between *Ine* and *Alfred's* versions of these laws, but as I have argued, these can be explained by the theory that *Ine* was originally written in Latin.²³ The nature of the differences between the shared clauses indicate that the compiler may have used a Latin copy of *Ine* in the making of the code, since the legal meaning and basic linguistic construction are the same, but the phrasing and vocabulary diverge.²⁴ The differences are not of the same nature as those made to *Æthelberht* before inclusion in *Alfred* (i.e. supplying missing words and using different verbs). One example is provided by a law on fighting. *Alfred's* version reads:

Gif hwa in cyninges healle gefeohte oððe his wæpn gebrede 7 hine mon gefo, sie ðæt on cyninges dome swa deað swa lif swa he him forgifan wille. (Af 7)

²¹ D. Pratt, *The Political Thought of King Alfred the Great* (Cambridge, 2007), p. 221.

²² Wormald, *MEL*, p. 280.

²³ For the full argument about *Ine's* Latin origins, see Ivarsen, 'The Latin Law-Code of King Ine'.

²⁴ Several examples are given in Ivarsen, 'The Latin Law-Code of King Ine'.

If someone fights in the king's hall or draws a weapon and is caught, it should be on the king's judgement whether [it be] death or life that he wishes to grant him.

Compare this to *Ine's* version:

Gif hwa gefeohte on cyninges huse, sie he scyldig ealles his ierfes 7 sie on cyninges dome hwæðer he lif age þe nage. (Ine 6)

If someone fights in the king's house, he forfeits all his possessions and it should be on the king's judgement whether he should or should not have life.

The vocabulary is not the same, but the most conspicuous difference is in the final part. The meaning is the same, and the variation in phrasing seems to be of a kind to be expected if the same Latin subjunctive (for example) was rendered by two different people. Other shared laws display the same. Combined with the independent evidence for *Ine's* Latin origins, this could indicate that the code was made using a Latin version of *Ine* (as well as suggest that two different people were behind the two different translations). If we accept this possibility, it seems that the compiler intended to render some of *Ine's* laws close to their original phrasing. As with *Æthelberht*, legal details were updated where they needed updating.

Though these near-identical clauses are the most conspicuous borrowings, there is a higher number of instances where it looks like the compiler started out with one of *Ine's* laws, before giving a different take on the topic. This includes laws on *burhbryce* ('forcible entry'), church sanctuary, changing lords or districts, fighting, felling trees, homicide, the celebration of Sundays and holidays, damage caused by animals and lending weapons.²⁵ The compiler adapted and adjusted,²⁶ seemingly with the aim of suppling details, covering other eventualities or presenting a situation from a different perspective.²⁷ This is consistent with his use of *Æthelberht*: the compiler did not cover everything in *Æthelberht*, though he kept to the same basic topics.

The inclusion of the whole text of *Ine* may have been guided by different concerns than those guiding the copy of individual clauses. If we accept the Latin translation theory, the motive could have been to make a Latin text available in Old English.²⁸ This could have

²⁵ Af 2, 5/Ine 5, Af 7, 15, 39/Ine 6–6.3, Af 8–8.2/Ine 27(?), Af 12/Ine 43–43.1, Af 22/Ine 8, Af 23–23.2/Ine 40, 42, Af 29/Ine 34, Af 34/Ine 25, Af 37/Ine 39, Af 40/Ine 45, Af 43/Ine 3–3.2, Af 19/Ine 29. These overlaps are discussed in Dammary, 'Law-code', pp. 258–9; Pratt, *Political Thought*, p. 219–20; Liebermann, *Gesetze III*, p. 36; and Wormald, *MEL*, p. 278–80.

²⁶ See Wormald, *MEL*, pp. 279–80 for a summary of the legal differences between *Alfred* and *Ine* in their shared topics.

²⁷ Wormald, *MEL*, pp. 280–1.

²⁸ See also the discussion in Ivarsen, 'The Latin Law-Code of King Ine'.

been a practical concern, given the claims made in one Alfredian text, the translation of Gregory the Great's *Cura pastoralis*. In the voice of Alfred, the preface to this translation states that Latin learning had declined so much in England that few people were able to read the language.²⁹ Judges' linguistic inability to read *Ine* in Latin may therefore have been one of the motives for translation, as it may have been for the other ninth-century translations (to which we will return in the second half of this chapter). Alternatively, Alfred or the code's compiler may have sought to foster a tradition of vernacular legislation, whether for practical reasons or not.³⁰ A translated version of *Ine* – which may have existed side-by-side with the Latin original in the late ninth century – would perhaps contribute to creating the impression of linguistic uniformity in the West-Saxon legal tradition.³¹

4.1.3 Offa?

As we saw above, Alfred claimed to have consulted 'judgments... from the days of Offa'. The trouble is that there are no extant laws in the name of this eighth-century Mercian king. The most enduring suggested solution to this puzzle is Wormald's. He proposed that the prologue was referring to the decrees issued at a church council held in Mercia and Northumbria in 786.³² This council is known only from a report written (in Latin) by the two convening papal legates, though in a form which indicates that it contains the actual acts of the council.³³ In this report, King Offa is said to have received the papal legates as well as

²⁹ The preface is edited in H. Sweet (ed.), *King Alfred's West-Saxon Version of Gregory's Pastoral Care*, EETS 45, 50 (London, 1871), pp. 3–9; with a translation in Lapidge and Keynes, *Alfred the Great*, pp. 124–7. There are different opinions on the veracity of Alfred's statement about decline. Some hold it to be an accurate reflection of the ninth-century situation, for example M. Lapidge, 'Latin Learning in Ninth-Century England', in his *Anglo-Latin Literature, 600-899* (London, 1996), pp. 410–54. Others see it as a literary trope that need not reflect reality: J. Morrish, 'King Alfred's Letter as a Source on Learning in the Ninth Century', in P. Szarmach (ed.), *Studies in Earlier Old English Prose* (Albany, 1986), pp. 87–107. Godden has argued that Alfred may be correct about the lack of learning, but that poor Latinity among clergy was the normal state of affairs in Anglo-Saxon England and not a recent phenomenon: M. Godden, 'The Alfredian Project and its Aftermath: Rethinking the Literary History of the Ninth and Tenth Centuries', *Proceedings of the British Academy, 2008 Lectures* 162 (2009), pp. 92–122, at p. 103.

³⁰ I have explored this possibility in Ivarsen, 'A Vernacular Genre?'

³¹ A parallel to this kind of 'appropriation' of older laws is Charlemagne's reissue of *Lex Salica*, as suggested in P. Wormald, 'Living with King Alfred', *The Haskins Society Journal* 15 (2004), pp. 1–39, at p. 13. For more on Charlemagne and *Lex Salica*, see McKitterick, *The Carolingians and the Written Word*, pp. 40–60.

³² Wormald, 'Offa's "Law-Code"' and MEL, pp. 280–1. Wormald gave an overview of older interpretations of Offa's influence on Alfred's code ('Offa's "Law-Code"', pp. 203–4).

³³ The text of the council report is printed as 'Alcuini epistola 3' in *Epistolae Karolini Aevi* II, MGH Epp. 4, ed. E. Dümmler (Berlin, 1895), pp. 19–29 (hereafter '786 decrees'). The most useful introductions to this text are found in Cubitt, *Church Councils*, pp. 153–90 and J. Story, *Carolingian Connections: Anglo-Saxon England and Carolingian Francia, c.750-870* (Aldershot, 2003), pp. 55–92.

attended the Mercian council where the legates read out the chapters now contained in the report.³⁴ Wormald proposed that this and other circumstantial evidence suggested that something like the 786 decrees were instituted by Offa as his laws.

As we shall shortly see, Wormald's suggested parallels between *Alfred* and the 786 decrees are not convincing enough to bear this argument out. However, I do think Alfred's code reveals some influence from a conciliar and canonical style of composing legislation, especially in its use of scriptural citation in the presentation of a legal issue. I will therefore argue that texts such as the 786 decrees, as well as the closely related text *Admonitio Generalis* (issued by Charlemagne in 789), are useful models for understanding the presentation of materials in the code. Whether they were also direct sources cannot be determined with any certainty.

Let us first look at Wormald's case. He suggested that Alfred used the 786 church council decrees for a law on treachery and a law on marriage and illegitimate offspring. The second topic is found in Alfred's law against the unlawful 'leading' of a nun from a minster and the inheritance claims of the nun and her potential children (Af 8–8.2). Wormald held this up against two chapters from the 786 decrees, which concern unjust marriages (*iniusta connubia*) and where *ancillae Dei* are mentioned as one of the categories of unsuitable partners. The following chapter in the decrees opens with a prohibition against sons of prostitutes inheriting, and again, the children of *sanctimonialiae* ('nuns') are mentioned among the offspring not worthy of enjoying inheritance.³⁵ The focus and details of the 786 decrees are markedly different from Alfred's laws, though as we saw above with *Ine* and *Æthelberht*, that might not be a problem. The slightly more troubling part is that the chapters in the 786 decrees are long and detailed and the aspects allegedly copied by Alfred seem almost incidental.

The case for the treachery law is stronger. The opening of chapter twelve of the 786 decrees establishes how and by whom kings should be elected. Its overarching focus is a king's special position as God's 'anointed', and it includes an injunction against killing a king: 'In necem regis nemo communicare audeat, quia christus Domini est'.³⁶ The next clause deals

³⁴ '786 decrees' in MGH Epp. 4, pp. 20, 28.

³⁵ Given the way in which Alfred spun off Ine's laws at other points, it is not unlikely that a law of Ine's – also on illegitimate children – could have influenced the treatment of the topic in *Alfred*. The relevant law in *Ine* reads: 'Se ðe dearnenga bearn gestriened 7 gehiled, nah se his deaðes wer, ac his hlaford 7 se cyning' ('he who begets a child through fornication and hides it, he may not have the wergeld of his death, but his lord and the king'; Ine 27).

³⁶ '786 decrees' in MGH Epp. 4, p. 24.

with clerics or bishops involved in this offence, followed by sanctions for everyone else. The passage is backed up by several biblical quotations, including a reference to Judas, a story about treachery from the book of Esther and a mention of David and Saul.

Alfred's code is indeed also concerned with treachery. This is indicated by four separate passages. One such passage is a law on plotting against the king or one's lord; one is a law on the oath and pledge; one is a rewritten Mosaic law; and one is in the prologue's explanation of synodical lawgiving. The first passage is found in *Alfred's* law prescribing the death penalty for anyone plotting against the king or his lord – the only occurrence of the death penalty in his portion of the code. In the chapter list, this law appears under the heading *Be blafordsearwe* ('On treachery against a lord'), and the passage itself uses the etymologically related verb *sirwan ymb* ('to plot'; Af 4, 4.2).³⁷ The second passage, which also uses the word *blafordsearwe*, is found in the first law after the prologue. This commands everyone to keep their oath and pledge (Af 1–1.1), stating that it is better 'to lie' than to fulfil a promise to commit treason (*blafordsearwe*). The third passage uses the same root – this time in the form *ymsyrwan* ('plot') and *searu* ('plot, treachery') – is found in one of the rewritten Mosaic laws, as a translation of *insidiari* ('to lie in wait for') and *insidia* ('ambush'; AfEl 13/Ex 21:12–3). The different meanings of these verbs is only one of several differences between Alfred's version and the Mosaic original, as we shall see later. For now, it is enough to note that it is among the most heavily rewritten clauses of the prologue and that it happens to echo the vocabulary of Alfred's own laws on the topic of treachery. Indeed, it is also the only example of the Mosaic preface and Alfred's laws prescribing the same punishment for a similar offence.

The fourth passage concerning treachery also uses the word *blafordsearwe*. It appears in the section of the prologue describing the beginnings of synodical lawgiving (AfEl 49.7). According to the prologue, the introduction of monetary compensation as penalty was a consequence and expression of the mercy introduced by Jesus. It stands in contrast to the ubiquitous Old Testament prescription of the death penalty, which is effectively illustrated by the Mosaic excerpts included in the prologue. However, the prologue states that mercy is not given to those who betray their lord, because neither God nor Jesus had shown mercy

³⁷ See below, section 4.2.2, for a discussion of the rubrics, which may have been written later than the laws, possibly by a different person.

to those who betrayed them.³⁸ These biblical examples are followed by additional scriptural weight in the quotation ‘þone hlaforð lufian swa hine’ (‘love the lord like yourself’; AfEl 49.7). We can read this as a conflation of Christ’s two great commandments, that is to love God and to love your neighbour as yourself (Matt 22:37–40), or as a rewritten version of the second of these with ‘lord’ in the place of ‘neighbour’. In any case, the verse serves as a not so subtle emphasis of the importance of lordship and loyalty in the code, be it to the heavenly or an earthly lord.

The code’s encouragement of loyalty and discouragement of treachery certainly echoes the 786 decrees’ spirit. Both texts draw on Judas to underscore the spiritual and worldly dangers of treachery, the council decrees explicitly and the code implicitly. The council decrees set up a parallel between heavenly and worldly lords by stating ‘igitur qui resistit potestati, Dei ordinationi resistit’,³⁹ and the code draws a similar parallel when it uses Jesus and God as the explanation for why treachery is unattonable. That being said, the two texts do not share any phrasing or specific biblical verses. As Wormald himself observed, the connection between the 786 decrees and Alfred on treachery is at best broadly topical and of a kind which could have been independently thought out.⁴⁰ Therefore, I do not think surviving evidence allows us to argue that the compiler of the code used the extant text of the 786 decrees. It remains possible – but also unprovable – that there once existed a vernacular counterpart to the decrees in Offa’s name, which could have looked different from the Latin version.⁴¹

A point largely missing from Wormald’s discussion is the fact that it is not the actual law against treachery in *Alfred* that looks the most like the 786 council decrees, but rather the discussion of treachery in the final parts of the prologue. Therefore, I want to raise the possibility that a text *like* the 786 decrees influenced the composition of the code and its prologue. The proposed influences are twofold. Firstly, council decrees or canon law could

³⁸ AfEl 49.7: ‘Buton æt hlaforðsearwe hie nane mildheortnesse ne dorston gecweðan, forþam ðe God ælmihtig þam nane ne gedemde þe hine oferhogdon, ne Crist Godes sunu þam nane ne gedemde þe hine to deaðe sealde, 7 he bebead þone hlaforð lufian swa hine’, ‘Only for treachery did they not dare to pronounce any mercy, because God the almighty did not judge any to those who scorned him, nor did Christ God’s son judge any to those who gave him to death, and he commanded to love the lord as himself.’

³⁹ ‘786 decrees’ in MGH Epp. 4, p. 24.

⁴⁰ H. Mordek, K. Zechiel-Eckes, and M. Glatthaar (eds), *Die Admonitio generalis Karls des Großen*, MGH Fontes iuris Germanici antiqui in usum scholarum separatim editi 16 (Hannover, 2012). Wormald, ‘Offa’s “Law-Code”’, p. 215.

⁴¹ This was suggested by Wormald. The report states that the decrees were read out *theodisce*, in English, as well as in Latin. This could indicate that there once existed an English version of the decrees; see Wormald, ‘Offa’s “Law-code”’, pp. 220–1.

have inspired the code's use of scripture. Through its prologue, the code uses scripture to frame, back-up and explain issues of secular law, just like a large number of extant council decrees and other forms of canon law, such as the 786 decrees. Secondly, such a text may have prompted the compiler of the code to cover certain substantive points, including treachery and much else. A detailed comparison of the points shared by Alfred's code and church council decrees and canon law is not possible here.⁴² A comparison of themes and framing is more manageable if we take only the two texts suggested above, namely the 786 decrees and Charlemagne's *Admonitio Generalis*. What is more, these texts may have been known to Alfred and his circle.⁴³ They therefore offer a way in which to interpret the prologue and its use of scripture, but also the possibility of direct influence.

Charlemagne's *Admonitio Generalis*, issued in 789, consists of two parts.⁴⁴ The first is made up of short statements copied from the canonical collection known as Dionysio-Hadriana. The second section is characterized by longer chapters, which often start with biblical citations and follow up with explanations and regulations on those topics. The second section shares much with the 786 decrees in terms of themes and sometimes even in wording, which has led to the suggestion that they may have been written by the same author, namely Alcuin.⁴⁵ In both texts, biblical verses are interspersed among the regulations, as part of the long discursive chapters that characterize much conciliar and canon law (see

⁴² The use of the Old Testament is very pronounced in some canon law collections, such as the popular Irish collection *Collectio Canonum Hibernensis*. For an edition of *Hibernensis* and comment on source use, see R. Flechner, *The Hibernensis: A Study and Edition, vol. 1* (Washington, DC, 2019). For more on its reliance on the Old Testament, see e.g. M.P. Sheehy, 'The Bible and the *Collectio canonum Hibernensis*', in P. Ní Chatháin and M. Richter (eds), *Irland und die Christenheit: Bibelstudien und Mission. Ireland and Christendom: the Bible and the Missions* (Klett-Cotta, 1987), pp. 277–83.

⁴³ No manuscript of *Admonitio* or the 786 decrees survive from Alfred's time, nor is there textual evidence that they were definitely known. However, both texts were known in the following two centuries: Archbishop Oda used the 786 decrees in the tenth century (see above p. 95 and fn 76) and the *Admonitio* is found in four tenth- and eleventh-century manuscripts, usually as part of Ansegis' capitulary collection (see G&L 73, 629, 808, 925). It is therefore possible that such texts were known to Alfred's circle, which included, as we shall shortly see, continental helpers who may also have been familiar with such texts from home. We also know that another Carolingian text associated with Charlemagne, namely Einhard's *Vita Karoli*, was known and used at Alfred's court by Alfred's biographer Asser, though no manuscript survives from that text either. Asser's debt to Einhard is set out in Lapidge and Keynes (trans.), *Alfred the Great*, pp. 55, 222 and M. Schutt, 'The Literary Form of Asser's "Vita Alfredi"', *The English Historical Review* 72 (1957), pp. 209–20. A general point about the lack of surviving manuscripts from England, especially from the ninth century, see D. Pratt, 'Kings and books in Anglo-Saxon England', *Anglo-Saxon England* 43 (2014), pp. 297–377.

⁴⁴ The standard edition is now Mordek et al., *Die Admonitio generalis*.

⁴⁵ The case for Alcuin's involvement in writing both texts has been presented by Katy Cubitt in *Church Councils*, pp. 161–8, 177–8, 182–90. Alcuin's involvement in making *Admonitio* is discussed in W. Hartmann, 'Die karolingische Reform und die Bibel', *Annuaire Historiae Conciliorum* 18 (1986), pp. 58–74, esp. pp. 62–3; and Mordek et al., *Die Admonitio generalis*, pp. 47–63. Doubts about Alcuin's authorship of the 786 decrees are set out by D.A. Bullough, *Alcuin: Achievement and Reputation* (Leiden, 2002), pp. 350–6. He argued that the similarities between the two texts could be because Alcuin was influenced by the 786 decrees but was not their author.

appendix). Biblical citations are, in a sense, used as part of the legal logic of such chapters; they explain why something is the way it is and why a certain reaction is appropriate for a certain transgression. Such a mix of biblical citation and regulation is, for the most part, not a feature of Alfred's code. Treachery and loyalty are dealt with in this way, as are some basic notions of justice. Nevertheless, it is possible to read the prologue as a whole in a similar way. It expresses themes and ideas that should be borne in mind throughout the code, as the next section will demonstrate in more detail. In this way, it forms a parallel to the 786 decrees and the *Admonitio* and the way in which their chapters show which scriptural themes that influence a particular legal area.

Further comparison can be drawn in terms of substantive points. There are many thematic overlaps between the 786 decrees and the prologue, including not only treachery, but also how to judge justly, the importance of keeping vows made to God and general statements on tithes, usury and perjury. The topical similarities between the prologue and the *Admonitio* include areas such as perjury, magicians, hatred and greed, homicide, theft and illegal unions, hospitality towards poor people and travelers, Sunday work, justice in judgment⁴⁶ and more. In addition, the *Admonitio* has a section which follows and cites the ten commandments, just like the opening of Alfred's code.⁴⁷

The code's inclusion of biblical text has for a long time been seen as an Irish influence.⁴⁸ That might be so, but the proposed Irish sources do not quite mirror the prologue's use of scripture. Firstly, they tend to copy the biblical text as it is, and as the next section will show, that is not the case in Alfred's prologue.⁴⁹ Secondly, unlike some of the proposed Irish sources, the code uses the biblical text to frame legal issues found in the

⁴⁶ The prologue's treatment of the theme of justice in judgement (AfEl 43) is among its most heavily rewritten passages, seemingly drawing on an idea and its phrasing which goes back to Isidore. Versions of this phrase are also found in *Admonitio* and the 786 decrees, as well as in Asser's biography of Alfred.

⁴⁷ Mordek et al., *Die Admonitio generalis*, chs. 61–9.

⁴⁸ In particular, Alfred's code has long been thought to have a connection to the text *Liber ex lege Moyi*. This is an Irish text made up of extensive extracts from the books of Exodus, Leviticus, Deuteronomy and Numbers. For an edition and list of the verses included, see S. Meeder, 'The *Liber ex lege Moysi*: Notes and Text', *The Journal of Medieval Latin* 19 (2009), pp. 173–218, at pp. 185–9. It has been suggested that *Liber* was the exemplar from which the prologue was copied (see footnote below), but it has also been seen as influencing the decision to combine Old Testament law and royal law. The strongest claims for such an influence have been made by Bryan Carella, who went so far as to argue that Alfred 'translat[ed] the *Liber ex lege Moysi* and used it as an introduction for his own legal code'; B. Carella, 'Evidence for Hiberno-Latin Thought in the Prologue to the Laws of Alfred', *Studies in Philology* 108 (2011), pp. 1–26, at p. 19, with similar claims made on pp. 18, 23. Given that Alfred's prologue contains only a small part of what is translated in *Liber* and the fact that Alfred's code frames the material using original composition and New Testament passages means that this conclusion does not hold.

⁴⁹ This is, for instance, the case with *Liber ex lege Moysi*.

‘regulatory’ portions of the code. All in all, the parallels to ecclesiastical conciliar law appear to be closer. While there is not enough evidence to verify Wormald’s identification of ‘Offa’ as the 786 decrees, there is scope for seeing influences from the late eighth century – that is, the days of Offa – in the use of biblical examples to frame a legal issue and the use of scripture to show the logic of a provision.

4.1.4 The Bible⁵⁰

There is no acknowledgement in the prologue that several chapters of the Bible had been translated. After the list of chapter titles, the prologue dives straight into the Exodus extracts with the phrase ‘Dryhten wæs sprecende ðas word to Moyse and þus cwæð’ (‘The Lord was speaking these words to Moses and spoke like so’), a version of Exodus 20:1 with Moses’ name inserted. As table 2 shows, most of the following material is based on the Bible.⁵¹ The first section of Alfred’s prologue (AfEl 1–48) is made up Old Testament laws from Exodus 20–23 in translation, many of which are rewritten in one way or another. The second section (AfEl 49–49.9) merges original composition in Old English with shorter passages from and references to the New Testament. As we saw above, the compiler seems to have updated and adjusted the older Anglo-Saxon laws he used. Someone also adjusted the biblical extracts,

⁵⁰ The biblical version or exemplar from which the prologue was translated is unknown. Where no extant biblical version reflects the prologue’s version, I will treat the differences as deliberate rewriting from the Vulgate version (*Biblia Sacra iuxta Vulgatam Versionem*, ed. Robert Weber and Roger Gryson, 5th ed. (Stuttgart, 2007)). Where there is no explicit comment on extant versions that might resemble the code’s, it can be assumed that there are none. As mentioned above, it has previously been proposed that the *Liber ex lege Moysi* was the exemplar. The link was first suggested by Paul Fournier over a century ago, based on the fact that both texts start with the Decalogue and go on to include Exodus chapters 21, 22 and partly 23; see P. Fournier, ‘Le *Liber ex lege Moysi* et les tendances bibliques du droit canonique irlandais’, *Revue Celtique* 30 (1909), pp. 221–34, at p. 230. There are also some peculiar readings in Alfred that could be influenced by the *Liber*; these are set out in Wormald, *MEL*, pp. 419–20 and Pratt, *Political Thought*, p. 230. However, as Wormald points out, the compilers behind Alfred’s code and the *Liber* could just have been using similar insular Bible exemplars. Wormald suggested the Late-Antique text *Collatio legum Mosaicarum et Romanarum* as a possible source (*MEL*, pp. 418–10), though Bryan Carella has since argued against the use of *Collatio*; B. Carella, ‘The Source of the Prologue to the Laws of Alfred’, *Peritia* 19 (2005), pp. 91–118, at pp. 105–6, 108. Carella did not identify enough linguistic similarities between Alfred’s prologue and the *Liber ex lege Moysi* to indicate that this text was the source either (p. 110), but based on other grounds, he thinks it could be a likely source (pp. 117–8). He makes this claim much more strongly in a 2011 article, where he talks about Alfred’s ‘demonstrated use of the *Liber ex lege Moysi*’ (Carella, ‘Hiberno-Latin thought’, p. 17), though I am uncertain about where this demonstration has been made.

⁵¹ It has also been suggested that the Bible was a source for Alfred’s own laws. Wormald raised the possibility that the biblical extracts in the prologue could have influenced Alfred’s treatment of damage done by animals (Af 23–24/AfEl 21) and a law on harming or killing a pregnant woman (Af 9/AfEl 18); Wormald, *MEL*, p. 282. However, the lack of similarity in wording and the ubiquity of such laws in other early medieval legislation weakens his argument significantly. Jurasinski thought there were other traces of the Bible in Alfred’s own laws, including on the laws’ treatment of harm caused by animals and accidental killing: S. Jurasinski, ‘Noxal Surrender, the “Deodand”, and the Laws of King Alfred’, *Studies in Philology* 111 (2014), pp. 195–224, esp. pp. 205–12, 219. However, I do not think he provides persuasive evidence for this argument.

but different criteria seem to underlie the changes made to them. As this section will show, the translator and/or compiler appears to have used the biblical text to make a statement about the relationship between divine law and human law and about legal change and development, perhaps influenced by Augustinian ideas.

The translator's changes to the Old Testament text in the first section of the prologue have been discussed on multiple occasions and multiple – albeit similar – conclusions have been reached. Michael Treschow considered the changes to reflect an attempt to emphasize and inject mercy, as well as translate 'this portion of the Mosaic law ... into Anglo-Saxon legal practice'.⁵² Stefan Jurasinski argued that the scriptural verses were rewritten to express ideas from penitentials and canon law circulating in the ninth century.⁵³ Wormald saw Alfred's adjustment to the biblical text as a way to strengthen the similarities between Mosaic law and 'the *Volksrechte* of early medieval Europe' to show that Anglo-Saxon law was rooted in divine law, a view which David Pratt more or less followed.⁵⁴ Richard Dammary took the view that Alfred's law code as a whole was didactic, and considered the changes made to the biblical passages to reflect areas of particular importance (such as intention and justice) where Alfred wanted his officials to learn the right thing.⁵⁵

There seems to be some agreement that the translator or compiler tried to smooth out the differences between Mosaic and Anglo-Saxon law. That seems undeniable in some instances. For example, in a law concerning an aggressive ox that kills someone (AfEl 21/Ex 21:29–30), the Old English translation inserts a reference to *witan* who determines the price the ox's owner can pay to save his own life, thereby bringing it closer to Anglo-Saxon practices.⁵⁶ What is more, the prologue culturally translates some concepts, such as when a *servus hebraeus* ('Hebrew slave'; Ex 21:1) becomes *cristenne peow* ('Christian slave'; AfEl 11) or *sicli* ('shekels'; Ex 21:32) become *scill*. ('shillings'; AfEl 21).⁵⁷ The trouble all previous explanations run into is the inconsistency of such adaptation. The translator's changes often bring only parts of a provision closer to the Anglo-Saxon context. This is for example the

⁵² M. Treschow, 'The Prologue to Alfred's Law Code: Instruction in the Spirit of Mercy', *Florilegium* 13 (1994), pp. 79–110, at p. 91.

⁵³ S. Jurasinski, 'Violence, Penance, and Secular Law in Alfred's Mosaic Prologue', *The Haskins Society Journal* 22 (2010), pp. 25–42; and Jurasinski, 'Noxal Surrender'. I cannot go into detail here, though I have not found anything to suggest that the compiler was using the text of any penitentials in the making of the code.

⁵⁴ Wormald, *MEL*, p. 421; Pratt, *Political Thought*, p. 231.

⁵⁵ Dammary, 'Law-Code', pp. 228–32.

⁵⁶ This is one example given in Dammary, 'Law-Code', pp. 225–7. See also Wormald, *MEL*, pp. 420–1.

⁵⁷ The other occurrences are the removal of references to an *asinus* 'ass' in AfEl 28 and AfEl 42 and to being foreigners in Egypt in AfEl 47.

case in a law against stealing freemen (AfEl 15/Ex 21:16), where the translation adds a clause allowing the accused an opportunity to clear himself before being punished (an Anglo-Saxon practice), though that punishment would still be the death penalty (not an Anglo-Saxon practice). What is more, the cultural translation noted above is not consistent – there is, for instance, still talk of Egypt – indicating that the main point cannot have been to Anglo-Saxonize these Old Testament laws.⁵⁸ On top of that, the prologue contains some things presumably still current in Anglo-Saxon England, for instance the ten commandments, but also much that was no longer valid, such as stoning an ox that kills a person (AfEl 21/Ex 21:28) or, more generally, punishment practices based on giving an eye for an eye (AfEl 19/Ex 21:24–5). Indeed, the large number of offences incurring the death penalty in the Mosaic laws is not at all paralleled in extant Anglo-Saxon legislation.

The key to understanding the prologue and the changes made to the biblical text is to distinguish between different aspects of the Mosaic laws: linguistic form, underlying principles, legal topic, sanctions and procedures. In short, it seems that the compiler wanted to show that the basic linguistic form, topics and principles were the same in West Saxon and Mosaic law, but that penalties, some procedures and the people involved in making and enforcing law had changed. Through its translation, the prologue thus demonstrates that some parts of the law are stable whilst some parts can change. This is precisely what the narrative included in the prologue's final parts states explicitly, as I will show below.

The point about linguistic form is twofold. Firstly, by including examples of Mosaic law, the compiler is showing that they are, in their basic linguistic construction, much like Alfred and his predecessors' laws. The Mosaic laws consist of mostly short conditionals and some commandments, in the form of a list of discrete laws that change from one topic to the next. As the appendix below shows, this is a characteristic feature of Anglo-Saxon laws as well. All historical narrative has been omitted, except for the first line ('the Lord was speaking these words to Moses') and the repetition of a similar line at the end of the Mosaic part (AfEl 49). That means that the first part of the prologue reads much like any Anglo-Saxon list of legal provisions. Secondly, a small number of clauses seem to have been deliberately brought nearer the form of Anglo-Saxon legislation. For example, some

⁵⁸ Some details specific to the Israelites are kept, e.g. at AfEl prol. and AfEl 33: 'forpon ge wæron giu elðeodige on Egipta londe' ('because you were once strangers in the land of Egypt').

‘motivation clauses’⁵⁹ have been taken out, such as in the translation of Exodus 22:31, where ‘*virī sancti eritis mihi*’ is omitted from the prologue’s translation.⁶⁰ The prologue’s rendition of the *lex talionis* has also been brought linguistically closer to a familiar form. Instead of Exodus 21:24–5: ‘oculum pro oculo, dentem pro dente, manum pro manu, pedem pro pede...’, the prologue gives: ‘Gif hwa oðrum his eage oðdo, selle his agen fore: toð fore teð, honda wið honda, fet fore fet...’ (AfEl 19). The linguistic similarities to the list of injuries in *Alfred* and *Æthelberht* are unmistakable.

The linguistic resemblance is reinforced by thematic resemblance. There is no topic covered by the prologue’s Mosaic laws that is not in some way touched upon in *Alfred*, *Ine* or *Æthelberht*’s laws. This includes topics such as homicide, personal injuries, damage caused by animals, theft, damage caused to other people’s property, entrustment of property, sexual offences, witchcraft, church dues and more.

In addition, it seems that the translator sought to bring some of the underlying principles of the Mosaic laws closer to Anglo-Saxon ones. Some biblical laws appear to have been modified so that their treatment of intention is more in line with what appears to be Anglo-Saxon practices. The clearest example is AfEl 13, a translation of Exodus 21:12–4. The translation changes the biblical text by inserting the phrase ‘nedes...oððe unwillum oððe ungewealdes’ ([because of] force or unwillingly or unintentionally), where the Latin only states that the killer was not ‘lying in wait’ for the victim. Not only does the Old English translation emphasize the internal state of the offender, but it also changes the sanction for an unintentional killing: the Bible lets the unintentional killer go free (as long as he seeks sanctuary), but the code’s prologue specifies that he may live (if he seeks sanctuary) but he has to pay *folcribte bote* (‘compensation according to common law’). Absence of malicious intent is a mitigating factor in the prologue, but it does not let the offender off the hook. The same is expressed in the rendition of a Mosaic law on a master beating and potentially killing his slave. The Old English version adjusts this provision by stating that the master killing a slave unintentionally is not *ealles swa scyldig* (‘as guilty’; AfEl 17), though he still carries

⁵⁹ Such motivation clauses are a distinctive feature of biblical law, see J. Burnside, *God, Justice, and Society: Aspects of Law and Legality in the Bible* (Oxford, 2010), p. 10.

⁶⁰ AfEl 39. As Eric Stanley pointed out, the translator also omitted an explicit reference to God’s anger (‘et indignabitur furor meus’): E.G. Stanley, ‘The Administration of Law in Anglo-Saxon England: Ideals Formulated by the Bible, Einhard and Hincmar of Rheims - but No Formal Mirror of Princes’, in K.E. Olsen, A. Harbus, and T. Hofstra (eds), *Germanic Texts and Latin Models* (Leuven, 2001), pp. 53–71, at p. 59. It is, however, possible that such phrases were taken out already in the (unknown) exemplar used for the translation of the Mosaic laws. What is more, some of the Exodus laws included towards the end of *Alfred*’s prologue mention God and his punishments more directly (e.g. AfEl 34/Ex 22:22–4).

some responsibility.⁶¹ In the Bible, the master is simply not guilty if the act was unintentional (Ex 21:21). Alfred's own laws do not give much information on the role of intention, though there is enough to suggest that intention mattered in questions of liability for an offence and that the unintentional offender would still be punished.⁶² Given that it does not appear that Alfred was following a particular version of the Bible with these variant readings, such rewritings must represent a deliberate wish to show a particular underlying principle.

One aspect of the Mosaic laws that is decidedly not the same in *Alfred* is punishment practices. As many as ten of the biblical laws prescribe the death penalty, whereas, as we saw above, only treachery against the king or one's lord is punished by death in Alfred's laws.⁶³ Eleven Mosaic laws prescribe compensation, though these usually seek to restore the value of the stolen or damaged thing, such as paying medical expenses or restoring the 'estimated value' of a field.⁶⁴ In contrast, 83 of 95 punishable offences in Alfred's laws prescribe compensation, and all except two are fixed sums of money.⁶⁵ These differences would not seem noteworthy had it not been for the final parts of the prologue, where it is explained how and why punishment practices are the way they are. The prologue explains that:

Hie ða gesetton, for ðære mildheortnesse þe Crist lærde, æt mæstra hwelcre misdæde þætte ða weoruldhlafordas moston mid hiora leafan buton synne æt þam forman gylte þære fiohbote onfon, þe hie ða gesettan... Hie ða on monegum senoðum monegra meniscra misdæda bote gesetton ond on monega senoðbec hie writan. (AfEl 49.7–8)

They [many synods of holy bishops and other excellent wise men] then set down, because of the mercy that Christ had taught, that worldly lords could with their permission – without sin – receive monetary compensation for almost all offences, at the first occurrence, which they then set down... They then in many synods established the compensation for many human offences and wrote them down in many synod-books.

⁶¹ Some similar observations are made in Dammary, 'Law-Code', pp. 228–31.

⁶² The effect of intention upon the punishment for an offence is mentioned in a law on the accidental killing of a man who is felling trees ('If one man kills another unintentionally while they are engaged on a common task [felling trees], the tree shall be given to the kindred...'; Af 13). The same word (*genealdes*) is used in another clause, which concerns the liability of a man carrying a spear over his shoulder (Af 36). Af 19 concerns lending a weapon to someone who does harm with it, and raises the issue of the owner's knowledge of the offender's intention. For more on intent and mental liability in Anglo-Saxon law and penitentials, see S. Jurasinski, *The Old English Penitentials and Anglo-Saxon Law* (Cambridge, 2015), pp. 172–203.

⁶³ Ine 12 prescribes death for thieves, and Af 4, 4.2 prescribes death for treason. Death penalty in the prologue is found at AfEl 13, 14, 15 (x2), 18, 21, 30, 31, 32, 34.

⁶⁴ AfEl 16, 18, 21–29.

⁶⁵ Af 1.8, 2.1, 3, 5, 5.5, 6, 7.1, 8, 8.3, 11–11.2, 12, 13, 15, 16, 18–19.1, 23, 23.2, 24, 25–31, 35–36, 37.1–2, 38–40.2, 44–77. Only Af 13 and 24 are not monetary.

Fixed compensation payments – fixed both in terms of sums and in terms of being written down – are presented as a post-apostolic invention, which took place among peoples who had become Christian. The rationale was the mercy that had been introduced by Jesus. As we saw above, the prologue made it entirely clear that this mercy did not extend to treason. Therefore, Alfred’s laws show in practice what the prologue explained through Christian legal history: most misdeeds are amendable, except one. The Mosaic laws provide a contrasting picture, where a large number of offences are punished by death and the idea of an-eye-for-an-eye is very much at play.⁶⁶

That being said, the focus on punishment practices also serves to illustrate a similarity: both Mosaic and Alfred’s law prescribe penalties for wrongdoing. What is more, as we saw, they penalize more or less the same areas of wrongdoing. This then underscores the continuation of justice across time; no one can commit wrongs with impunity. However, the precise responses to particular acts of wrongdoing can and will change over time. It seems, then, that the compiler used the Old Testament to show both continuities and changes between the law God gave to the Israelites and the law of his own day.

The four New Testament passages included in the prologue carry on with the theme of eternal principles and changeability of law. One of these is the Golden Rule (AfEl 49.5–6), which is numbered in all manuscripts as the first chapter of Alfred’s laws and has a rubric in the chapter list. As chapter 2 showed, the prologue states that ‘one does not need any other *domboc*’ if the principle of the Golden Rule is observed (AfEl 49.6). That in itself may be taken as a statement of what I argued above, namely that the prologue asserts the eternal relevance of certain basic principles. Another New Testament verse is, as we have already seen, included in the treatment of treachery. The prologue says that Christ ‘bebead þone hlaford lufian swa hine’ (‘commanded to love the lord as himself; AfEl 29.7), which could, as I mentioned, be a conflation of the two great commandments given in the gospel of

⁶⁶ There are, however, three laws in Alfred with a flavour of the *lex talionis*: punishment for rape is castration (Af 25.1), for slander the loss of one’s tongue (Af 32) and stealing from church is punished with the loss of ‘the hand that did it’ (Af 6–6.1). However, all three laws have parallels in other legislation and so Alfred may not have been inspired by the Old Testament in prescribing such punishments. Af 25.1 (on a slave raping a slave, punished with castration) has a parallel in *Lex Ripuaria* ch. 61.17 (a slave committing adultery (*moechari*) with another slave, punished with castration). Af 6 (on stealing from a church, punished by cutting off the offenders hand) has a parallel in *Hibernensis* XXIX.7 (on stealing from a church or from other holy places, second occurrence is punished by cutting off hand or foot). As Wormald points out, Alfred’s law on slander (Af 32; punished with loss of one’s tongue) has a parallel in the Theodosian code and thus the *Breviary of Alaric*; Wormald, *MEL*, p. 282.

Matthew.⁶⁷ Not only does this verse serve to underscore the importance of loyalty, but according to the gospel these are the commands on which ‘depend the whole law and the prophets’ (Matt 22:40). In fact, the Golden Rule and the two great commandments formed the foundations of Augustinian notions of justice, and, as we shall shortly see, there may be other traces of Augustine’s legal thinking in the prologue too.⁶⁸

Another passage from the New Testament explains why laws can and should change. These verses from *Acts* mark the transition from the time of Jesus to the time of the apostles, and feature the apostles granting newly converted peoples relief from several Mosaic laws.⁶⁹ The prologue makes it clear that laws should be adapted, because preservation of faith takes precedence over keeping every Old Testament law. The theme of the law’s malleability is picked up in another New Testament extract, which shows that the body of laws can be increased. That is implied in the passage on the coming of Christ, which states that Jesus came not ‘to break or forbid’ God’s laws, but to ‘increase’ them (*eacnian*; AfEl 49), a translation of *adimplere* (‘to fulfill’; Matt 5:17). The translator’s choice of words could be an expression of the Anglo-Saxons’ own idea of additions to law: the laws of Hlothhere and Eadric, Wihtræd, Æthelstan and Edgar use the verb *eacnian* (‘to increase’) to describe their additions to ‘the law’.⁷⁰

The prologue thus tells a history of legal changes, providing an explanation of how earthly laws can change and yet still embody divine laws. Each stage – from Moses to Jesus to the Apostles to newly Christianized peoples – introduces a new idea of the development of law: laws can be increased, abrogated, adapted and codified. Particular aspects – notably penalties and procedures – may change and that is permissible. However, the prologue also shows that some things remain the same across time. Punishment is prescribed for wrongdoing, the same areas are regulated by (written) law, and principles of mercy, intention and loyalty do not change.

⁶⁷ Matthew 22:37–40: ‘Diliges Dominum Deum tuum ex toto corde tuo...Diliges proximum tuum, sicut teipsum’.

⁶⁸ ‘Justice’ in A. Fitzgerald and J. Cavadini (eds), *Augustine Through the Ages: An Encyclopedia* (Grand Rapids, 1999), p. 381 and A.H. Chroust, ‘The Philosophy of Law of St. Augustine’, *The Philosophical Review* 53 (1944), pp. 195–202, at p. 199.

⁶⁹ This passage has previously been taken to refer to the Anglo-Saxons’ own conversion, and it has been suggested that its inclusion was prompted by a letter sent by Archbishop Fulk of Rheims to Alfred. See Wormald, *MEL*, pp. 425–6, Pratt, *Political Thought*, p. 223, and J. Nelson, ‘“... sicut olim gens Francorum ... nunc gens Anglorum”: Fulk’s letter to Alfred revisited’, in her *Rulers and Ruling Families in Early Medieval Europe* (Ashgate, 1999), V, pp. 135–44.

⁷⁰ Hl prol, Wi prol, VI As prol/8.9, IV Eg 2,1a, 14.2. It is also used by Wulfstan in EGu prol.

A similar line of thinking can be observed in Augustine of Hippo's writings on law.⁷¹ Augustine posits that there are two kinds of law: eternal unchanging law – which is God or *summa ratio* ('the highest reason') – and temporal law.⁷² Temporal law can and will change according to worldly circumstances, and what is just in one period is not necessarily just in another.⁷³ A good ruler will be guided by reason and the natural law innate in godly humans, which means that his laws will be derived from eternal law and therefore be just.⁷⁴ To Augustine, Mosaic law was something distinct from both eternal and temporal law; it was divine law which contained eternal law adapted to a specific people and their circumstances.⁷⁵ Old Testament law shared principles with Christ's new covenant, although it was superseded by it.

Based on surviving manuscripts and citations, such Augustinian views may well have been known in Alfred's time.⁷⁶ Within such a framework, the law code's juxtaposition of Old Testament law and Alfred's law need not be taken – as it sometimes is – as a belief in the Anglo-Saxons as 'a new Israel'.⁷⁷ It could instead be seen as a way in which to communicate

⁷¹ Wormald and Pratt have suggested that the inspiration for some such legal thinking in the prologue was derived from Archbishop Hincmar of Rheims, perhaps via Alfred's continental helpers (Wormald, *MEL*, pp. 422–5; Pratt, *Political Thought*, pp. 223–30). Hincmar's thinking on the subject owes something to Augustine, but in several ways, the code appears to be closer to Augustine than it is to Hincmar. For instance, as David Pratt notes, Hincmar's view of the distinction between unchangeable divine laws and flexible *leges mundanae* was 'inseparable both from his wider commitment to the general conciliar canons and from attempts to assert their superiority over papal decrees' (Pratt, *Political Thought*, p. 224). What is more, Hincmar never set out these thoughts as systematically; they have been pieced together from various sources, none of which survive in Anglo-Saxon manuscripts.

⁷² B. Gronewoller, 'Augustine of Hippo', in P.L. Reynolds (ed.), *Great Christian Jurists and Legal Collections in the First Millennium* (Cambridge, 2019), pp. 266–82, at pp. 269–71.

⁷³ Gronewoller, 'Augustine of Hippo', pp. 269–70.

⁷⁴ 'Natural law' in Fitzgerald and Cavadini (eds), *Augustine Through the Ages*, p. 583.

⁷⁵ Gronewoller, 'Augustine of Hippo', p. 273.

⁷⁶ Augustinian ideas on law are expressed, for instance, in Augustine's *De libero arbitrio* and *De civitate dei* (see Gronewoller, 'Augustine of Hippo', pp. 269–73). Parts of *De civitate dei* survive in four English manuscripts; the work is cited *inter alia* by Bede; and it is listed in one book list: see M. Lapidge, *The Anglo-Saxon Library* (Oxford, 2008), p. 284. In fact, one of these manuscripts – CCC 173 (fols. 57–83) – dates to the eighth century and was at Winchester in Alfred's reign. This manuscript also contains Alfred's law code, though we do not know when the eighth-century part containing the Augustinian extracts were added to the laws; see Parkes, 'Palaeography of the Parker Manuscript', pp. 151–2. *De libero arbitrio* was cited by Aldhelm and used by Bede, and it survives in two English eleventh-century manuscripts; see Lapidge, *The Anglo-Saxon Library*, p. 286. Extracts from relevant texts may also have existed in florilegia, or such ideas could have been mediated through other works. Some of this thinking can also be identified in the Alfredian rewriting of a passage from Boethius, which seems to say that – contrary to what Boethius' original claimed – it is not silly for men to legislate over other men as long as it is done with *gesceadwisnes* ('reason'); see J.L. Nelson, 'The Political Ideas of Alfred of Wessex', in her *Rulers and Ruling Families in Early Medieval Europe*, IV, pp. 125–58, at pp. 146–7.

⁷⁷ As expressed by Wormald, *MEL*, pp. 426–7 and Pratt, *Political Thought*, p. 232. Several Alfredian works, including prologue to the code, have been used as evidence of King Alfred's desire to present the English as a chosen people. George Molyneux has convincingly argued that there is little evidence for such a view: G. Molyneux, 'Did the English Really Think They Were God's Elect in the Anglo-Saxon Period?', *The Journal of Ecclesiastical History* 65 (2014), pp. 721–37.

the justness of the laws made by English kings. The prologue's emphasis on the endurance of certain principles and basic expressions of law, but the changeable nature of punishment practices and procedures, might be a way in which to communicate that Alfred's temporal laws embody God's laws despite all their differences.

Augustinian ideas also give us a framework for interpreting the code's use of its other sources. The code changes legal details and compensatory values in laws copied from *Ine* and *Æthelberht*, while seemingly still claiming that such laws are taken from these sources. Wormald took this to mean that 'Alfred was...professing a greater respect for precedent than he actually practiced'.⁷⁸ With Augustinian ideas in mind, we do not have to resort to such conclusions: in order to be just in Alfred's day, these laws had to be adapted to his circumstances. In the prologue, Alfred stated that he copied those laws *ðe me ryhtoste ðubton* ('that seemed the most just to me'), but that does not necessarily refer to the justness of a specific compensation value in *Æthelberht*. Perhaps it was the idea of offering monetary compensation for bodily injury which Alfred perceived as 'most just'. The laws of *Æthelberht* and *Ine* vary from those of Alfred, because their world varied from his. But since these older laws (presumably) also embodied divine law, they contained aspects that remained just in Alfred's day. That is what he copied, thus practicing as well as professing respect for precedent. This could also explain why the code's compiler appears to have had no qualms about including the entire *Ine* text, which contradicts and disagrees with Alfred's laws on a number of issues.

The prologue is not Anglo-Saxon law in the sense that it provides information on offences, procedures and punishments. It is, however, Anglo-Saxon law in the sense that it gives instructions in the basic principles that should guide any dispute resolution. This is related to what was argued above, namely that the inclusion of biblical material in the code is comparable to the inclusion of Scripture in texts like *Admonitio*, the 786 decrees or other church council decrees. As in these texts, the code's legal message is grounded within Scripture, hence they share a logic and an encouragement to certain behaviours. This should be seen in the context of the code's potential audience, namely judges. In the biography of Alfred written in the 890s, its author Asser describes how Alfred was worried about his judges making unjust decisions through *ignorantia* ('ignorance') or *malevolentia*

⁷⁸ Wormald, *MEL*, p. 279.

(‘malevolence’).⁷⁹ The prologue contains precisely the kind of material that might combat judges’ ignorance, through its juridical wisdom in the realms of justice and mercy as well as its concrete guidance in specific cases of dispute resolution. Malevolent malpractice would be discouraged by its admonitions on loyalty, especially the prologue’s implied message that disloyalty earns both spiritual and worldly punishment.

4.2 Part II: Compilation process

4.2.1 Who was involved?

An engraving in an eighteenth-century history of England depicts Alfred sitting down with a couple of books, surrounded by helpers looking over his shoulder; the inscription reads ‘Alfred makes a Collection of Laws and divides the Kingdom into Counties’.⁸⁰ Perhaps we should not imagine such remarkable productivity on the king’s part, but this image is symptomatic of our modern view of Alfred: he was a man of letters, actively involved in any number of literary efforts, including the writing of a law code.⁸¹ However, it also reveals the assumption that he was not alone in the making of the code. The assumption is a natural one. After all, the code involved such different tasks as biblical translation, composition of narrative prose in Old English, selection and updating of written legislation and potentially translating an Anglo-Latin law text. As we shall now see, the helpers peering over Alfred’s shoulders in the picture may have played a more active role in the making of the code. But before speculating about the contributors to the code, however, we must look at the circle of scholars known to have produced other written works and translations at Alfred’s court.

In the late ninth century in Wessex, there was a push towards literacy, education and translation, a project usually associated with Alfred.⁸² The label ‘project’ is unusually justified:

⁷⁹ W.H. Stevenson, *Asser’s Life of King Alfred: Together with the Annals of Saint Neots Erroneously Ascribed to Asser* (Oxford, 1904), pp. 92–3; Lapidge and Keynes, *Alfred the Great*, pp. 109–10.

⁸⁰ The engraving was made by Samuel Wale in the 1770s, and it is printed in S. Keynes, ‘The Cult of King Alfred the Great’, *Anglo-Saxon England* 28 (1999), pp. 225–356, at p. 250.

⁸¹ As Keynes observed, the written word in all its forms is ‘at once the product, the expression, and the symbol’ of the distinctiveness of Alfred’s reign; S. Keynes, ‘The Power of the Written Word: Alfredian England, 871–899’, in T. Reuter (ed.), *Alfred the Great: Papers from the Eleventh-Centenary Conferences* (Ashgate, 2003), pp. 175–97, at p. 175.

⁸² For the extensive historiography on Alfred’s translation project see e.g. D. Whitelock, ‘The Prose of Alfred’s Reign’, in E.G. Stanley (ed.), *Continuations and Beginnings: Studies in Old English Literature* (London, 1966), pp. 67–103; Godden, ‘The Alfredian Project’; Godden, ‘Did King Alfred Write Anything?’, *Medium Ævum* 76 (2007), pp. 1–23; J. Bately, ‘Did King Alfred Actually Translate Anything? The integrity of the Alfredian Canon Revisited’, *Medium Ævum* 78 (2009), pp. 189–215; J. Bately, ‘The Alfredian Canon Revisited: One Hundred

from the preface to the translation of Gregory the Great's *Cura pastoralis*, or *Pastoral Care*, we know that someone – who identifies himself as Alfred – considered it necessary to provide translations of Latin works into Old English.⁸³ Alfred's biographer Asser gave further details on these efforts, including an account of the scholarly helpers the king invited to his court.⁸⁴ These *luminaria* had to come from outwith Wessex, given the lack of learning Alfred identified in his own kingdom, and they included Wærferth, bishop of Worcester; Plegmund, archbishop of Canterbury; Æthelstan and Werwulf, priests from Mercia; Grimbald, a monk of St Bertin's in Francia; John the Old Saxon, a monk from Saxony; and finally, Asser himself, a monk of St David's in the Welsh kingdom of Dyfed.⁸⁵

Some of their literary activities are attested: Asser stated that Wærferth translated Gregory the Great's *Dialogi* at the king's command, while Alfred claimed in the prologue to *Pastoral Care* that Plegmund, Asser, Grimbald and John all helped him 'learn' (*geliornode*) the book so that he could translate it into English himself.⁸⁶ The preface to the translation of Boethius' *De consolatione philosophiae* states that Alfred translated it himself and a twelfth-century writer claimed that Asser helped him.⁸⁷ A short note at the end of the translation of Augustine's *Soliloquia* names Alfred as translator, though we do not know who else might have been involved.⁸⁸ The translation of the fifty first psalms does not provide explicit information on translators or authors, though it is usually seen as a product of the Alfredian circle based on stylistic grounds.⁸⁹ Also associated with Alfred's court are Asser's biography of Alfred (*Vita Ælfredi*) as well as the *Anglo-Saxon Chronicle*. Other works have at various times

Years On', in T. Reuter (ed.), *Alfred the Great: Papers from the Eleventh-Centenary Conferences* (Ashgate, 2003), pp. 107–20; J. Bately, 'Alfred as Author and Translator', in N.G. Discenza and P.E. Szarmach (eds), *A Companion to Alfred the Great* (Leiden, 2014), pp. 113–42; R. Jayatilaka, 'King Alfred and his Circle', in R. Gameson (ed.), *The Cambridge History of the Book in Britain: Volume 1: c.400–1100* (Cambridge, 2011), pp. 670–8; and Pratt, *Political Thought*, pp. 113–26.

⁸³ The preface to *Pastoral Care* is printed in Sweet (ed.), *Alfred's Pastoral Care*, pp. 3–9 and translated in Lapidge and Keynes, *Alfred the Great*, pp. 124–6.

⁸⁴ Relevant chapters in Asser's *Vita* include 24–5, 76–9, 87–90, 106; see Stevenson, *Asser's Life of Alfred* and Lapidge and Keynes, *Alfred the Great*.

⁸⁵ Alfred's summoning of helpers is described in Asser chs. 77–9; Stevenson, *Asser's Life of Alfred*, pp. 62–6. Lapidge and Keynes, *Alfred the Great*, pp. 92–6, see also pp. 259–61 for commentary. For more on this group, as well as the manuscript context for their surviving works, see A. Meaney, 'King Alfred and his Secretariat', *Paregon* 11 (1975), pp. 16–24.

⁸⁶ Lapidge and Keynes, *Alfred the Great*, pp. 92, 126. For post-Alfredian and external evidence of authorship, see Godden, 'Did King Alfred Write Anything?', pp. 3–4.

⁸⁷ For this preface in translation, see Lapidge and Keynes, *Alfred the Great*, p. 131. William of Malmesbury makes the claim about Asser; see the discussion in Godden, 'Did King Alfred Write Anything?', p. 1.

⁸⁸ Godden, 'Did King Alfred Write Anything?', p. 4.

⁸⁹ J.M. Bately, 'Lexical Evidence for the Authorship of the Prose Psalms in the Paris Psalter', *Anglo-Saxon England* 10 (1981), pp. 69–95.

been seen as Alfredian, and it is a corpus still in flux.⁹⁰ My aim is not to assess whether such claims of authorship are true, or whether we should believe that Alfred himself translated anything.⁹¹ The fact that many of these works explicitly claim association to Alfred – claims which can partly be supported on stylistic grounds – is enough to consider them potentially relevant to Alfred’s code-making activities.

Firstly though, what can we say about the authorship of the code and its constituent parts? I have already discussed one hint to authorship above: the clauses translated and copied from *Ine* into *Alfred* differ from the translations of those clauses contained in the whole *Ine* text.⁹² One possible reason for this is that the clauses copied from *Ine* into *Alfred* were translated by someone other than the person who translated the whole *Ine* text. This is related to a point to which I will return very shortly, namely that there are linguistic features connecting *Ine*, the prologue and the *Pastoral Care* translation. Thus, at least two separate people may have been working on the code: one involved in translating *Ine* and the prologue and one working on *Alfred*. What is more, the list of chapters at the start of the whole code appears to have been written by someone other than the person behind *Alfred*, as we shall see in the following section on the process of composition.

For now, let us take a look at the authorship of the prologue and *Ine*. The connection between *Ine*, the prologue and *Pastoral Care* is based on similarities in vocabulary preferences, which has long been a method used to establish the Alfredian canon, with Janet Bately as the main driver.⁹³ Her approach is based on comparing the frequency of certain words and their variants in order to establish a preference for one word over another, and texts which consistently share these preferences are proposed to have ‘one mind at work’ behind them.⁹⁴ This method has its issues and limitations, acknowledged by Bately and others, including the

⁹⁰ Modern scholars have different opinions about the works that make up the Alfredian canon, given that some consider Alfred’s personal authorship to be a criterion (such as Godden), whereas others count texts produced by his circle. The works commonly accepted as Alfredian include the *Anglo-Saxon Chronicle*, *Pastoral Care*, the law code, *Dialogi*, the psalms, Boethius and Augustine’s *Soliloquia*. Former members of the canon include translations of Orosius’ *Historia contra paganos* and Bede’s *Historia*, which are now considered as external to the Alfredian project. See references above, as well as Pratt, *Political Thought*, pp. 116–8.

⁹¹ I do not think it is relevant whether Alfred personally wrote, translated or dictated something. I am more concerned whether such works were produced by his circle and as part of his efforts. Therefore, I see no reason to exclude works that self-identify as part of this effort from the canon of Alfredian texts, such as Wærferth’s *Dialogi*. However, see Godden ‘Did Alfred Write Anything?’ for a different view, namely that we should only include works possibly translated by Alfred himself (*viz.* *Pastoral Care*).

⁹² This argument was set out above on p. 115–6.

⁹³ See e.g. J.M. Bately, ‘King Alfred and the Old English Translation of Orosius’, *Anglia* 88 (1970), pp. 433–60; ‘Lexical Evidence’, ‘Old English Prose Before and During the Reign of Alfred’, *Anglo-Saxon England* 17 (1988), pp. 93–138.

⁹⁴ Bately, ‘Lexical Evidence’, p. 94.

possibility that texts were produced by more than one person.⁹⁵ An additional difficulty for our purposes is that the law code is not long enough to provide a decent sample size. For these reasons I am not too concerned with the general similarities between the law code's vocabulary and that of the Alfredian corpus, though it should be noted that the *Pastoral Care* and the prologue converge in many translation preferences.⁹⁶ However, more importantly, they also share some very rare words. These include *gechysp* ('clamour');⁹⁷ *bereccan magan* ('to be able to clear (one's self)');⁹⁸ *woroldbblaford* ('worldly lord');⁹⁹ and *frīðstow* ('sanctuary'), each occurring between three and seven times in total across the whole corpus of surviving Old English texts. This could be coincidence. However, these words are not just very rare, but in the prologue they only appear in additions to or rewritings of the biblical material or in the original prose parts. This would indicate that they were not passive translations of a Latin word, but rather something that had involved an active choice of phrasing.

This is perhaps most clear in the case of the word *frīðstow* ('sanctuary'), which appears in the passage on unintentional killings discussed above (AfEl 13). This word is only found in three other works, all of which are Alfredian translations: Boethius' *Consolatio*, the fifty first psalms and the *Pastoral Care*. In Boethius, it translates *asylum*, while all three occurrences in the psalms are translations of *refugium*.¹⁰⁰ In contrast, its occurrences in the prologue and the *Pastoral Care* do not correspond directly to any one Latin word. In both works, it is part of a biblical translation. In the prologue, it renders Exodus 21:13: 'constituam tibi locum in quem fugere debeat' ('I will appoint thee a place to which he must flee'), which is translated into 'gif he frīðstowe gesece' ('if he seeks sanctuary'). In the *Pastoral Care*, it is part of a passage from Deuteronomy 19:5: 'hic ad unam supradictarum urbium confugiet et vivet' ('he shall flee to one of the cities aforesaid and live'), translated into 'he sceal fleon to anra ðara ðreora burga ðe to frīðstowe gesette sint' ('he must flee to one of those three cities which have been

⁹⁵ Bately, 'The Alfredian Canon Revisited', p. 112; Godden, 'Did King Alfred Write Anything?', p. 9.

⁹⁶ Bately never studied the law code's vocabulary, though based on her other evidence, Wormald concluded that the law code agreed with the general preferences of other Alfredian texts; *MEL*, pp. 274–6. However, his list of 22 words conflates the prologue, Alfred's laws and the rubrics (though not *Ine*), and it is worth noting that 11 of the 22 words are found in the prologue only, and not in Alfred's laws (*cigan*, *cleopian*, *eardian*, *geconian*, *geþeahht(ere)*, *lician*, *mildheortnes*, *unriht*, *unwillum*, *gegaderian*, *scyld(ig)* ('guilt(y)'). That means that 18 of the 22 'Alfredian' words appear in the prologue, but only 11 of the 22 words in Alfred's own laws.

⁹⁷ There are three occurrences of *gechysp* in the corpus: two in *Pastoral Care* and one in the prologue (AfEl 41). *DOE* s.v. *gechysp*.

⁹⁸ There are five occurrences of *bereccan* in the corpus: two in *Pastoral Care*, one in the prologue (AfEl 15), one in OE Bede and one in V As. *DOE* s.v. *bereccan*. *Bereccan magan* is only found in the prologue and *Pastoral Care*.

⁹⁹ There are seven occurrences of *woroldbblaford* in the corpus: two in *Pastoral Care*, one in the prologue (AfEl 49.7), two in the *Soliloquia*, two in the 'Canons of Edgar' and one in a Wulfstan homily.

¹⁰⁰ *DOE* s.v. *frīðstow*.

appointed as sanctuary’).¹⁰¹ *Friðstow* is in both cases the result of a free translation from the Latin, used in place of a Latin verb of fleeing. The fact that there is a common alternative for the sense of ‘sanctuary’ (*gebeorb* or *gebeorbstow*) might be further indication of the significance of this overlap. On top of that, there are topical similarities in the two passages where *friðstow* occurs, as both concern unintentional murders; indeed, the word *ungewealdes* (‘unintentional’) has been added to the Latin original in both cases.

This could then hint at common authorship of the prologue and *Pastoral Care*. Further evidence seems to connect *Ine* to both the prologue and the general Alfredian canon. Again, the words that connect *Ine* to the wider canon are rare and appear in conspicuous contexts. The most conspicuous overlaps are *gafolgylda* (‘tax-payer’), *ceac* (‘cauldron’), *cynn* (‘fitting’) and *afwerdla* (‘damage, injury’), and I have discussed many of them in more detail elsewhere.¹⁰² The prologue and *Ine* are connected in their use of *licgan dearnenga* (‘commit adultery’), *ceas* (‘strife’) and *afwerdla*, but their most significant overlap is the biblical phrase *swelte he deaðe* (‘let him die by death’). This phrase was the standard way in which to translate the Old Testament phrase *morte moriatur* across the Anglo-Saxon period, including on seven occasions in the code’s prologue.¹⁰³ But it also appears – as a complete outlier in the context of the phrase’s other usage – as the expression used for capital punishment in *Ine*.¹⁰⁴ Based on the general usage and extremely specific origins of this phrase, it is difficult to think its use in both *Ine* and the prologue is not connected and that possibly the two texts were translated by the same person.

While the sample size is small, these connections may strengthen the natural notion that the people involved in translating other Alfredian works, primarily *Pastoral Care*, were also involved in translating parts of Alfred’s law code. That means that Wærferth, Plegmund, Asser,¹⁰⁵ Grimbald and John could all be candidates for the work involved with the law code,

¹⁰¹ Sweet (ed.), *Alfred’s Pastoral Care*, p. 166. In the Bible, ‘aforesaid’ refers to the preceding verse where God establishes three cities where ‘he who is forced to flee [*profugus est*] for manslaughter, may have near at hand whither to escape’ (Deut 19:2).

¹⁰² *Gafolgylda*, *ceac*, *cynn* and *afwerdla* are discussed in depth in Ivarsen, ‘The Latin Law code of King Ine’. For the occurrences of these words in other Alfredian works, see Bately, ‘Lexical Evidence’.

¹⁰³ AfEl 13 (x2), 14, 15 (x2), 31, 32.

¹⁰⁴ I discuss the phrase *morte moriatur* in greater length in Ivarsen, ‘The Latin Law code of King Ine’.

¹⁰⁵ Carella compared the biblical citations in Asser’s *Vita* with the prologue to examine whether the two texts may have used the same Bible version; B. Carella, ‘Asser’s Bible and the Prologue to the Laws of Alfred’, *Anglia - Zeitschrift für englische Philologie* 130 (2012), pp. 195–206. However, the texts do not share any verses, and so the only possible evidence is that the prologue may have used an Irish version for Acts 15 and Asser may also have used an insular New Testament copy (see e.g. p. 197). Carella concludes that there is not enough evidence to say there was shared authorship between the two texts (pp. 204–6), though he still thinks Asser may have been involved in making the code.

in addition to Alfred himself. Given that all the above are mentioned as helpers in translating *Pastoral Care*, it is impossible to pinpoint an individual's involvement in translating *Ine* or the prologue. While Asser, Grimbald and John were not native English speakers, they may nevertheless have learned enough English to participate in translation work.¹⁰⁶ The only specific textual clue I have been able to identify is in a law on moving districts and changing lords, which *Alfred* appears to have borrowed from *Ine* (Af 37/ Ine 39). In *Ine*, the word used is *scir* ('shire'), whereas *Alfred* gives *boldgetæl* ('district'). *Boldgetæl* is only otherwise attested in Wærferth's translation of Gregory *Dialogi*, where it renders *prouincia* on five occasions.¹⁰⁷ This may point in the direction of Wærferth's involvement in the *Alfred* portion of the code. As I argued above, the whole *Ine* text may have been translated by someone other than the translator of individual provisions from *Ine*. This could point in the direction that Wærferth was not behind the translation of *Ine* as a whole, though this is, admittedly, in the realm of complete speculation.

4.2.2 Process of composition

From this overview of the sources and how they were used, it is possible to reconstruct, at least partly, the process of making the code. Such a reconstruction is important for understanding a key point of this chapter: the codes were the products of a long process of research, extraction of source material, compilation, adaptation, translation and composition.¹⁰⁸

After having decided on what to include – perhaps a time-consuming task itself – there was the question of how to put it all together. An important observation in this context is one made above: the compiler seems to have accessed *Ine* in Latin, which could mean that the full text of *Ine* was translated after the main portion of Alfred's laws were made. There are signs that the list of chapters at the start of the code was composed after *Alfred* too: as Wormald observed, some rubrics only make sense in reference to the main text, given that the antecedents of a rubric's pronoun is in the text of the law not the previous rubric.¹⁰⁹ What

¹⁰⁶ For an assessment of their potential linguistic abilities, see J.M. Bately, 'Grimbald of St. Bertin's', *Medium Ævum* 35 (1966), pp. 1–10. However, Asser was capable of translating from English into Latin, as evidenced by the translations of parts of the *Anglo-Saxon Chronicle* in his *Vita Ælfredi*.

¹⁰⁷ DOE s.v. *boldgetæl*.

¹⁰⁸ A similar process in a Roman context is set out in Harries, 'How to Make a Law Code', pp. 63–78.

¹⁰⁹ Wormald, *MEL*, p. 268.

is more, it seems that the rubrics were written not just after Alfred's laws, but after *Ine's* too, since they cover both texts and the vocabulary of the rubrics seem to indicate that they were taken from the Old English version of *Ine*.¹¹⁰ However, there are also many vocabulary discrepancies between the chapter titles and their corresponding chapters, which could imply that the author of the chapter list was not the author of the rest of the code.¹¹¹

The evidence then seems to imply that *Alfred* was written before *Ine*, and that both *Ine* and *Alfred* were written before the chapter list. Given that the prologue describes the method of making the laws, it could be that this section was written after Alfred's laws too. However, it remains possible that the Exodus parts of the prologue were made before the descriptive final part, or that the final part was written before the actual compilation took place by someone who knew which sources were going to be used.

In any case, the starting point for the whole project could have been the portion containing Alfred's own laws. This section is itself a compilation of sources, as we saw above, and it is made up of three main blocks (in the loosest possible sense): a section on breaches of the king's and church's protections, miscellaneous laws partly inspired by *Ine* and the list of injuries related to *Æthelberht*. Dirk Korte identified the theme of the first part of the code as 'breaking': breaking oaths, bonds of loyalty, church peace, the king's protection and so on.¹¹² Wormald reached a similar conclusion, labelling the first section as dealing with 'breach of peace or protection'.¹¹³ This first section is unusually coherent, and, what is more, it also presents topics in unusually great detail, for instance in the case of church peace and sanctuary (Af 2–2.1, 5–6.1). Given the level of detail, coherence and placement at the start, perhaps the first dozen chapters of the code were subjects of particular importance to Alfred. What is more, only a few of the passages in this block have sources. In fact, *Ine's* cluster of fighting laws (*Ine* 6–6.5) is broken up, so that the one concerning the king is found in this

¹¹⁰ Dammary proposed that the chapter list could have been added after Alfred's reign; Dammary, 'Law-Code', p. 205. This conclusion was partly based on the vocabulary discrepancies, but mostly on the fact that the rubricator sometimes seems to have misunderstood the point of a law; see Dammary, 'Law-Code', pp. 189–90 for a table of such instances. He reckoned that the original compilers of a code would not have included a 'disordered and misleading' list of chapter titles at the start of the code (p. 205). As Dammary stated, such a claim cannot be categorically denied, though I do not see any good reason to support it either. Wormald considered the numbering and chapter list to be original, as he saw an ideological connection between the number of chapters (120) and the age of Moses; Wormald, *MEL*, pp. 267–9, 417–8.

¹¹¹ For a table of the vocabulary differences, see Dammary, 'Law-code', pp. 197–8.

¹¹² D. Korte, *Untersuchungen zu Inhalt, Stil und Technik angelsächsischer Gesetze und Rechtsbücher des 6. bis 12. Jahrhunderts* (Meisenheim am Glan, 1974), p. 85 with a table on pp. 91–2.

¹¹³ Wormald, *MEL*, p. 269.

first section (Af 7) and the others elsewhere in the code (Af 15, 39).¹¹⁴ This could indicate that this block was deliberately crafted to be coherent. This section and its topics could be derived from now lost writs or decrees covering such issues, or they may have been put into writing for the first time for the making of the code.

After having assembled these topics of special interest, the compiler may have added the miscellaneous laws that he took either from *Ine* or perhaps from cases, whether real-life or hypothetical, before attaching an injuries list based on *Æthelberht*. At some point, the process would have involved deciding on the legal adjustments made to the text copied from these sources. Either afterwards or concurrently, the prologue would have been written and translated. There is very little vocabulary overlap between the prologue and Alfred's laws (including for legally similar passages),¹¹⁵ and so the prologue may have been made without much input from or consultation of the portion containing Alfred's laws. The same is the case for *Ine*, which does not share much vocabulary with *Alfred*. *Ine* and the prologue may have been translated by the same person or at the same time by different people who were in communication. In any case, such translation work would presumably have taken time, especially considering the changes made to the texts.¹¹⁶

The resulting text may then have been put to advisors for approval. Such involvement of a ratifying body is mentioned in the final part of the prologue, where Alfred states that he showed (*geewan*) his gathering of judgments (*domas*) to 'all my wise men' (*eallum minum witum*) and that they confirmed that 'it pleased them to keep them all' (AfEl 49.10). This could potentially refer to a general meeting where Alfred's laws were read out, as was suggested was the case for some of the decrees in the previous chapter, or it could be in more informal settings with smaller groups of advisors. Whether this passage refers to the whole code or just the portion in Alfred's name is uncertain, though, as argued above, this part of the prologue appears to describe just the composition of *Alfred*, not necessarily the code as a

¹¹⁴ The fighting laws are included near-verbatim as they appear in *Ine* – as we saw above in the section on *Ine* – so Alfred presumably found them in their cluster.

¹¹⁵ Both the prologue and *Alfred* legislate on injuries to pregnant women, and Wormald suggested *Alfred* copied it from the prologue (MEL, p. 282). However, the phrasing is conspicuously different: the prologue gives *eacniende wif* ('pregnant woman'; AfEl 18), while *Alfred* uses the awkward phrase 'wif mid bearne...þonne þæt bearn in hire sie' ('a woman with child...when that child is inside her'; Af 9). The prologue's version may be from one of the Bible versions using *mulier praegnans* for the relevant law (Ex 21:22-3), and *Alfred*'s from one using 'habens [infantem] in utero'. See *Vetus Latina Database* for the relevant versions of Ex 21:22-3.

¹¹⁶ For the materials, processes and methods and amount of work going into medieval translation, see O'Brien, *Reversing Babel*, pp. 159–86.

whole. Therefore, it is possible that the material for Alfred's own laws were gathered, adjusted, translated, composed and ratified before the rest of the code was assembled.

4.3 Conclusion

The making of Alfred's code involved much effort. It was done with the texts of *Æthelberht, Ine, 'Offa'* and the Bible at hand, and it may have seen the participation of several people, possibly working under Alfred's supervision. The translation and copying of these texts involved adaptation and adjustment seemingly done to bring out a sophisticated message about the nature of law. Clearly, then, the making of the code involved a lot of research and thinking *about* law: the history of law, the relationship between God's law and secular law, and the spiritual and worldly importance of observing both. Such juristic thinking is not attested in writing in Anglo-Saxon England before Alfred's code – whether in legislation or elsewhere – nor would it happen on the same scale again until Cnut's reign.

This provides another level at which Alfred's code was timeless. The code did not just have relevance for immediate issues requiring the king's word on the details of solving a case. It also concerns more abiding issues of how to resolve disputes fairly, justly and with loyalty, which would not be contingent on Alfred's own circumstances. This even matches the code's self-representation. For while the code's contemporary readers may have been aware of its precise circumstances of production, the code represents itself as something with no specific context in terms of a meeting, event or situation. It also claims that it was made to last: in the final parts of the prologue, Alfred stated that he rejected older laws that did not please him and that he did not write down everything of his own because he did not know what would please those who came after him. This could indicate another difference between codes and decrees: perhaps codes were seen as the preserve of laws that had stood the test of time and would continue to do so, whereas decrees were intended also to address what was perceived as immediate issues.

A later manuscript may display such a sense of continued relevance for Alfredian ideas of justice and mercy. The text known as *Index*, a translation of the chapter on judges from Alcuin's *De virtutibus et vitiis*, was inserted before the prologue in a late eleventh-century

manuscript.¹¹⁷ This short chapter touches on several issues covered in the prologue, including the dangers of bribes and the importance of unbiased judges. Indeed, its opening line reads as a summary of the prologue: ‘first of all for the sake of justice he sets compensation for wrongdoing and then for the sake of mercy he moderates the penalty for misdeeds’.¹¹⁸ This text could have been attached because it was perceived as relevant, or it may have had some kind of connection with the code in Alfred’s time which later earned it a place between the chapter list and prologue in these manuscripts. In either case, it indicates that Alfred’s code did not just live on as a referent in the laws of Edward, Æthelstan and Edgar, but also in the realm of juridical thinking.

¹¹⁷ Cotton Nero A.i(A). See R. Torkar, *Eine Altenglische Übersetzung von Alcuins De virtute et vitiis, Kap. 20 (Liebermanns Judex): Untersuchungen und Textausgabe* (München, 1981). According to Wormald, it was also part of the lost manuscript used by Nowell to fill in his transcript of and Cotton Otho B.xi; see Wormald, *MEL*, p. 382.

¹¹⁸ ‘Ærest for ðære rihtwisnesse he gereceð ðæs gyltes bote 7 þonne for ðære mildheortnesse he gemetegað þære scylde wite’; Torkar, *Eine Altenglische Übersetzung*, pp. 248–9.

5 The Making of Cnut's Code

Almost a century and a half would go by before anyone attempted to produce a text that matched Alfred's code in terms of its research, compilation, collation, adaptation and translation. This was the second Anglo-Saxon law code – written by Wulfstan in the name of King Cnut around 1020 – which seems to be the product of a comparably complex process. As will become clear, the codes of Alfred and Cnut also grapple with many of the same issues and contain similar material. However, their compilers chose different methods through which to combine and adapt their sources. They also made sense of the relationship between the laws of an Anglo-Saxon king and the laws of God in different ways.

The making of Cnut's code will be explored in three parts. Part one deals with the sources used for the code, part two with the structure of the code and part three with the process of compiling the code. The emphasis of part one is Wulfstan's methods in adjusting and adapting his source material, complementing the work that has already been done in identifying the sources he used.¹ Part two concerns the structuring of this material. I will argue that Wulfstan organized his materials into blocks, some of which are 'regulatory' and some of which are 'homiletic'. The final part considers the process of putting these blocks together, as well as the roles played by Wulfstan, Cnut and his advisors in the making of the code.

¹ The first port of call for the sources of *I-II Cnut* is Liebermann's *Gesetze I*, which lists probable sources alongside each chapter. However, since Liebermann printed *Cnut 1018* as a variant of *I-II Cnut*, his source list is somewhat misleading. For an updated and refined list of sources, see the table in Wormald, *MEL*, pp. 356–60. Some general overviews include M.P. Richards, 'I-II Cnut: Wulfstan's *Summa*?', in S. Jurasinski, L. Oliver, and A. Rabin (eds), *English Law Before Magna Carta: Felix Liebermann and Die Gesetze der Angelsachsen* (Leiden, 2010), pp. 137–56 and P. Stafford, 'The Laws of Cnut and the History of Anglo-Saxon Royal Promises', *Anglo-Saxon England* 10 (1981), pp. 173–90. For the Kentish material in Wulfstan's laws, see Rabin, 'The Reception of Kentish Law', pp. 225–40. A lot of work has been done in identifying the sources of Wulfstan's homilies, see e.g. D. Bethurum (ed.), *The Homilies of Wulfstan* (Oxford, 1957), pp. 278–365. The essays in Jost's *Wulfstanstudien* cover the sources used for several of Wulfstan's homilies and some laws, and his edition of *Institutes* cites all relevant sources; see Jost, *Die 'Institutes of polity, civil and ecclesiastical': ein Werk Erzbischof Wulfstans von York* (Bern, 1959). The sources of 'Canons of Edgar' can be found in Fowler, *Wulfstan's 'Canons of Edgar'*, pp. xxxiv–xliv. The sources used to make the canon law collection are numerous, and the most important are set out in: Cross and Hamer (eds), *Canon Law Collection*, pp. 29–38.

5.1 Part I: Sources

Unlike Alfred, Wulfstan never acknowledged the sources he used in making a code. In fact, Wulfstan seems to have been reluctant to name sources and authorities in general. In the twenty or so homilies in Bethurum's edition, Wulfstan only named one of his sources, namely Gregory the Great.² Andy Orchard has compared this dearth to Ælfric, whose texts name over a hundred sources.³ Only two passages in Wulfstan's laws specify the source, both of which are found in his decrees for Æthelred.⁴ In fact, one of these passages is copied into *I-II Cnut*, but Wulfstan removed the source reference before the law was included in the code.⁵ The only proper name contained in *I-II Cnut* is that of King Cnut himself.

Thankfully, Wulfstan's use of sources can to a large degree be reconstructed, though we should bear in mind that he may have relied on material now lost.⁶ The identifiable source texts involved in making *I-II Cnut* include decrees written by Wulfstan (*Cnut 1018*, *V*, *VI*, *VIII Atr*, *EGu*), older Anglo-Saxon law texts (*Wihtrad*, *Alfred*, *Ine*, *II-III Eg*, *I*, *III Atr*), Wulfstan's other writings (*Institutes of Polity*, 'Canons of Edgar', homilies) and possibly some external sources.⁷ Wulfstan's methods of dealing with these texts will be dealt with in turn below. As we shall see, most of the source material was not preserved verbatim by Wulfstan. He adjusted texts and their phrasing, moved passages around, copied individual phrases and words, added points and combined separate passages. In general, he kept closer to his own texts than he did to those of others, and he relied more on older laws in the secular portion (*II Cnut*) than in the ecclesiastical (*I Cnut*).

² This reference is found in homily Xc in Bethurum, *Homilies*, p. 202 (hereafter cited as 'WHom' and homily number).

³ A. Orchard, 'Wulfstan as Reader, Writer, and Rewriter', in A.J. Kleist (ed.), *The Old English Homily: Precedent, Practice, and Appropriation* (Turnhout, 2007), pp. 311–41, at p. 321.

⁴ VI Atr 23 names Gregory the Great as a source, while VIII Atr 7–8 specifies that the content is taken from Edgar's laws.

⁵ VIII Atr 7–8 cites Edgar by name on the topic of tithes (II-III Eg 3–3.1). The relevant passage in *VIII Æthelred* is copied into *I Cnut* (8.2), but Edgar's name is left out. There are other reasons to believe Wulfstan deliberately avoided naming names in *I-II Cnut* too. The prologue to Cnut's Oxford agreement contains a reference to 'laws of Edgar' *eadgares lagan* (*Cnut 1018* 1). This is not included in *I-II Cnut*, despite the fact that almost all of *Cnut 1018* is included in the code.

⁶ There are around 80 clauses without identifiable sources; see Wormald, *MEL*, pp. 356–60 for these. Wormald proposed that there might have existed a secular counterpart to *VIII Æthelred*, which may have contained much of the unattributable material in *II Cnut*: Wormald, 'Æthelred the Lawmaker', p. 59.

⁷ See the list of sources in Wormald, *MEL*, pp. 356–60.

5.1.1 Anglo-Saxon laws

5.1.1.1 *Wulfstan's own laws for Æthelred and Cnut*

The main sources for *I-II Cnut* are the decrees written by Wulfstan for Æthelred and Cnut, namely *V*, *VI*, *VIII Æthelred* and *Cnut 1018* as well as *Edward-Guthrum*.⁸ As Wormald showed, the single largest source is *Cnut 1018*. In total, 46 of the c. 300 clauses in *I-II Cnut* (following Liebermann's clause-divisions) are taken verbatim from *Cnut 1018*, and a further eleven are modified versions.⁹ That means that *Cnut 1018* – which itself is heavily reliant on *V* and *VI Æthelred* – is included pretty much in its entirety in Cnut's code, though not as a continuous block.¹⁰ Clauses from *V* and *VI Æthelred* that are not found in *Cnut 1018* are copied verbatim into *I-II Cnut* seven times, and these texts provide influence in several more cases, as we shall shortly see.¹¹ Clauses found only in *VIII Æthelred* are copied verbatim six times and with modifications six times. *Edward-Guthrum* is the only possible source for three passages. However, as we shall now see, these numbers can only be taken as estimates, given the very complex way in which Wulfstan mixed and tweaked versions of the same idea across multiple texts.¹²

A few examples of such tweaking and adjusting should be enough to illustrate Wulfstan's methods. I Cn 14.2–15 concerns activities to be avoided on Sundays. The same topic is covered in Cn 1018 14.1, VIII Atr 17, VI Atr 22.1 and V Atr 13–13.1.¹³ Despite this being well-trodden legislative ground for Wulfstan, he did not copy any of his old versions. For *I Cnut*, he took the basic sentence from his older texts, but added an exception clause and a clause setting out the precise start and end of a Sunday. He also divided the material

⁸ Wormald noted verbatim parallels to *Grīð* and *Gefýncðu* as well, though the passages in question are also found in *VIII Æthelred*, *Cnut 1018* or *Institutes*. Given that the three latter sources are certainly used by Wulfstan for *I-II Cnut*, it is perhaps likely that he did not use the text of *Grīð* and *Gefýncðu* directly. See Wormald, *MEL*, pp. 356–60.

⁹ Wormald, *MEL*, p. 355.

¹⁰ For the relationship between V/VI Atr, *Cnut 1018* and *I-II Cnut*, see the tables in Wormald, *MEL*, pp. 356–60 and Kennedy, 'Cnut's law code of 1018', p. 59.

¹¹ These numbers are partly taken from Wormald's table of sources in *I-II Cnut* in *MEL*, pp. 356–60. I have, however, adjusted the numbers so that a verbatim quotation cannot be counted for two texts. For example, Wormald gives 21 verbatim correspondences between *I-II Cn* and V/VI Atr (*MEL*, p. 360), though 14 of these are found in Cn 1018 as well, which presumably means that Wulfstan took them from Cn 1018.

¹² It is possible that Wulfstan had versions of these texts that differed from ours or which contained marginalia which he incorporated into the text. However, I will work from the assumption that his texts looked more or less like surviving versions.

¹³ Slightly different versions are found in 'Canons of Edgar' 19 and EGu 7.

into several separate main sentences. This rewritten version is also found in a homily.¹⁴ But the homily and *I Cnut* are not identical either, for they diverge in the following sentence. In *I Cnut*, this sentence is taken verbatim from *Cnut 1018*.¹⁵

Other examples of adaptations involve the addition of phrases. I Cn 2.5 adds a sanction clause – ‘7 ægþer ge mægþote ge manþote fullice gebete’ – to the text found in VIII Atr 3. Similar details (about what constitutes a ‘smaller monastery’ and a ‘field church’) are found in I Cn 3.2, but they are missing from VIII Atr 5.1. In II Cn 8–8.1, Wulfstan took the text of Cn 1018 20–20.2 and added a phrase (‘7 þæt nan man ne forsace’), before supplying a sanction clause which has similarities in wording to a legally identical and much older law (II As 14.1). There are also five instances where Wulfstan added the phrase ‘be ðam þe seo dæd si’ (‘according to what the deed is’) to laws he otherwise copied verbatim.¹⁶

In other cases, Wulfstan introduced small adjustments of syntax or vocabulary. For example, the content of EGu 7.1 is phrased in one conditional and one statement.¹⁷ This clause is included near verbatim in *II Cnut*, but it is expanded and turned into two parallel conditionals.¹⁸ In this case, there is no impact on the legal message. However, some of Wulfstan’s small changes have legal implications too: VIII Atr 26 was copied verbatim into II Cn 41, except Æthelred’s *mæssepreost* (‘mass priest’) was turned into *weofodden* (‘altar servant’) in *II Cnut*, with the latter encompassing mass priests, bishops and deacons.¹⁹ Another linguistically minor, but legally significant, change is found at II Cn 40.2: ‘Cristenan kyningce gebyrað swyðe rihte þæt he Godes æbylgðe wrece swyðe deope...’ (‘It is very fitting for a Christian king that he should make good [on] offences against God...’). This is an exact copy of VIII Atr 35, except that the Æthelred version reads ‘Cristenum mannum gebirað swiðe rihte...’ (‘It is very fitting for Christian men...’). Such linguistically simple changes of subject

¹⁴ Homily 23 in A. Napier, *Wulfstan: Sammlung der ihm zugeschriebenen Homilien nebst untersuchungen über ihre echtheit* (Berlin, 1883), p. 117 (hereafter cited as ‘Napier’ and homily number).

¹⁵ I Cn 15.1/Cn 1018 14.1, also in VI Atr 22.1/V Atr 13–13.1. The Sunday law has parallels in Charlemagne’s *Admonitio Generalis* as well as in other Carolingian laws. We know that Wulfstan knew the *Admonitio* well: Bodleian Hatton 42 has annotations in what appears to be Wulfstan’s hand correcting the text of the *Admonitio* (as contained in Ansegis’ *Collectio*) against the copy of *Admonitio* contained in CCC 265; see Wormald, ‘Wulfstan and the Holiness of Society’, p. 240. It is possible that Wulfstan was influenced by Charlemagne’s laws, as I discuss below. For potential Frankish influence on Æthelred’s decrees, see Wormald, ‘Æthelred the Lawmaker’, p. 72.

¹⁶ ‘Be ðam þe seo dæd si’ is added in II Cn 30.4, 43, 45.2, 45.3, 46.

¹⁷ EGu 7.1: ‘Gif frigman freolsdæge wyrce, þolie his freotes oððe gylde wite, lahslite. Deowman þolie his hyde oððe hydgyldes.’

¹⁸ II Cn 45.1–2: ‘Gyf freoman freolsdæge wyrce, þonne gebete þæt mid his halsfange, 7 huru wið God bete hit georne, swa swa man him tæce. Deowman, gif wyrce, þolige his hyde oððon hydgyldes, be þam seo dæd sy.’

¹⁹ This is the definition of *weofodden* given in Wulfstan’s *Institutes*: see Jost, *Institutes of Polity*, p. 116.

has obvious implications for the content. Another vocabulary change is found in lawgiving verbs, which are consistently different between *V/VI Æthelred, Cnut 1018* and *I-II Cnut*.²⁰ As I discuss in the appendix, this change may have been done on stylistic grounds.

As these brief examples indicate, Wulfstan often relied on his own texts and he often included them verbatim. However, he also tweaked and adjusted them, sometimes to include more detail, sometimes seemingly just for emphasis or style. His tendency to recycle his own sentences even where the content was essentially different (such as in the sentences starting ‘it is fitting for a Christian king’ and ‘it is fitting for each Christian man’) could suggest that he was happier to copy than to compose anew. If the complexity of trying to explain these adaptations is anything to go by, making such changes might have taken some effort for Wulfstan too.

5.1.1.2 *Edgar and early Æthelred*

After his own texts, Wulfstan’s most important source is *II-III Edgar*. Even the prefatory opening lines of *I* and *II Cnut* are taken from *II* and *III Edgar* (*mutatis mutandis*). There is thus reason to suspect that the bipartite structure of *I-II Cnut* was also inspired by *II-III Edgar*. Wulfstan’s reliance on the actual text of *II-III Edgar* is most pronounced in *II Cnut*; *I Cnut* owes much to the themes and structure of *II Edgar* but less to the wording of the text. Across the code, a total of fifteen clauses have *I-II Edgar* as their only potential source, around ten of which are included verbatim.

The only verbatim use of *II-III Edgar* in *I Cnut* concerns tithes. Wulfstan copied Edgar’s statement on the non-payment of tithes (I Cn 8.2/II Eg 3.1), even though he did not use Edgar for the immediately preceding injunctions to pay tithes and other church dues (I Cn 8–8.1). The clause commanding payments (I Cn 8) was taken from Cn 1018 13–13.3 (which itself is from V Atr 11–11.1). Given that *Cnut 1018* does not contain any penalties, the sanction clause was an addition and it was lifted from II Eg 3.1.²¹ The clauses following the tithe injunction in *I Cnut* concern the same topics as the clauses following the tithe injunction in *II Edgar*, though Wulfstan did not copy Edgar’s language on these points. *I Cnut*

²⁰ The evidence for this is set out below on p. 200.

²¹ Though it is possible that Wulfstan copied Edgar’s penalty clause from VIII Atr 7–8 rather than from *II-III Edgar* directly.

also contains two laws resembling two of Edgar's (I Cn 11–11.2, 14.2/II Eg 2.2, 5) that are not found in any of the Æthelred decrees or *Cnut 1018*, though they are not copied verbatim.

Wulfstan's use of *II-III Edgar* in *II Cnut* was more extensive.²² In fact, only a few of Edgar's secular laws (i.e. those found in *III Edgar*) are not included in *II Cnut*. One of the clauses not copied is III Eg 2.1–2, which grants permission to appeal a case before the king if a judgment is too *befig* ('heavy') and states that a compensation payment cannot be higher than the offender's wergild. Wulfstan did, however, include the immediately preceding clause in *III Edgar* which concerns putting a case before the king (II Cn 17/III Eg 2). Furthermore, *II Cnut* does not cite *III Edgar*'s clauses on sureties (III Eg 6–6.2), though traces of it can be identified (II Cn 20a, 33–33.1).

Otherwise, Wulfstan copied everything he came across in *III Edgar*. He even seems to have taken linguistic inspiration from *Edgar*. In one instance (II Cn 16), Wulfstan used the opening line from a law of Edgar's (III Eg 3) to introduce a different topic. In another passage, Wulfstan recycled a phrase from Edgar ('hit for Gode gebeorglic sy 7 for worulde aberendlic'; III Eg 1.2) in a law which otherwise does not copy *Edgar* (II Cn 2). Similar linguistic influence is also found elsewhere. The law found at III Eg 7–7.3 concerns 'open thieves' and traitors and their punishment by death, and it is copied by Wulfstan at II Cn 26. Edgar's law is phrased awkwardly and with very unusual syntax. Not only did Wulfstan preserve this odd phrasing, but he even recycled it in the immediately following clause (II Cn 26.1), which is not taken from *Edgar* at all.

This law on open thieves and traitors is indicative of Wulfstan's reliance on *II-III Edgar* in other ways too. As mentioned, Wulfstan copied Edgar's exact law at II Cn 26. However, the same topics are covered again later in the code (II Cn 64) in much more detail, in clauses without any identifiable sources. This duplication might indicate that Wulfstan wanted to include as much of the text from *III Edgar* as he could, even if it meant repetition.

The early laws of Æthelred are also a significant source for Wulfstan. Around twenty passages appear to be taken from *I Æthelred*, and approximately fifteen of these are verbatim copies. These are clustered in the same section as the *Edgar* laws around II Cn 20–30. Just as with *II-III Edgar*, Wulfstan appears to have deliberately mixed and matched Æthelred's laws with other sources. We shall see just how intricate this process can be in the section on

²² That is to say, almost the entire text of *III Edgar* is used at various points in *II Cnut*, though it is possible, as mentioned, that there once existed a secular counterpart to *VIII Atr*, which could have been the intermediary stage between III Eg and II Cnut. This is argued in Wormald, 'Æthelred the Lawmaker', p. 59.

external sources below, where I will show how Wulfstan combined a longer passage from *I Æthelred* with inspiration from a canon law extract. *III Æthelred* seems only to have made its mark on the final section of *II Cnut*, the ‘mitigations’ – which will be discussed at length below – though it is never cited verbatim. The most significant similarity is in the phrase ‘uncwydd 7 uncrafod’, which is used in *III Atr 14* and *II Cn 72* in laws expressing the same thing, though the rest of *Æthelred*’s phrasing has not been copied.

5.1.1.3 *Alfred-Ine and Wibtræd*

Pre-tenth-century laws, including *Alfred-Ine* and *Wibtræd*, are only very occasionally copied verbatim. Yet, there are enough similarities to suggest that Wulfstan may have had these texts at hand. From *Alfred*, Wulfstan may have copied parts of the law on treachery, though he combined *Alfred*’s two separate clauses on treachery against the king (*Af 4*) and treachery against one’s lord (*Af 4.2*) into one clause that covers both (*II Cn 57*). Wulfstan also covered this topic in *V* and *VI Æthelred* (*V Atr 30* and *VI Atr 37*), so it is possible that Wulfstan used the text of these decrees rather than *Alfred* directly. However, the versions of the treachery laws in the *Æthelred* decrees are much longer than the one in *II Cnut*, perhaps making *Alfred* a more likely source. What is more, the section following the treachery law in *Cnut*’s code (*II Cn 58–9*) covers the same topics as *Alfred* does after its treachery law (*Af 3, 7*). Most other parallels to *Alfred* are also found in *II Cnut*, though none of these involve verbatim copying. However, the topical similarities are close enough to suggest that Wulfstan had *Alfred*’s laws in mind. This is the case for lending weapons (*II Cn 75, Af 19* (see also *Ine 29*)); double compensation payments during holidays (*II Cn 47, Af 5.5*); slander and its punishment (*II Cn 16, Af 32*), a general oath (*II Cn 21, Af 1*), and binding a freeman (*II Cn 60, Af 35*).²³

The only possible link to *Alfred* in *I Cnut* is tenuous, consisting only of the phrase ‘að and wedd wærlice healde’ (‘eagerly keep [one’s] oath and pledge’; *I Cn 19*). This phrase is used in the first law in *Alfred*, where it is commanded that everyone must keep their oath and pledge (*Af 1*). In *I Cnut*, Wulfstan used the phrase in a list of activities all Christians should perform, which otherwise includes protection of the faith, attendance at confession, practice

²³ Wormald proposed that *II Cn 60* was inspired by *Abt 24*, from which *Af 35* possibly derived (*MEL*, p. 361, fn 438). Wormald also proposed that the first half of *II Cn 60* – on disarming someone unlawfully – was taken from *Abt 18*. However, as far as I can tell, *II Cn 60* is about disarming a man (*beuapnian*), whereas *Abt 18* is about supplying a weapon to someone (*wepnum beberan*).

of penance, receipt of communion and right actions in words and deeds (I Cn 19, also in V Atr 22–22.1 and VI Atr 28). The general corpus of Old English texts indicates that ‘að and wedd’ is a frequent collocation. However, there is less evidence to suggest that the whole phrase ‘að and wedd wærlice healde’ was conventional: it occurs ten times in the corpus, once in *Alfred* and nine times in Wulfstan’s texts.²⁴ The consistent appearance of the same adverb (*wærlice*) combined with the same two nouns (*að* and *wedd*) and verb (*healde*) could indicate that Wulfstan borrowed the phrase from *Alfred*. What is more, there is another idiosyncratic phrase which signals that Wulfstan used the text of Alfred’s code in the composition of a homily; a homily which in fact also contains the ‘að and wedd wærlice healde’ phrase.²⁵ According to Wormald’s chronology of Wulfstan’s writings, this homily may have been written before Wulfstan’s lawmaking activities started, and so perhaps that is where Wulfstan first copied the code’s text.²⁶ That said, it is entirely possible that Wulfstan, after having used this phrase in multiple texts over the course of nearly two decades, no longer thought of it as Alfred’s phrase, but rather as his own.

Similarities between *Ine* and *I-II Cnut* are topical only. This is the case for the laws on Sunday work (*Ine* 3–3.2), since there is no trace of *Ine*’s language in Wulfstan’s treatment of the matter. That said, *Ine* may have been in Wulfstan’s mind for his writing of laws on topics such as liability for theft (*Ine* 57/II Cn 76), working on feast days or Sundays (*Ine* 3–3.2/II Cn 45–45.3) or letting a known thief escape (*Ine* 36/II Cn 29).²⁷

Wulfstan certainly used *Wibtræd*. That much is clear from the one law he copied verbatim and in full (II Cn 55/Wi 4) on unlawful marriages among foreigners. However, he does not copy *Wibtræd* on other shared topics, such as Sunday work (II Cn 45/Wi 9, 11). *II Cnut*’s clauses on Sunday work do, however, contain the word *folcfræo* (‘free, enjoying the rights of freemen’). This word is only otherwise found in *Wibtræd*’s law on manumission (Wi 8). In *II Cnut*, it is used to state that a servant who has been forced by his lord to work on a

²⁴ V Atr 22.1, VI Atr 28, I Cnut 19.1, WHom 13, WHom 20a, WHom 20b, Napier 30, Napier 37, *Institutes of Polity* §126.

²⁵ WHom XIII in Bethurum, *Homilies*, p. 229. Alfred’s prologue gives an idiosyncratic rendering of *decimas et primitias* in Ex 22:29, namely ‘frumgripan gangendes 7 weaxendes’ (‘first fruits walking and growing’). As far as I am aware, there are no other Latin or Old English sources that use this combination of ‘first fruits’ and participles to describe animals and crops, except for Alfred’s prologue and this Wulfstan homily. Indeed, these are the only two occurrences of the word *frum(g)ripan* in the corpus of surviving Old English texts.

²⁶ P. Wormald, ‘Archbishop Wulfstan: Eleventh-Century State-BUILDER’, in M. Townend (ed.), *Wulfstan, Archbishop of York: the Proceedings of the Second Alcuin Conference* (Turnhout, 2004), pp. 9–28, at p. 26.

²⁷ Other possible influences are on the topic of *reaflac* (‘robbery’) (*Ine* 10/II Cn 63) and church dues (*Ine* 4/I Cn 10.1). See also below for the possible influence of *Ine* on the penalties prescribed for oft-accused men (*Ine* 37/II Cn 30.4–5).

Sunday gets his freedom, which is the topic of the law immediately following the manumission clause in *Wibtræd* (Wi 9). It would not be surprising, therefore, if Wulfstan had used the text of *Wibtræd* for this clause.²⁸

5.1.1.4 *Æthelstan*

Æthelstan's laws may have influenced Wulfstan, though they are never copied directly. These proposed parallels are clustered between II Cn 22–37;²⁹ these clauses are close enough in topic to propose that Wulfstan had the text of II *Æthelstan* at hand. This is the case for II Cn 8.1 (cf. II As 14.1) on minting false coins and perhaps for II Cn 37 (cf. II As 10.1) on false witnessing. However, these shared concerns are phrased differently. This is also the case for II Cn 28.1 and II As 22.2 on the requirement to settle all legal cases before changing lords. This topic is also found in II *Edward* 7, but neither Æthelstan nor Wulfstan copies the language of II *Edward*. However, despite the lack of direct verbal links, Wulfstan's version of this law is constructed along the same syntactic lines as Æthelstan's and Edward's and contains the same information with the same placement in the sentence, and so it is plausible that he had consulted one of these texts at some stage. The influence of Edward's laws is otherwise non-existent.

5.1.1.5 *Omissions*

Though the amount of direct copying diminishes the further back in the corpus one goes, it nevertheless seems that Wulfstan had access to and used a number of older Anglo-Saxon law texts, including *Wibtræd*, *Alfred-Ine*, II *Æthelstan*, II–III *Edgar* and I *Æthelred*. He did not use *Æthelberht*, even though it is possible that he had access to this text in the same place as he had access to *Wibtræd*.³⁰ Perhaps he considered *Æthelberht* as subsumed into and replaced by Alfred's code. Some other texts are also conspicuous by their absence, namely I *Æthelstan*, I *Edmund* and IV *Edgar*. As we have seen, these are the only Anglo-Saxon law texts (not written by Wulfstan himself) copied out in any of Wulfstan's manuscripts, in addition to II–III *Edgar*.

²⁸ For Wulfstan's use of Kentish laws in other contexts, see Rabin, 'The Reception of Kentish Law'.

²⁹ E.g. at II Cnut 8.1, 13.2, 15a, 21, 22.3, 28.1, 29, 30–30.3, 37, corresponding to II As 14.1, 20.8 (x2), 1, 23.3, 22.2, VI As 6.3, 6. II As 10.1

³⁰ The unique surviving copy of the Kentish laws, *Textus Roffensis*, places Abt, Wi and Hl/Ea together, which makes it possible that Wulfstan's copy of *Wibtræd* also contained the other Kentish laws.

It also seems that he knew these texts well. As I have argued before, Wulfstan may have rewritten the original text of *I Æthelstan*,³¹ and he appears to have translated *IV Edgar* into Latin.³² What is more, as we saw in chapter 3, Wulfstan stated in one of his decrees for Æthelred (VIII Atr 43) that Æthelstan, Edmund and Edgar were model legislators. It would be natural to assume that Wulfstan would draw on their law texts when they covered topics he was interested in, such as tithes. Perhaps this indicates that he did not seek to compile all existing Anglo-Saxon laws on certain topics, but rather had a predetermined set of texts he was using. It is also possible that these texts held a different legal status than, for instance, *II-III Edgar*. As we saw in chapter 3, different processes appear to have produced *II-III Edgar* and *IV Edgar*, which might possibly be relevant to Wulfstan's use of them. As I indicated in the discussion of Alfred's code, there may have been a perception that only some kinds of material were suitable for codes.

5.1.2 Other texts

5.1.2.1 *Wulfstan's Homilies and Institutes of Polity*

Wulfstan's use of his own non-legislative sources matches his use of his own legislative sources. That is to say that it appears to have involved complex recycling and adjustment of material. A few examples of his adaptations and tweaking will suffice as a supplement to the work that has already been done on Wulfstan's adaptation of homilies for Æthelred's decrees.³³ Wulfstan's sources in this category include *Institutes of Polity*, homilies and 'Canons of Edgar'.³⁴ Establishing a secure chronology of Wulfstan's writings is almost impossible, and so it is not always clear whether he copied something from a homily into *I-II Cnut* or vice versa, especially where material exists both in homilies and older law texts. However,

³¹ See above on pp. 79–80 and Ivarsen, 'Æthelstan, Wulfstan and a Revised History of Tithes'.

³² Ivarsen, 'A Vernacular Genre?'

³³ See above on p. 142 fn 1 for previous work on Wulfstan's sources. A few examples of studies that concern both laws and homilies are D. Whitelock, *Sermo Lupi Ad Anglos* (London, 1952), pp. 51–2; C. Cubitt, 'On Living in the Time of Tribulation: Archbishop Wulfstan's *Sermo Lupi ad Anglos* and Its Eschatological Context', in R. Naismith and D.A. Woodman (eds), *Writing, Kingship and Power in Anglo-Saxon England* (Cambridge, 2017), pp. 202–33, at pp. 227–32; and Lionarons, 'Napier Homily L', pp. 413–28.

³⁴ For a recent assessment of the corpus of Wulfstan homilies, see J. Wilcox, 'The Dissemination of Wulfstan's Homilies: The Wulfstan Tradition in Eleventh-Century Vernacular Preaching', in C. Hicks (ed.), *England in the Eleventh Century: Proceedings of the 1990 Harlaxton Symposium* (Stamford, 1992), pp. 199–217, at p. 201.

given that *I-II Cnut* seems to have been written and issued only a couple of years before Wulfstan's death in 1023, most of his other writings would presumably pre-date *I-II Cnut*.³⁵

According to Wormald's table, there are fourteen clauses in *I-II Cnut* (using Liebermann's divisions) that contain passages found verbatim in *Institutes* and three that are similar.³⁶ There are sixteen passages with verbatim parallels in homilies and fourteen that are similar. There are four exact parallels with the 'Canons of Edgar'. Wormald's list can be supplied with the additional verbatim use of a homily at I Cn 15, 16, 18 (Napier 23, 51) and the verbatim use of *Institutes* at I Cnut 4.1–3.³⁷ As with the laws, there is some verbatim copying – in fact, the passages from *Institutes* are all copied verbatim³⁸ – but there is also a lot of tweaking.

The homilies with exact parallels in *I-II Cnut* are all of the type deemed 'too legal' by Bethurum.³⁹ It has been suggested that these homilies were compiled by Wulfstan for oral delivery at meetings where law texts were issued or made, which offers a very interesting way in which to consider the relationship between meeting and text, but one that unfortunately cannot be dealt with here.⁴⁰ The relevant homilies are Napier 23, 24, 50, 51 and 59, which have exact parallels at a total of eleven places in *I-II Cnut*. These are on issues such as consanguineous marriage, Sunday worship, the importance of loyalty and the remarriage of widows. It should be noted that many of these passages are also found in other texts. For instance, I Cn 6–6.1 is found in Napier 50, but it is also included in *VI Æthelred* and *Cnut 1018*. Therefore, it is not certain that Wulfstan lifted these passages from homilies rather than laws. That said, Wormald's list includes three passages where it seems that a homily is the only potential source,⁴¹ and this can be supplemented with I Cn 15, 16 and 18 which rely on Napier 51 and Napier 23, as I will show below.⁴²

³⁵ Wormald's chronology of Wulfstan's works is found in Wormald, 'Wulfstan: Eleventh-Century State-Builder', pp. 26–7.

³⁶ Again, these numbers are adjusted from the table on the sources of *I-II Cnut* in Wormald, *MEL*, pp. 356–60.

³⁷ Jost, *Institutes of Polity*, pp. 104–5.

³⁸ The verbatim quotations from *Institutes* are found in the 'homiletic' passages (see table 3 and below, section 5.2.1) at the end of *I Cnut* and *II Cnut* (I Cn 26–26.4, II Cn 84–84.4b) and at the start of *I Cnut* (4.1–3).

³⁹ Bethurum, *Homilies*, pp. 36–41.

⁴⁰ Lionarons, *The Homiletic Writings*, pp. 164, 170–1; Jost, *Wulfstanstudien*, pp. 104–7.

⁴¹ I Cn 20–20.2, 21, 23 copied from Napier 24 and 59.

⁴² Napier 51: 'Open þyðe and hlaforðes searwu and abære morð æfter woruldlagu is botleas þing' (Napier, *Wulfstan*, p. 274); II Cn 64: 'Husbryce 7 bærn 7 open þyð 7 æbære morð 7 hlaforðswece æfter woruldlage is botleas.' *Botleas* is used for the first time ever in III Atr, which states that breaching the king's peace is *botleas*, i.e. that it cannot be atoned for with money (*bot* 'compensation'). VIII Atr and I Cn both state that breaching the church's peace is *botleas*, though no other law text contains the list found in II Cn 64. Lionarons suggested that the *botleas* clause found in Napier 51 and II Cn 64 was originally part of the hypothetical secular counterpart

The following examples, not identified by Wormald, can illustrate the ways in which Wulfstan used the text of his homilies. Firstly, as I showed above, the legislation on Sundays in *I Cnut* (I Cn 14.2–15.1) combined text from Napier 23 with text from Æthelredian decrees and *Cnut 1018*. The same is the case for I Cn 16–17. These clauses are an exact match with a passage in Napier 23, and both *I Cnut* and Napier 23 represent a slightly changed version of II Eg 5.1. The only difference between I Cn 17 and Napier 23 is that the homily gives a date in Latin (*octabas epiphanie*) and the laws in Old English (*se eahtan dæge ofer Twelftan mæssedage*).⁴³ A similar (but not identical) law in *Cnut 1018* gives the date in Latin (Cn 1018 15). The following sentence (I Cn 17.1) is not in Napier 23, but has been lifted from *Cnut 1018*.⁴⁴ I Cn 18 and 18a are again identical to Napier 23. Wormald proposed that Napier 23 was written before *I-II Cnut*, and if so, Wulfstan seems to have preferred the way he phrased the idea in the homily over the way he phrased it in the laws. Where the homily was lacking material, however, he supplemented passages from his older law texts.

Wormald listed similarities to other homilies (including Bethurum’s homilies VII, Xc, XII, XIII, XX), but these parallels are mostly very general and none are copied verbatim. The similarities to these homilies are clustered at the end of *I Cnut* and at the start of *II Cnut*, and concern topics such as being prepared for judgement day (I Cn 18), knowing the Pater Noster (I Cn 22), and the various kinds of sinners (II Cn 6–7). A potentially closer parallel is found in the ‘mitigations’ section at the end of *II Cnut* (II Cn 73–4/76.2). The relevant clauses specify the required waiting period before a widow remarries (II Cn 73–4). A parallel is found in *Sermo Lupi*, the well-known Wulfstan homily written in response to Danish attacks, perhaps dating to around 1014.⁴⁵ A passage at the start of this homily lists a range of illegalities Wulfstan had identified among the English. One of these is that widows are married off wrongly and by force.⁴⁶ This could be related to *II Cnut*, though there is nothing connecting them in language and it could have been a general concern.⁴⁷

to VIII Atr (as suggested by Wormald), and that Napier 51 could have been compiled by Wulfstan for oral delivery alongside this law text in 1014; see Lionarons, *The Homiletic Writings*, p. 171.

⁴³ I have discussed the potential significance of giving dates in Latin versus the vernacular in Ivarsen, ‘A Vernacular Genre?’.

⁴⁴ The passage is found in Cn 1018 14.6, and it also appears in VI Atr 23.1 (in CCCC 201) and V Atr 16.

⁴⁵ For a discussion of the different versions of *Sermo Lupi*, see Cubitt, ‘Time of Tribulation’, pp. 217–20.

⁴⁶ The relevant passages are found in all three versions of *Sermo Lupi*; see Bethurum, *Homilies*, pp. 256, 262, 269.

⁴⁷ Hollis argued that the protection of widows was a general concern and that the connections between the widow laws in the mitigation section need not have anything to do with Wulfstan’s own concern for widows: S. Hollis, ‘“The Protection of God and the King”: Wulfstan’s Legislation on Widows’, in M. Townend (ed.), *Wulfstan, Archbishop of York* (Turnhout, 2004), pp. 443–60.

There is another potential textual parallel to *Sermo Lupi*. The relevant passage in the homily is in one of Wulfstan's numerous lists of sinners and sins. These occur in almost all his law texts and many of his homilies. Although they are rarely identical, there are some patterns. One frequent collocation is *hadbryca* ('injury done to a person in holy orders') and *æwbryca* ('adultery') found, for example, in Napier 50, V Atr 24 and VI Atr 28.2. In *Sermo Lupi*, *hadbryca* and *æwbryca* are uniquely followed by *sibleger* ('incest').⁴⁸ The similarity to the law code is not found in a list of sinners – though they do appear elsewhere in the code⁴⁹ – but in a cluster of laws that mirror the list in *Sermo Lupi*: 'Gif hwa hadbryce gewyrce...' (II Cn 49); 'Gif hwa æwbryce gewyrce...' (II Cn 50); and 'Gif hwa sibleger gewyrce...' (II Cn 51). These are followed by the appropriate sanctions. In *II Cnut*, Wulfstan thus appears to be filling in some more legal detail to the list found in *Sermo Lupi*. That said, it is entirely possible that this was not done with the text of *Sermo Lupi* in mind.

5.1.2.2 *Non-Wulfstan texts*

From other texts and manuscripts associated with Wulfstan, we know that he often relied on Ælfric's texts.⁵⁰ We also know he had access to a range of continental texts, both legal and otherwise, including Ansegis' collection of Carolingian capitularies, *Admonitio Generalis*, some church council decrees, Alcuin's letters, canon law, penitentials, *Collectio Canonum Hibernensis*, *Excerpta de libris Romanorum et Francorum*, the Benedictine rule, and much more.⁵¹ As will become clear in this section, Wulfstan appears to have been influenced by such texts, especially those found in his canon law collection, though nothing in this category appears to have been quoted directly in *I-II Cnut*.

Firstly, let us look at what is missing. No Ælfrician text appears to have been used in making *I-II Cnut*. Nor is there anything detectable from another (possibly) expected source, namely the Bible. Some of the lists of sinners reproduced in *I-II Cnut* are ultimately based on the Bible (e.g. 1 Tim 1:9–10 and Revelation 22:15), but versions appear in a number of

⁴⁸ In version WHom XXa and XXc: Bethurum, *Homilies*, pp. 258, 272.

⁴⁹ E.g. II Cn 6: 'Manslagan 7 manswaran, hadbreca 7 æwbreca'.

⁵⁰ For a list of the Ælfric texts used by Wulfstan as sources elsewhere, see M. Godden, 'The Relations of Wulfstan and Ælfric: A Reassessment', in M. Townend (ed.), *Wulfstan, Archbishop of York* (Turnhout, 2004), pp. 353–74, at pp. 363–4.

⁵¹ The texts and manuscripts available to Wulfstan are listed in chapter 3, see above on p. 99 and fn 90, and those made or used by Wulfstan are covered in the introduction; see above on pp. 14–5.

homilies and law texts, from which the relevant passages in *I-II Cnut* derive.⁵² Similarly, there does not seem to be anything directly quoted from any of Wulfstan's canonical sources.

While no such external texts appear verbatim in *I-II Cnut*, there are potential traces of Wulfstan's canon law collection.⁵³ One such influence might be the mention of 'rocks, trees and founts' as places of worship for heathens (II Cn 5–5.1). The passage in question is the only one at the start of *II Cnut* that does not have a parallel in *Cnut 1018* or any *Æthelred* law. It could be that it was influenced by a law of Charlemagne's on the same topic, which was copied as part of Wulfstan's collection of canons.⁵⁴ Charlemagne's influence on *Cnut's* code could have been mediated through Wulfstan's text 'Canons of Edgar', which also mentions worship of 'rocks, trees and wells' as a heathen practice.⁵⁵

Another potential influence is from a short extract known as 'De inproiuiso iudicio secularium' found in some versions of the canon law collection. It seems to have influenced a passage on a man who is *ungetreow* ('untrustworthy') and *tibthysig* ('often-accused') and who is then accused by three people together (II Cn 30.4–5). The start of this lengthy passage is a verbatim rendering of I Atr 1.5–6.⁵⁶ However, where *I Æthelred* prescribes the death penalty for a second act of recidivism, Wulfstan stated in *Cnut's* code that 'there is no other compensation – if he is proven guilty – than that his hands or feet or both are chopped off' (II Cn 30.4). Wulfstan went on to say that the offender who does *gyt mare wurc* ('still more wrongdoing') should have his eyes taken out, his nose, ears or upper lip cut off or be scalped (II Cn 30.5). The rationale behind this penalty is that it allows the offender to *sawle beorga* ('protect the soul').

There is no identifiable source for Wulfstan's wording in II Cn 30.4–5. A law in *Ine* states more or less the same, namely that an often-accused offender who is proven guilty at

⁵² E.g. II Cn 6–7. For more on such lists, see Cubitt, 'Time of Tribulation', pp. 222–4.

⁵³ The canon law manuscripts are listed in the introduction; see above on pp. 14–15 and fns 24 and 26. Elliot discussed whether Wulfstan may have authored some of the extracts in this collection; see M.D. Elliot, 'New Evidence for the Influence of Gallic Canon Law in Anglo-Saxon England', *The Journal of Ecclesiastical History* 64 (2013), pp. 700–30, at pp. 715–7. It seems to be entirely plausible that he may have, and perhaps the citations and influences from the canon law collection should be classified among Wulfstan's use of his own texts. However, given that it is essentially impossible to say, and because a large part of the texts in the collection are reproductions of continental texts, I will treat them as non-Wulfstan texts.

⁵⁴ This law from Charlemagne's is found in the canon law collection in CCC 265, p. 85. A transcription of the relevant part of this manuscript can be accessed from individual.utoronto.ca/michaellliot/, where it is listed as *Collectio Wigorniensis C*. The relevant passage is on p. 50, ch. 178. The law is originally from Charlemagne's *Admonitio Generalis* (ch. 65), from where it was copied into Ansegis' collection of capitularies (I. 62).

⁵⁵ Fowler, *Wulfstan's 'Canons of Edgar'*, pp. 4–5 (§16). Fowler listed some of the parallels and potential sources for this passage in 'Canons' on pp. 26–7.

⁵⁶ II Cn 30–30.1, 30.3b and parts of 30.4 are the same as I Atr 1.2–1.5. There is some added detail in *II Cnut* on, for instance, the recipient of the *wergeld* payment prescribed (II Cn 30.3b/I Atr 1.5).

the ordeal should lose a hand or a foot (Ine 37), but there is no trace of the language of *Ine* in Wulfstan's version.⁵⁷ What is more, a passage with essentially the same message is found in V Atr 3–3.1 and Cn 1018 5, which specifies that one should not squander the souls wrought and bought by Christ. However, this passage is copied as II Cn 2.1 and its wording is not detectable in II Cn 30.4–5.

Instead, a potential source for Wulfstan's thinking in II Cn 30.4–5 is 'De inprouiso'. It too contains the idea that corporal punishment protects the souls that Christ bought and both prescribe (many of the same) mutilations as an alternative preferable to the death penalty.⁵⁸ While there is little trace of the precise language of 'De inprouiso', the theological underpinnings and logic are exactly the same. Even more importantly, it seems that Wulfstan had worked actively with this passage when writing *V* and *VI Æthelred* (Old English and Latin), all of which preserve what appears to be direct verbal links to 'De inprouiso'.⁵⁹ In fact, we saw some of these connections above in a passage quoted in chapter 3 and its discussions of *VI Æthelred*: some of the biblical citations used to treat mercy in judgment in the Latin version of *VI Æthelred* may have been taken from 'De inprouiso'.⁶⁰ When such thoughts on the protection of souls and Christian mercy were transferred to *I-II Cnut*, the verbal connections to 'De inprouiso' disappeared, but the theological notions underlying the law remained the same. All in all, then, it seems that Wulfstan copied out a law from *I Æthelred* almost in full, adapting only the middle part. Presumably this adaptation was made because he did not agree with the original's prescription of the death penalty. In this respect, his thinking would seem to have been influenced by a canonical stipulation.

As this example suggests, the texts in Wulfstan's canon law collection may have influenced Wulfstan's writing of *Cnut's* code but he did not quote them. This discussion has

⁵⁷ For the reference to the ordeal in this law of Ine's, see Ivarsen, 'The Latin Law-Code of King Ine'.

⁵⁸ The connection between 'De inprouiso' and II Cn 30.4–5 was first pointed out by Whitelock, 'Wulfstan and the Laws of Cnut', p. 449. It has later been expanded upon in K. O'Brien O'Keefe, 'Body and Law in Late Anglo-Saxon England', *Anglo-Saxon England* 27 (1998), pp. 209–32, at pp. 216–7. A lengthy discussion of the development of Wulfstan's ideas on the death penalty – including a discussion of influence and use of the canon law collection – is found in Foxhall Forbes, *Heaven and Earth*, pp. 172–89, and see esp. pp. 185–8 for the relevant canonical passages. 'De inprouiso' is found in CCC 190, CCC 265, Cotton Nero A.i (B) and Bodleian Barlow 37; see Elliot's transcriptions at individual.utoronto.ca/michaellliot/. The version in Cotton Nero A.i(B) is printed in O'Brien O'Keefe, 'Body and Law in Late Anglo-Saxon England', pp. 216–7.

⁵⁹ 'De inprouiso' has several verbatim connections to V Atr 3–3.1 (and thus I Cn 2.1), including the phrase 'þæt man Cristene men for ealles to lytlum to deaðe ne fordeme' (V Atr 3–3.1); cf. 'pro modico commissio homines statim morti adiudicant' ('De inprouiso'). There are also some textual connections to VI Atr Lat 10.1, which uses some of the same biblical citations as 'De inprouiso', see following footnote.

⁶⁰ See above on p. 98 for the text of *VI Æthelred Latin* 10–10.1 in full. Both this chapter and 'De inprouiso' give an unusual version of II Cor 6:9 combined with Matt 7:2 (found in 'De inprouiso' in MS Barlow 37).

also illustrated a general trend: that there are many more linguistic parallels between Wulfstan's canons and his earlier decrees for Æthelred. For instance, Wormald identified the first part of *V Æthelred* as Old English versions of canons from Wulfstan's canon law collection.⁶¹ As chapter 3 showed, *VI Æthelred Old English/Latin* are also indebted to external sources, including some from the canon law collection. In short, it seems as though canons and other 'external' texts had an influence on *I-II Cnut*, but only as mediated through Wulfstan's earlier texts.

5.1.3 Conclusion: Sources

Wulfstan is renowned for constantly revising his own texts.⁶² As we have just seen, this is certainly his *modus operandi* when making Cnut's code. Indeed, *I-II Cnut* is to a large extent made up of texts written by Wulfstan himself (both laws and other texts), supplemented by *II-III Edgar* and *I Æthelred* and occasionally other texts. Wulfstan seems to have used the texts of *II-III Edgar*, *I*, *V*, *VI*, *VIII Æthelred* and *Cnut 1018* directly. He may also have had the text of *Wibtræd*, *Alfred-Ine*, *II Æthelstan* and *III Æthelred* at hand, given that the code contains exact or close reproductions of some of their content. Wulfstan also appears to have used his homilies, though given the complex relationship between Wulfstan texts, it is difficult to say whether he used the text of these directly or whether he had, say, notes and drafts containing some of the shared passages. As the example above indicated, Wulfstan does not at any point appear to quote external or originally Latin sources in Cnut's code, even though he seems to have done so in Æthelred's decrees. There are undoubtedly ideas influenced by such texts contained in *I-II Cnut* – as well as some more specific parallels – though there is no indication that Wulfstan worked with these texts at hand when composing *I-II Cnut*.

⁶¹ Wormald, *MEL*, p. 455 and 'Wulfstan and the Holiness of Society', p. 240.

⁶² Examples of Wulfstan's adaptations are given in Orchard, 'Crying Wolf', pp. 240, 251. Michael Elliot described Wulfstan's methods 'highly revisional' in the context of his canon law collection; 'Wulfstan's Commonplace Book', pp. 6–7 and Cubitt noted that Wulfstan's reuse of certain themes in homilies 'is not routine cut and paste'; 'Time of Tribulation', pp. 221–4.

5.2 Part II: Structure

This mass of material was organized in several ways. Firstly, the code is divided into two parts: one ecclesiastical (*I Cnut*) and one secular (*II Cnut*). Secondly, these parts are divided into blocks. Some of these are thematically unified in that they broadly concern the same legal topics (e.g. procedure and judicial meetings or offences committed during holy times or in sacred spaces). I will refer to these as ‘regulatory’ blocks. Other blocks deal with a wide-ranging and disparate group of issues, but are unified in their linguistic style and rhetorical register. These are what I call ‘homiletic blocks’. Both *I* and *II Cnut* consist of several such ‘homiletic’ and ‘regulatory’ sections, as table 3 shows. I will begin by setting out the characteristics of the homiletic blocks, showing how they are distinct from the regulatory ones. Thereafter, I will show how these blocks are combined and structured.

5.2.1 ‘Homiletic’ and ‘regulatory’ blocks

As we saw above, Wulfstan used his homilies in his laws and vice versa, and so there is some danger in calling certain parts of the code ‘homiletic’ and others ‘regulatory’. Firstly, it should be made clear that these designations have nothing to do with the types of sources Wulfstan drew on to write them. That is to say that it is not a defining criterion of a homiletic section that it contains material taken from a homily. Rather, the differences between the two types of section are in their respective rhetorical registers and legal content.

In terms of content, the homiletic blocks are characterized by a lack of earthly sanctions and procedural explanations. Their injunctions may imply an outcome, such as in, for example, II Cn 7: ‘Licceteras 7 leogeras, ryperas 7 reaferas Godes graman habban, butan hig geswican 7 þe deoppar gebetan’ (‘Hypocrites and liars, plunderers and robbers will incur God’s anger, unless they desist and make amends more deeply’). However, they do not contain information on the penalties or processes involved. The difference becomes clear if we compare it to another law on the same topic: ‘Gif hwa reaflac gewyrce, agyfe 7 forgyldde 7 beo his weres scyldig wið þone cing’ (‘If anyone commits robbery, let him return and pay for [the stolen goods] and he must pay his wergeld to the king’; II Cn 63). The outcome of the exhortative version, God’s anger, may be a deterrent comparable to that of the wergeld payment, but it offers little concrete instruction. What is more, the homiletic sections do not

Cnut's law code		
I Cnut	2380 words	
I Cn 1–3.2		Regulatory block on ‘church peace’ and its breaking.
I Cn 4–4.4		Homiletic block on the duties and importance of priests, commands respect for the ranks of the clergy.
I Cn 5–6.2		Regulatory block on accusations against various ranks of the clergy, feuding against clergy, clergy and false witnessing, as well as sexual rules for clergy.
I Cn 6.3–17.3		Regulatory block on ecclesiastical matters pertaining to the laity, such as tithes, marriage/sexual rules, feasts and fasts, addressed to ‘each Christian man’.
I Cn 18–25		Homiletic block addressing the needs and duties of ‘each Christian man’, including avoiding sin, following the golden rule, and loving and fearing God, loyalty to worldly and heavenly lord.
I Cn 26–26.4		Homiletic block concerning the duties of bishops in the transmission of God’s law.
II Cnut	4800 words	
II Cn 1–11.1		Homiletic block on correct ordering of the land, spiritually and physically and the <i>clænsige</i> ‘cleansing’ of the land; lists of sinners; protection of Christian souls; coins, weights and measures. Concludes with ‘Amen’ in Cotton Nero A.i (A) and CCC 383.
II Cn 12–16		Regulatory block
17–37		1. (Some of) the king’s rights
37–55		2. Procedure (courts, oaths, witnesses, surety, perjury, trustworthiness, etc.)
54–66.1		3. Offences committed against/by people in ecclesiastical ranks or during holy period, sexual offences.
II Cn 67–68.3		4. Major offences (murder, theft, treachery, assault/fighting, breaches of peace and protection, neglect of public works, etc.)
II Cn 69–83.2		Homiletic block on mercy, justice, and unintentional and involuntary crimes.
II Cn 84–84.6		Regulatory block on <i>libtingc</i> ‘mitigation’.
II Cn 84–84.6		Homiletic block on bishops, importance of being guided by those who are the teachers of God’s law.

Table 3: The content of Cnut’s code

usually specify illegal acts, but rather make general observations about pre-defined categories of people through lists of nouns such as the one just quoted. There is only one exception. II Cn 8 is in the middle of a homiletic section, though it specifies a sanction for minting false coins (loss of a hand) and the procedures through which the offender can clear himself.

The homiletic sections are distinct in their rhetorical register too. They are written in Wulfstan's 'high' or 'impassioned' style.⁶³ The observation that there were different stylistic levels in Wulfstan's homilies was first made by Bethurum, and Ida Hollowell later identified some of the linguistic characteristics underlying his 'high style' and 'low style'. The high style is characterized by longer clauses, more main than subordinate clauses, more nouns than verbs and a frequent occurrence of subordinate clauses with a 'low content level'.⁶⁴ Hollowell's observations on the sentence level can be supplemented with similar features on the word and phrase level: Bethurum pointed to the use of parallelisms and repetitions in words and sentences, alliteration and rhyme, intensifying words, and tautologies and pleonasm.⁶⁵ The high style is designed, in Richard Dance's words, to 'hammer home' the message.⁶⁶

An illustration of these different style levels in *I-II Cnut* is provided by the transition between a regulatory section ending at II Cn 66.1 and a homiletic section starting at II Cn 67:

To cyricbote sceal eall folc fylstan mid rihte. Gif hwa Godes flyman hæbbe on unriht, agyfe hine to rihte 7 forgilde þam þe hit gebyrige, 7 gylde þam cingce be his weregylde. Gif hwa amansodne man oððe utlahne hæbbe 7 healde, plihte him sylfum 7 ealre his are. (II Cnut 65.1– 66.1)

And gif hwa wylle georne fram unrihte gecirran eft to rihte, miltsige man for Godes ege, swa man best mæge þam swyþe georne. 7 utan don swa us þearf is helpan aa þam raþost þe helpes betst behofað; þonne nime we þæs lean þær us leofast byð. Forðam a man sceal þam unstrangan men for Godes lufe 7 ege lipelicor deman 7 scrifon þonne þam strangan. Forþamðe ne mæg se unmaga þam magan, we witon full georne, gelice byrðene ahebban, ne se unhala þam halan gelice. (II Cnut 67– 68.1)

⁶³ 'Impassioned style' is Bethurum's term, though she also refers to it as 'genus grande' (*Homilies*, p. 89). Hollowell prefers the label 'high style' in her 'Linguistic Factors Underlying Style Levels in Four Homilies of Wulfstan', *Neophilologus* 61 (1977), pp. 287–96, at p. 288.

⁶⁴ Hollowell, 'Linguistic Factors', pp. 288–9.

⁶⁵ Bethurum, *Homilies*, p. 90. Hollowell emphasized that such 'figures of sound' are more pervasive in the high style ('Linguistic Factors', p. 290). For further characteristics of Wulfstan's language, see Orchard, 'Crying Wolf'.

⁶⁶ Dance, 'Sound, Fury, and Signifiers', p. 56.

All people should contribute correctly to repair of the church. If anyone wrongfully keeps God's fugitive, he should give him to justice and pay to whom it belongs and pay the king his wergeld. If anyone keeps and maintains an excommunicated person or an outlaw, he puts himself and his possessions in danger [of forfeiture].

And if anyone wishes eagerly to turn from wrongdoing thereafter to justice, one should very readily show him mercy for fear of God, as one is best able to. And let us do as is most beneficial for us, namely always be quickest to help those who are most in need of help, and then we shall get the reward where it is most dear to us. Because one should always judge and prescribe penance more leniently for unstrong men – for love and fear of God – than for strong men. Because we know full well that the weak cannot carry the same burden as the strong, nor the sick the same as the healthy.

The homiletic part (II Cn 67–68.1) is distinctly in the high style: it has a number of parallelisms, many of which are opposing pairs ('lufe 7 ege', 'unmaga 7 maga', 'unhala 7 hala', 'unstrang 7 strang'). These pairs also illustrate the preference for nouns (or, in this case, adjectives functioning as nouns), which Hollowell identified as a linguistic trait of the heightened style. What is more, nearly all the subordinate clauses in this homiletic passage contain non-essential information ('swa man best mæge', 'swa us þearf is', 'we witon full georne').⁶⁷ These exemplify what Hollowell called subordinate clauses with low content value, because they 'merely intensify the idea' of a nearby clause rather than say something new.⁶⁸ In addition, the passage employs a range of Wulfstan's favourite intensifiers, including *georne* ('eagerly'), *full* ('completely'), *swyþe* ('very') and *a* ('constantly'). It also features what Bethurum identified as sentence parallelisms, in the repetition of *forðam* ('because') introducing the two sentences setting up the different opposing pairs. In addition, the tautology of the final two sentences certainly seems designed to hammer home what has already been said.

A passage in the opening section of *II Cnut* illustrates features of Wulfstan's high style on the level of individual words:

Dæt is þonne ærest þæt ic wylle þæt man rihte laga upp arære 7 æghwylc unlaga georne afylle, 7 þæt man aweodige 7 awyrtwalige æghwylc unriht, swa man geornost mæge, of þysum earde, 7 arære up Godes riht. (II Cn 1)

⁶⁷ 'As he is best able', 'as is beneficial for us', 'as we well know'.

⁶⁸ Hollowell, 'Linguistic Factors', p. 290.

Firstly, I wish that everyone should raise up just law and strike down any violation of the law and that everyone should root out and eradicate all wrongdoing from this earth, as zealously as one can, and exalt God's law.

There is alliteration on 'w' in *aweodige*, *awyrtwalige* and *æghwylc*. This passage also illustrates Wulfstan's fondness for word repetition, seen in *arære* and in the use of *riht* in almost every sense of the word (*rihte laga* 'just law', *Godes riht* 'God's dues', *unriht* 'wrongdoing'). Finally, the passage shows his predilection for parallelisms, such as 'rihte laga upp arære 7 æghwylc unlaga georne afylle' and 'aweodige 7 awyrtwalige æghwylc unriht... 7 arære up Godes riht'. Finally, there might be an instance of chiasmus in 'rihte laga upp arære....arære up Godes riht'.

In general, there is no one source which provided Wulfstan with the blocks in homiletic style. The first and last homiletic blocks in *I Cnut* (4–4.4/26–26.4) were lifted from the *Institutes*, but the next one (I Cn 18–25) is partly from *Cnut 1018*, partly from homilies (Napier 23, 24 and 59) and partly unattributable. The opening homiletic block in *II Cnut* consists of extracts from *Cnut 1018* as well as unattributable material, and the section given above (II Cn 67–68.3) is wholly without identifiable sources. The final homiletic block of *II Cnut* (84–84.6) is made up of partly copied and partly rewritten material from the *Institutes*. So while there are sources for many of the individual sentences making up the homiletic block, their clustering in distinct sections in *I-II Cnut* has no direct source.

Lawson suggested that the homiletic tone of Wulfstan's decrees for Æthelred arose from the fact that the texts 'were grounded in preaching'.⁶⁹ His assessment was based on the description of the Enham meeting contained in *VI Æthelred Latin*, and he suggested that most of this text represents the archbishops' admonitions mentioned in the preface.⁷⁰ However, this does not seem to be the case for *I-II Cnut*. As I have argued throughout, in their extant form the codes are not records of meetings. Indeed, the fact that the homiletic sections in *I-II Cnut* are copied from other written texts suggests that they are not examples of spontaneous oral preaching at a meeting. They appear to be textual compositions, whether made for the code or for some other purpose. It could be, as Lawson suggested, that the homiletic element is present in *I-II Cnut* because the code was intended to be read out for

⁶⁹ Lawson, 'Wulfstan and the Homiletic Element', pp. 576–7.

⁷⁰ Lawson, 'Wulfstan and the Homiletic Element', pp. 573–7.

the *witan*.⁷¹ However, it is also possible that Wulfstan included it as a feature intended for the written version as much as its oral performance.

5.2.2 Thematic structure

Having identified these two style levels and their associated sections in *I-II Cnut*, we are in a better position to make sense of the thematic structure of Cnut's code. As table 3 shows, there are three homiletic blocks each in *I* and *II Cnut*. Each of these appears to be thematically related (to a greater or lesser degree) to adjoining regulatory blocks. A homiletic block concerning the importance of respecting the ranks of the clergy is followed by procedural regulations pertaining to the various ranks of the clergy (I Cn 4–4.4/I Cn 5–6.2). The worldly duties of 'each Christian' – paying tithes, avoiding adultery, keeping the fast – is followed by a lengthy section on the inner duties of 'each Christian', which include fearing God and knowing one's faith (I Cn 6.3–17.3/I Cn 18–25). The mitigations at the end of *II Cnut* are preceded by homiletic material on justice, mercy and the role of intention (II Cn 67–68.3); the mitigations themselves concern the role of intention and it contains expressions of the king's justice and mercy through protection of property and protection of the weak. The final blocks of both *I* and *II Cnut* emphasize the importance of listening to bishops and their instructions, and these admonitions could have been intended to encourage observance of the code as a whole. Overall, the thematic range is sometimes rather broad. For example, the homiletic block at the start of *II Cnut* concerns the correct ordering of the land and includes a call to 'cleanse' it of sinners and illegalities (II Cn 1–11.1). The following regulatory block concerns procedural matters (oaths, witnessing, courts, sureties and so on) and major offences (murder, theft, treachery, arson and so on). However, both sections would appear to present the same message: there are benefits to observing uniform and correct law and procedure.

The scheme outlined above – which takes the two different kinds of blocks into account – looks tidier than previous attempts to reconstruct the structure, which have been based on topic alone.⁷² What is more, it can also resolve some structural inconsistencies.

⁷¹ Lawson, 'Wulfstan and the Homiletic Element', p. 583.

⁷² Previous attempts to find a structure have been made by Korte and Wormald. The sections identified (for *II Cnut*) by Korte are: II Cn 1–37 (on 'peace in the land through administration of justice'), II Cn 38–56.2 (on 'protecting the church and securing its rights through secular law'), II Cn 57–69 (on treachery, breaches of protections, house-peace), and II Cn 70–83 (the alleviations, meant 'to adapt temporal rights to God's will');

Wormald noted that the first mention of burghal and military obligations (II Cn 10) was strangely far apart from the second mention (II Cn 65).⁷³ This distance makes more sense within the homiletic/regulatory framework: the first mention is part of a homiletic block urging conformity and order of society, while the second is part of a regulatory block concerning major offences. The same is the case for clauses on murder (II Cn 4a/II Cn 56) and similar duplications. Some such inconsistencies in structure led to the most pessimistic view of the structure of *I-II Cnut*, namely that of Mary Richards. She considered *I Cnut* to be a focused summary of Wulfstan's thoughts on ecclesiastical law (his *summa*), but that *II Cnut* represented Wulfstan '[struggling] to control a mass of material', proposing that *II Cnut* may be closer to a draft version.⁷⁴ In light of the seemingly well-planned blocks presented here, such a negative view may be unnecessary.

That said, the structure of *I-II Cnut* does not always make sense on a more detailed level. This is especially the case for the internal structure of some blocks. For instance, the long regulatory block in II Cn 12–66.1 has four further thematic sub-sections, as table 3 shows. The transition between topics is not always smooth, and may be guided by thought-association rather than a clear structural plan. For instance, there is not much logic to the transition between the subsection on procedure (II Cn 17–37) and the subsection on ecclesiastical matters (II Cn 38–55). The procedural section concerns witnessing, sureties, courts and so on, and the emphasis of the ecclesiastical section is on sexual offences and offences committed against/by people in ecclesiastical ranks. The transition between the two is made through a passage on perjury and false witnessing. It could perhaps be explained by thought association: the final clause of the procedural section (II Cn 36) concerns false oaths sworn *on haligdom* ('on relics'), noting the importance of the offender making deep amends to God. There is not a massive logical leap to the first clause of the ecclesiastical section, which is on offences taking place during holy times or in holy places (II Cn 38). A similar thought-association might account for the transition between the subsection on the king's rights (II Cn 12–16) and procedural matters (II Cn 17–37), as the first clause of the procedural section concerns the circumstances under which someone is allowed to bring a

Korte, *Untersuchungen*, pp. 95–8. Wormald's structure is: *I Cnut*: (1) church peace, (2) standards of sexual purity, (3) feasts, fasts, regular penance, (4) homiletic ending. *II Cnut*: (1) principles of justice, heathen practices, money + a 'mini-homiletic summary', (2) judicial organization prefaced by the king's rights, (3) church's status, penalties for defiance of church's commands, (4) major crimes, (5) review of circumstances, (6) alleviations, and (7) homiletic ending; *MEL*, pp. 354–5.

⁷³ Wormald, *MEL*, p. 355.

⁷⁴ Richards, 'I-II Cnut: Wulfstan's *Summa*?', esp. pp. 146–7.

case before the king (II Cn 17). Such awkward transitions – as well as some other inconsistencies⁷⁵ – led Wormald to propose that Wulfstan was more conscious about creating blocks of content than with the overall structure of the blocks.⁷⁶ That might be so, but in other ways the overall structure seems deliberate; that much is suggested by the thematic coherence between adjacent regulatory and homiletic blocks.

The final regulatory block in *II Cnut* – the mitigation (*lihtingc*) section (II Cn 69–83) – has received much attention. Its distinctiveness sheds further light on the compilation process and Wulfstan’s method. Firstly, it is distinct in having its own mini-preface: ‘Þis is þonne seo lihtingc þe ic wylle eallon folce gebeorgan...’ (‘This is then the alleviation by which I wish to protect all people...’). Secondly, this section appears to have fewer sources than the rest of *II Cnut*, and many of its topics do not have parallels at all in Anglo-Saxon legislation. Thirdly, its contents appear to be thematically distinct from the rest of the code. Such features led Pauline Stafford to suggest that the *lihtingc* section had originally been a separate document.⁷⁷ Furthermore, she argued that this document may have been Cnut’s coronation charter. The identification with a coronation charter was made on the basis of what Stafford interpreted as topical similarities to the coronation charter of Henry I, concluding that both were concerned with ‘the eradication of abuses’.⁷⁸

Stafford’s theory has been only partially accepted; while it seems plausible that II Cn 69–83 originated as a separate document, this document does not appear to have been a coronation charter.⁷⁹ The trouble is that its emphasis is not on specifically royal abuses. Indeed, most of the laws in this section do not concern the king at all. If anything, it sets out

⁷⁵ For instance, II Cn 12–16 (on the ‘king’s rights’) has a lot in common with II Cn 56–66.1 (on major offences). As listed in II Cn 12–15, the king’s *gerihta* (‘rights, dues’) in Wessex and Mercia were *mundbryce* (‘breaching the king’s protection’), *hamsocn* (‘assault on person in a house/on the house’), *forsteal* (‘assault on royal roads’), *flymena fyrmðe* (‘harbouring fugitives’) and *fyrðwite* (‘fine for failure to perform military service’) and in the Danelaw *fihtewita* (‘fine for fighting’), *fyrðwita*, *gryðbryce* (the same as *mundbryce*) and *hamsocn*. Some of these issues are revisited in the section at II Cn 56–66.1. For instance, II Cn 58–58.1 covers the penalties for breaching the king’s *borh* (‘protection’); II Cn 59 for fighting in the king’s house; II Cn 61 for disturbing the peace while out with the army; II Cn 62 for *hamsocn*; II Cn 63 for robbery. Some of these touch directly on the king’s rights (*hamsocn*, breaking the peace, perhaps *fyrðwite*) and some indirectly (fighting near the king, breaching king’s protection). This section also covers the *botleas* (‘unamendable’) offences, which include *bushbryce* (‘breaking into a house’), *barnet* (‘arson’), *open þyð* (‘open theft’), *abare morð* (‘manifest murder’) and *blafordwice* (‘treachery’). Given these many overlaps, we should perhaps have expected that these two sections were placed closer together.

⁷⁶ Wormald, *MEL*, pp. 354–5.

⁷⁷ Stafford, ‘Laws of Cnut’. Stafford discussed whether the mitigation section existed as a separate document with an independent existence on pp. 178–80.

⁷⁸ Stafford, ‘Laws of Cnut’, pp. 178–80.

⁷⁹ Such concerns are raised in Bolton, *Cnut the Great*, pp. 94–5 and Lawson, ‘Wulfstan and the Homiletic Element’, p. 581 fn 6.

the relationship between *any* lord and his men, especially in terms of inheritance and heriot, but other things besides (II Cn 70–4, 77, 78–9, 81). It also grants some general rights, such as peace on the way to or from a meeting (82), the right to keep inheritance without litigation (72) and the right to hunt on one’s own land (80). The king is mentioned in the first clause (69.1), which commands reeves to provide for the king only from his own estates, and in the hunting law, which specifies that no one is allowed to trespass on the king’s hunting (80.1). Some of the clauses on heriot concern the king and his men (70a–71.5). Apart from this, however, the content of the mitigation section is hardly comparable to Henry’s charter, which is specifically and explicitly concerned with the king’s actions vis-à-vis his ‘barons or any other of [his] men’, seeking to limit the king’s rights. There is thus not much to support the comparison with Henry’s charter, and so the argument for seeing the mitigation section as a coronation charter weakens.⁸⁰

That said, it is clear both from its form and its content that the mitigation section is distinct from the rest of the text. In terms of form, as mentioned, it has an introductory line as well as a concluding line.⁸¹ Except for the first two lines, this section is also the only place which features the king speaking in the first person in *II Cnut* (though *I Cnut* has almost a dozen instances, spread across the text). Stephanie Hollis noted a difference between the views on widowhood expressed in Wulfstan’s general oeuvre and those found in this section, suggesting that the mitigation section therefore could present the views of the *witan* and not just Wulfstan.⁸² Lawson pointed to some further issues in the code which appear to reflect Cnut’s rather than Wulfstan’s ideas, and most of these are in the mitigation section too.⁸³ This could indicate that the content of this section was not made in the same way as the rest of *I-II Cnut*, which may perhaps also account for the lack of identifiable sources in this section.⁸⁴

⁸⁰ Another possibility raised by Stafford is that the mitigation section represents the promises made by Æthelred on his return from exile in 1014, when he, according to the *Anglo-Saxon Chronicle*, promised to be a better lord. Stafford suggested that such a promise would have included efforts to eradicate royal abuses and that such a document could have made its way into the hypothetical secular counterpart to VIII Atr that was suggested by Wormald (Stafford, ‘Laws of Cnut’, pp. 180–1; Wormald, ‘Æthelred the Lawmaker’, p. 59). However, this argument rests as much on the view that the section is primarily concerned with royal abuses.

⁸¹ II Cn 83. Stafford used this distinct ending as an indication that the section may have originated as a separate law text: Stafford, ‘Laws of Cnut’, pp. 177–8. It does remain possible, however, that the call for observance to *þas laga* in II Cn 83 refers to observance of the whole code, rather than just the final section.

⁸² Hollis, ‘Wulfstan’s Legislation on Widows’, esp. pp. 457–9.

⁸³ M.K. Lawson, *Cnut: The Danes in England in the Early Eleventh Century* (London, 1993), pp. 207–8.

⁸⁴ It could also be that II Cn 69–83 was taken from sources now lost.

On the other hand, there are some signs of Wulfstan's methods in this section. As I discussed above, there might be connections to Wulfstan's *Sermo Lupi*, which would indicate that he had a hand in determining the content or at least its phrasing. Similarly, there are potential traces of Alfred, Ine and Æthelred's laws.⁸⁵ This source use seems consistent with the immediately preceding block on major offences. One solution could be that II Cn 69–83 was originally a decree or other law text issued by Cnut, which Wulfstan was either involved in making or later revised. It has been argued that Cnut's letter of 1020 was written by someone other than Wulfstan but that Wulfstan later revised and added material.⁸⁶ A similar process could underlie the mitigations section, which would then account for its differences from the rest of *II Cnut* as well as for the traces of Wulfstan's method. A plausible context has been suggested by Timothy Bolton, namely that Cnut might have issued a text corresponding to the mitigation section in 1016 or 1017. Its focus on abuses of lordship would fit with the political situation during these initial stages of the Danish conquest, when English nobles, including Eadric Streona, were overstepping the mark.⁸⁷ Wulfstan may have been involved in writing or revising such a text. If this section did originate as a separate document, then the (seemingly) wholesale inclusion of it in *II Cnut* represents a departure from Wulfstan's usual methods for *I-II Cnut*, which are focused around synthesizing and combining source materials.⁸⁸

5.2.3 Conclusion: Structure

Overall, the structure of *I-II Cnut* is centred upon pairs: the ecclesiastical first half is paired with the secular second half, and homiletic blocks are paired with regulatory blocks. Combined, these sections offer many of the same things as Alfred's code, namely instructions in the procedures and desirable outcomes of dispute resolutions, as well as instructions in the general principles underlying such judgments. Unlike the compiler of Alfred's code, Wulfstan did not use the Bible to provide this kind of information, but rather general statements in a heightened tone concerning rights and wrongs, devoid of procedural details

⁸⁵ Such overlaps include peace in relation to meetings (Af 38–38.1/II Cn 82) and the liability of wives for their husbands' thefts (Ine 57/II Cn 76). II Cnut 72 has some thematic as well as verbatim connections to II Atr 14, and III Atr 3 covers similar ground as II Cn 81.

⁸⁶ Wormald, *MEL*, p. 347.

⁸⁷ Bolton, *Cnut the Great*, pp. 94–5.

⁸⁸ It is important to note that the mitigation section, while possibly originally independent, does not seem to be a later addition to the code, given that there is another homiletic block following it.

and earthly sanctions. While most of the blocks I have been discussing above are not marked out as distinct in any surviving manuscript,⁸⁹ the effect of the linguistic differences must have been noticeable to readers or listeners.

5.3 Part III: Compilation process

5.3.1 Process of composition

Cnut's code is different from Wulfstan's previous lawmaking efforts. Not only is it a different type of law text, but it also represents a different approach on Wulfstan's part. Firstly, the code includes a wider range of Anglo-Saxon legal sources. Secondly, it covers more topics and gives more detail, especially in the form of sanctions, which are largely missing from Æthelred's decrees and *Cnut 1018*. Thirdly, it has an overarching structure missing from Wulfstan's decrees, as well as thematically or stylistically coherent blocks. Fourthly, it seems that Wulfstan did not actively copy texts found in his canon law collection, which he had previously used for his decrees. Fifthly, as the appendix argues, there are also some indication that Wulfstan deliberately sought to bring the language of *I-II Cnut* closer to the rest of the corpus than his Æthelred decrees had been. Finally, the manuscript context of *I-II Cnut* is different from that of Wulfstan's other law texts. While all complete versions Æthelred's decrees exist only in Wulfstan's own manuscripts, *I-II Cnut* is found only in manuscripts without association to Wulfstan.⁹⁰

These departures may offer some hints about the process of composition of *I-II Cnut*. For example, since *I-II Cnut* contains more material from older Anglo-Saxon laws than his previous efforts, a preliminary part of the process of making the code may have been research. Wormald noted that Wulfstan's research into the Anglo-Saxon laws seems to have kicked off after the Enham texts, signalled by Wulfstan's first use of Edgar in *VIII Æthelred*.⁹¹ This research seems to have intensified further with the preparation of *I-II Cnut*, for which the sources extend all the way back to the seventh century. Wulfstan must have had several of these older texts present or available (*Wibtræd, Alfred-Ine, II Æthelstan*), given the exact

⁸⁹ Only two sections are marked with larger initials in the manuscripts (II Cn 12, II Cn 69). These initials are found in almost all MSS: Wormald, *MEL*, p. 352 and fn 418.

⁹⁰ Wormald, *MEL*, pp. 349–52.

⁹¹ Wormald, *MEL*, p. 457.

reproductions of some of their material.⁹² The fact that he deviated from them even where the material was the same (such as is the case for most of the parallels with *Alfred-Ine*), could indicate that that he sometimes did not rely on their text but rather notes or his memory. Another possibility is that Wulfstan, like Alfred, decided not to follow their possibly old-fashioned language.

None of these sources seem to have guided the structure of *I-II Cnut*. *I Cnut* starts with text from *Cnut 1018*, before turning to text from the ‘Canons of Edgar’. It then returns to *Cnut 1018* and with extra material from *VI Æthelred*, *VIII Æthelred* and *II Edgar*, before concluding with a mix of text from *Cnut 1018*, a homily and *Institutes*.⁹³ The same is the case for *II Cnut*, which is also a mix of these sources as well as much unattributable material. In addition, *II Cnut* (as far as we know) may represent less familiar territory to Wulfstan, given that very little beyond the first homiletic section and parts of the section on ecclesiastical matters are found in his own texts.⁹⁴ And yet, *II Cnut* represents a more systematic and thematically ordered exposition of law than any other Anglo-Saxon law text. The lack of a textual model for the structure may suggest that a plan of the structure and its blocks preceded the actual composition of the texts. The idea of having two parts must have been pre-planned, given that Wulfstan used the first and last parts of *Cnut 1018* in *I Cnut* and the middle parts in *II Cnut*. The fact that the content of *Cnut 1018* is not followed entirely in *I Cnut* would also indicate that Wulfstan did not start out making *I Cnut* by simply adding penalties and more detailed instructions to the text of *Cnut 1018*.

5.3.2 Who was involved?

The style of *I-II Cnut* is distinctly Wulfstan’s, which means that it is relatively unproblematic to talk about Wulfstan’s methods and drafting, as I have just done. However, Wulfstan may not have been the only person involved in determining the content of the code, nor, for that

⁹² Given the verbatim reproduction of parts of *Wibtræd*, perhaps *Alfred-Ine* and *I Æthelred*, we must assume that Wulfstan had access to these texts. None of these texts are found in the manuscripts associated with Wulfstan. As we saw above (on pp. 150–1), there is a surprising disconnect between the older laws Wulfstan used as sources and the laws found in his manuscripts.

⁹³ This can be seen in Wormald’s table in *MEL*, pp. 356–60.

⁹⁴ This is Mary Richards’ conclusion. She proposed that Wulfstan was more comfortable with ecclesiastical material, and that *I Cnut* represented a ‘*summa*’ of his thoughts. To her, Wulfstan seemed less at ease with the secular material, which Richards interpreted as the reasons for why *II Cnut* (in her view) appears to be a draft with little logical structure. See Richards, ‘I-II Cnut: Wulfstan’s *Summa*?’ e.g. p. 146.

matter, its instigator. One must also consider the issue of precisely what led to the production of a law code in the 1020s.

It has been suggested that Wulfstan may have been commissioned to make a summary of English law for the Danish conquering regime.⁹⁵ Chapter 3 noted the issuing of *Cnut 1018* in a period of political consolidation after the rocky first years of the Danish conquest. The years between this text and the code, which may have been issued around 1020–21, were marked by further consolidation and a gradual removal of the old upper aristocracy.⁹⁶ Cnut had divided England into four parts, most of which were under the control of his earls, some of whom were Scandinavian.⁹⁷ Cnut was at least nominally in charge of Wessex, though there was at least one ealdorman too.⁹⁸ This is the political context of the making of *I-II Cnut*, which is in some ways a digest of English law. Not only would such a work have been of practical use for a king who was an outsider to the system and who travelled back and forth between England and Denmark, but it would surely have been useful for his governing earls. In addition, a code – or at least written law – may have been an important symbolic marker of Cnut as an English king, allowing him to follow in the centuries-old footsteps of other kings.

This could imply that the code was made with minimal input from the king, given that it may have been – in at least some ways – an overview of the law made for him. At the same time, the code did not just simply set out laws of the past. For example, as we saw above, the mitigation section shows signs of having been made with the involvement of advisors, and it may even have originated a separate document made by Cnut and his *witan*. What is more, the fact that *II Cnut* seems to represent a fairly full (and unprecedented) statement of the king's rights could perhaps be an indication that Cnut (or his advisors) had a hand in determining some of the content.⁹⁹ In fact, the involvement of advisors is also suggested by preface to *I Cnut*, which mentions that the code was 'mid his witeana gepeahte gerædde...on ðære halgan midewintres tide on Winceastre' ('decreed with the counsel of his

⁹⁵ Lawson, 'Wulfstan and the Homiletic Element', p. 582.

⁹⁶ O'Brien, 'Conquest and the Law', p. 50.

⁹⁷ S. Keynes, 'Cnut's Earls', in A.R. Rumble (ed.), *The Reign of Cnut: King of England, Denmark and Norway* (Leicester, 1994), pp. 43–88, at pp. 81–2.

⁹⁸ Bolton, *Cnut the Great*, pp. 95–6.

⁹⁹ The king's rights are set out in II Cn 12–15, 56–66.1. For a discussion of these, see T.B. Lambert, 'Royal protection and private justice: a reassessment of Cnut's "reserved pleas"', in S. Jurasinski, L. Oliver, and A. Rabin (eds), *English Law Before Magna Carta: Felix Liebermann and Die Gesetze der Angelsachsen* (Leiden, 2010), pp. 157–75. Lawson suggested that some other areas of the code might also reflect Cnut's government's decisions rather than Wulfstan's; Lawson, *Cnut*, pp. 207–10.

witan...at the time of holy midwinter at Winchester'; I Cnut prol). The reference to the *witan* here must be to a ratification of the code, not its making, for the reasons given in chapter 2 on the characteristics of codes, but it shows that the code was not Wulfstan's one-man show. Nevertheless, as preceding sections have shown, Wulfstan made his mark on this material and not just stylistically.

5.3.3 Conclusion: Compilation process

Wulfstan's framing and phrasing of certain issues seem to be influenced by his own readings – as in the example discussed above, where his evolving interest in the matter of saving souls seems to have influenced the content and phrasing of II Cn 30.4–5. One possible conclusion to draw from this is that some material must reflect Wulfstan's opinions as much as that of the *witan* or the king.¹⁰⁰ What is more, the heavy reliance on Wulfstan's own texts as sources for *I-II Cnut* would suggest that he was ultimately responsible for much of the content of the code. The homiletic sections are also distinctly Wulfstanesque in tone and lack parallels in other law-making. While it may seem surprising that Wulfstan should have so much autonomy in writing a code, it may not have been that unusual. As previous chapters have suggested, Wulfstan was not the only archbishop involved in law-making and possibly law-writing, it is just that he is the only one who comes with a corpus of text and manuscripts that allow us to recognize precisely what he did.

5.4 Conclusion: the codes of Alfred and Cnut

It should be clear that Anglo-Saxon law codes in their surviving forms could only have come into being as written texts. Alfred even talks about the laws in terms of writing: in the prologue, he stated that he 'gegaderode 7 awritan' ('gathered and wrote down') older laws, and that he 'ne dorste...on awrit settan' ('did not dare to put in writing') some of his own.¹⁰¹ Wulfstan's exact reproduction of other texts in Cnut's code similarly signals that it was not

¹⁰⁰ A similar conclusion was reached by Wormald. In his view, Wulfstan did not need to keep his law texts entirely consistent with the king's law, because England was not a *pays du droit écrit*, i.e. written law did not have to reflect the law as applied on the ground. To Wormald, this could explain how Wulfstan was able to use so many of his own compositions in his laws for Æthelred and Cnut: Wormald, 'Æthelred the Lawmaker', p. 56.

¹⁰¹ AfEl 49.9. This is also pointed out in Keynes, 'Royal Government', p. 231.

just the content that mattered but also the wording. The codes relied on writing for their message, and the act of writing made the codes.

In thinking about the two codes together, an immediate observation is how little Cnut's code seems to owe to Alfred's code in terms of content, structure and the selection of sources. One difference is, as mentioned, that Alfred acknowledged his use of sources, whereas Wulfstan did not. Wulfstan even removed several references to Edgar's laws that were included in some of his source material, such as *Cnut 1018*. And while both Alfred and Wulfstan drew on the laws of their predecessors, Wulfstan had a definite preference for laws he had written himself and he also used many of his own non-legislative texts. Alfred's only departure (as far as we know) from legislation was in the form of the Bible. Structurally, *I-II Cnut* does not resemble Alfred's code either, except in the broadest sense of having a section of godly material and a section of worldly material.

Nonetheless, the codes are similar in that neither present a fossilized version of laws of the past. Both compilers adapt and update their sources, both legally and linguistically. Both codes also include a different kind of material than most law texts, represented by the homiletic sections in *I-II Cnut* and the biblical prologue in Alfred's code. Alfred used the biblical text to make a point about law and its changes and the endurance of certain principles. Wulfstan did something similar in employing rhetorically heightened sections to bring out general themes of justice, correct internal attitudes and external behaviour and man's duties to God, which supported the message of adjacent regulatory sections. Both Alfred's code and *I-II Cnut* use these sections to emphasize the importance of justice, mercy, loyalty, protection of the weak, the role of intention and much more. Whether Wulfstan used Alfred's code as a model or not is not clear, though, as we saw above, he seems to have read it.

Alfred and Wulfstan used different methods to achieve similar goals. Alfred's prologue used an authoritative text; presented the message in form and language similar to Alfred's own laws; and kept it contained in one section. Wulfstan relied on his own compositions; varied the register and tone of the two types of material; and placed regulatory and homiletic blocks side-by-side. What is more, Wulfstan's fire-and-brimstone language seems designed to move the audience emotionally, and there is nothing quite as stirring in Alfred's more or less literal rendering of intricate Exodus laws on slaves and animals.¹⁰² However, the latter

¹⁰² In chapter 4, I discussed the translator's removal of 'motivation clauses' and references to God's anger, see above on pp. 125–6.

section of Alfred's prologue – especially on the topic of treachery – relies on biblical examples rather than biblical verses to remind the audience of the spiritual consequences of the misdeed, in a fashion more reminiscent of Wulfstan's methods.

Wulfstan's homiletic sections and Alfred's prologue reveal another distinctive feature of the codes, namely the second order legal thinking that went into their making. There are no exact models for either Alfred's code nor *I-II Cnut*, and so their makers must have put some thought into what material to include and how to deploy it. It seems that the makers of both codes attempted to say something about the role of law and, in particular, the relationship between God and his laws and the laws made by a king. Alfred's code makes the case that there is a connection between Mosaic law-making and Alfred's in their shared embodiment of God's eternal law, as expressed in the New Testament extracts and the focus on certain principles. Wulfstan's code does not reflect a linear history of law, but it seems to make the case that there is an ever-existing connection between heavenly and worldly consequences of illegal behaviour. Their respective thoughts are expressed structurally: Alfred's code has a linear and chronological presentation of law, whereas Wulfstan presented homiletic sections in parallel with regulatory sections, which again mirrors the way in which his homiletic sections employ parallelism and word pairs to make a connection between worldly and divine law. This is evidently juridical thinking, though it is rarely recognized as such, perhaps because it comes in an unexpected form as part of the legislation itself. Nevertheless, both codes offered much more information than concrete responses to concrete situations.

The inclusion of such material may be related to the codes' contexts. I suggested above that Cnut's code may be seen as a digest of English law for a conquering king and his nobility. It may have been issued to offer easily accessible instructions in Anglo-Saxon law to both the king and his earls, in the same way as decrees would. Through its regulatory and homiletic sections, Cnut's code also made it possible to set out the principles that should guide the observance and enforcement of law. As Lawson suggested, this kind of instruction and admonition may have been directed at the king.¹⁰³ At the same time, a code would also have benefited the king: Cnut would surely have been aware of the long tradition of Christian English kings issuing written law.¹⁰⁴ A law code allowed Cnut and his governing elite to learn the law but also draw on the authority of written law, and it allowed Wulfstan (and perhaps

¹⁰³ Lawson, 'Wulfstan and the Homiletic Element'; Lawson, *Cnut*, pp. 56–63.

¹⁰⁴ Lawson, 'Wulfstan and the Homiletic Element', p. 160.

the church more broadly) to remind the king of the basic Christian underpinnings of the law. The code form, as opposed to a different legislative type, allowed all these things to be done at the same time. Alfred's code can be seen in a similar light. It seems to date to the final parts of his reign, that is after the Danish invasions and after Wessex had reached agreements with the Danes.¹⁰⁵ Such a political situation may have spurred on Alfred's translation and education project. It may also have led to the issuing of a code, which allowed the king to state what the law was as well as to present a more general message about the kinds of principles on which the judicial system must be built.

¹⁰⁵ See Lapidge and Keynes, *Alfred the Great*, p. 304.

6 Conclusion: Who, What, Where, When... and Why?

There is much more to be said about individual pieces of Anglo-Saxon law, especially their content and contexts. One aim of this study has been to create a more secure footing for such work. Wormald showed that Anglo-Saxon law cannot be understood without taking the laws' manuscript transmission into account. I would add that textual, formal and linguistic aspects of the written laws are in a similar position. They allow us to see those circumstances of production of written law that are otherwise hidden. Such information is needed to make further claims about the complex and various purposes of written law, the aims of lawmakers and the relationship between written law and law on the ground. The observations made in this thesis will allow us to draw on the combined evidence of circumstances, content and context, rather than relying on the last two alone.

As chapter 1 showed in its discussion of the manuscripts and editions, there has been interest in the Anglo-Saxon laws from the twelfth century to the twentieth and beyond. Interests have sometimes been sparked by political circumstances, such as in the post-Norman conquest period or in Lambard's post-Reformation England. At other times, editorial projects appear to have been guided by antiquarian interests, such as Whelock's or Wilkins's editions, or to have taken place within wider legal and scholarly movements, such as Schmid's and Liebermann's editions. Throughout this thesis, I have argued that editions and their selection of texts have been shaped by specific historical contexts. Editions have in turn provided the foundations and assumptions from which scholars have worked. This situation has led us to construct our view of the Anglo-Saxon laws on unstable foundations.

I have grounded my study within the creation of my own corpus. As chapter 1 demonstrated, that is a risky business. However, I also set out the criteria for the inclusion (and exclusion) of texts within my corpus, and, what is more, I base my criteria on evidence provided by the texts themselves. Therefore, the corpus set out in chapter 1 is – at the very least – transparent about the way in which it shapes the following discussions. In chapter 2, I tried my hand at yet another imposition, this time in terms of categories. My categorization attempted to move away from the emphasis in previous scholarship on chronology and also the focus on whether a text represents royal, non-royal or customary law. I argued that there

are different written forms and types of text. My proposed groups – decrees and law codes (as well as tracts and notes) – are constructed on the basis of a mix of textual criteria, including self-representation, scope, use of sources and more.

The foundational research question I set out in the introduction – what is ‘an Anglo-Saxon law’? – was thus partly answered in these two chapters: Anglo-Saxon laws are the texts contained in the revised corpus and they are most aptly classified as ‘code’ or ‘decree’. The other questions – including where and when laws were written and by whom – have been addressed in the remaining chapters. The questions of where and when have for the most part been treated together. This was most clearly the case in chapter 3 on the decrees and their contexts, which sought to establish the time and place of the making of some extant decrees in relation to meetings of the king and his councillors. An important conclusion from that discussion was that not all decrees were made in the same way. Some decrees may have been prepared before an assembly, some at an assembly, and some well after an assembly.

The reasons for studying the laws in relation to assemblies is partly the common assumption that law was invariably made through assembly deliberations, which was explored in the introduction and in chapter 3. I have argued that this cannot have been the case for the two law codes, the making of which involved research, compilation, translation, adjustment, exclusion and systematization of a large amount of written material. I argued that this was ‘scriptorium’ work, which is to say that it must have taken place somewhere with access to other texts and in a setting where sustained and time-consuming composition and compilation of thousands of words was possible. The codes thus suggest that there were processes and people in place for law-writing outwith the assembly setting, which then supports the conclusions reached about the decrees. Decrees do not seem to involve work on the same scale as the codes, though it is nevertheless possible that some of them were produced in similar settings away from assemblies, perhaps in an archbishop’s scriptorium or at court. Texts such as *Cnut 1018* and Cnut’s code offer fairly clear indications that a mention of *witan* could be in reference to the ratification of a text produced through such a process.

The questions of where and when are thus relevant to the next issue tackled in the thesis, namely by whom the laws were written. The only securely identifiable individual is Wulfstan. He wrote laws for both Æthelred and Cnut and did in fact write a substantial share of all surviving laws. He is often seen as unique. Based on the number – and variety – of texts and manuscripts associated with him, there is certainly reason to think he was.

However, as chapter 3 suggested, he may represent an intensification of previous tendencies rather than an historical anomaly. Archbishops such as Wulfhelm and Oda may also have been actively involved in drafting laws, though we have fewer texts potentially attributable to them. As chapter 4 showed, the making of Alfred's code may have involved input from a range of courtly ecclesiastics, who may also have been involved in other literary activities. The combined evidence would suggest that the drafting of law – at least some law, at some points in time – was a high-level activity. Other laws may have found their extant form at the hands of an assembly attendee, which chapter 3 argued was the case with, for instance, *IV Edgar*. However, in such cases it remains impossible to determine whether such attendees were directly transcribing words composed by someone else (in writing or orally) or if they were essentially composing the text themselves, for example from notes. The mind behind the wording of a law text is therefore often hidden from view.

The discussion of who may have written the laws is connected to the question of how the laws were written. This question is the topic of the appendix. Here I show that legislative language shares specific characteristics which appear to be used out of stylistic convention rather than linguistic necessity. One inference from that observation is that legislative drafting had to be learned, otherwise such a style might have been difficult to maintain. This need not have been a very long education – and there is not enough evidence to allow us to talk about specialist drafters – but it is nevertheless an indication that most surviving texts were not records made by any bishop who attended a meeting.

Another conclusion to draw from such stylistic congruity is that laws – at least some of them – may have been drafted in 'official' copies. I have already mentioned the debate on the possible existence of an Anglo-Saxon royal chancery involved in the making of royal diplomas.¹ Law-making appears to have been very infrequent compared to the production of charters, which means two things. One is that we have less evidence with which to assess the potential influence of official royal scribes, and the other is that a chancery might not have been needed for what may have been a very intermittent activity. Nevertheless, it is possible that decrees were prepared in official copies, whether that was done by scribes who worked more or less permanently with such things or scribes who were only occasionally enlisted. They may have made several such copies, intended for circulation, or the original version may have been made available to be copied by interested parties. It is also possible

¹ See above on p. 20 and fn 49 and on p. 108.

that an official version was read aloud and copied by parties present at an assembly. Such official copies could have been drawn up from notes taken down at an assembly, or they could have been prepared beforehand. The latter alternative could have been the case for texts such as the legislative writs. Official copies made from notes taken down at a meeting could account for the two versions of the Alfred-Guthrum treaty, which are close in wording but contain slightly different content. It may also be the process which underlay the making of *IV Edgar*, which, as I argued, appears to be a record of a meeting.

One question I did not set out to answer was why laws were written down. As the introduction showed, this has been a perennial question and one which is near impossible to answer. The main contribution I have made in this study is to show that there is no need to search for a single explanation. That said, I touched on a few more specific answers in the chapters on the codes. I suggested that both Alfred and Cnut's codes could have something to do with their post-invasion and post-conquest contexts. I emphasized that the code form allowed lawmakers to do several things at once: set out instructions for how to solve specific cases, present the principles and behaviours that should guide any judgment, show the importance of God's eternal laws in secular laws, and admonish and instruct. As I argued in the case of Alfred, the code seems to contain some things contingent on the specific context in which it was issued, but it also sets forth eternal lessons about justice, mercy and loyalty. This could suggest that the making of codes was prompted by different needs than those prompting the making of decrees. The 'reactive' style of the decrees may signal that they were issued to solve immediate problems, mostly in the realm of concrete regulations. While the codes' juridical instructions are no less practical than the decrees' rules for reacting to different situations, the effort involved in putting such thoughts into legislative form may signal that a different need or interest produced them.

It could seem that only exceptional circumstances led to the production of codes. This impression is strengthened by the fact that both extant codes are connected to exceptional individuals, famous for their literary output. After all, much of Alfred's reputation is based on his attachment to writing and literature. Wulfstan's accumulated writings make it seem like he was working towards a great code for his entire lawmaking life. Nevertheless, we should not see the codes as exceptions from a norm of short statute-like texts. The law code form may have been seen as an option, an available type of legislation, but one which was only resorted to on two occasions. So we do not have to assume that codes found their form just because of their idiosyncratic makers. As I have argued in the

context of all surviving texts – codes, decrees, tracts and more – there are benefits to thinking about the Anglo-Saxon laws in terms of form and types of written instruments: texts do not necessarily look the way they look purely because of their specific contexts, but also because there were wider ideas about different written forms of law.

From the very brief foray into the political circumstances of Alfred's and Cnut's codes, it is clear that the question of 'why' requires us to consider the circumstances of production of a law text alongside its legal, political and cultural context. Part of the point of this study has been not to put too much weight on these kinds of contexts at the expense of other types of evidence, since it has the potential to lead to assumptions based on little evidence. For instance, it is tempting to use King Edgar's seemingly imperialistic tendencies and his consecration in 973 as corroborating evidence for why he might issue a law text which looks so different from those of his predecessors. That may be the appropriate context in which to place this text, but my goal has been to consider the textual and linguistic clues to its making independently of such concerns. In other words, I have focused more on the immediate circumstances of composition of a text than I have on the broader political or social contexts of its making. Given more space, all the decrees discussed in chapter 3, as well as the codes, could have been placed in their broader contexts after their textual features had been examined.

Contextualizing work has also partly been done by others, occasionally in dedicated studies.² It is also a side-effect of the fact that most studies of Anglo-Saxon kings, events and society tend to draw on the laws as sources. Wormald's *The Making of English Law* offers a great deal of context for individual laws, but – as we have seen throughout – Wormald was in some ways bound by the foundational assumptions about the corpus and the laws'

² The main work is, of course, Wormald's *The Making of English Law*. There are also many studies on the legislation of individual kings. This is particularly the case for Wulfstan's output, which has been greatly elucidated by, for instance, the work of Katy Cubitt, including 'Time of Tribulation', esp. pp. 227–32; 'Bishops and Councils'; 'Apocalyptic and Eschatological Thought in England Around the Year 1000', *Transactions of the Royal Historical Society* 25 (2015), pp. 27–52, and other works cited throughout. Simon Keynes' work is also an invaluable source for placing Æthelred's laws in their context; see e.g. S. Keynes, 'An Abbot, an Archbishop, and the Viking Raids of 1006–7 and 1009–12', *Anglo-Saxon England* 36 (2007), pp. 151–220 and 'Crime and Punishment in the Reign of King Æthelred the Unready', in I. Wood and N. Lund (eds), *People and Places in Northern Europe 500–1600: Essays in Honour of Peter Hayes Sawyer* (Woodbridge, 1991), pp. 67–81. Similarly, Pratt and Wormald have done much for Alfred: see Pratt, *Political Thought*, pp. 214–41 and Wormald, *MEL*, pp. 416–29. See also the references to the studies on Æthelstan and Edgar's legislation throughout.

production. Therefore, there is still much scope for work dedicated to the laws and their production which marries conclusions such as those I have proposed here with a more solid contextualization.

This study could also be expanded to include the material produced after the conquest. The number and variety of Anglo-Norman digests of Anglo-Saxon laws is testament to their apparent relevance long past the disappearance of the Anglo-Saxon kingdom(s). Much work on these text and their manuscripts has been done by Bruce O'Brien.³ His studies could be combined with a formal and textual approach to the post-conquest laws. Such a study might allow us to place the post-conquest versions of Anglo-Saxon law more firmly within the twelfth- and thirteenth-century legal framework, and it could also function as comparative material for the Anglo-Saxon laws. This approach could help make sense of the puzzling legal situation represented by the conquest: the break between Anglo-Saxon law and post-conquest law seems complete (post-conquest kings did not issue texts that look like pre-conquest codes and decrees), yet nonetheless partial (the same texts were copied, rewritten and reworked).

Another fruitful comparison has been hinted at throughout, namely to legislation produced on the continent. Much scholarship on the Anglo-Saxons has already been done with reference to ideas about literacy and law in the Carolingian empire, as the introduction and chapter 2 showed. Such comparison may occasionally have guided the work on Anglo-Saxon material too much. What is more, it is not always easy to distinguish between influence and parallel development, nor is it always clear-cut in which direction influence flowed. A comparative approach might therefore yield the most interesting results in the context of language and forms of law. A comparison of types of legislative forms and the characteristics of legislative language on the continent might make it easier to see what is distinct or not so distinct about the English material.

There is also room for more detailed comparison to canon law, on which I have only made a start in this study. As I hope to have shown, canon law and church council decrees offer fruitful comparison in the linguistic realm, but I think there is also room for much more study on the forms of church law and especially the forms of canon law collections. I have based my argument on the fact that some Anglo-Saxon law texts appear to have been thought of as a distinct body. It must nevertheless be borne in mind that the drafters (perhaps even

³ See for instance O'Brien, *God's Peace*.

instigators) of Anglo-Saxon laws were also familiar with a large body of church law. This is absolutely clear in Wulfstan's case, who seems to have been behind several versions of a large canon law collection. He also had access to other collections, as is clear from surviving manuscripts. In fact, collections of canon law seem to have been available in Anglo-Saxon England throughout the period.⁴ Other Anglo-Saxon legislative drafters, including Oda and Wulfhelm, also seem to have been familiar with canon law and canon law collections. Oda, as we saw, even composed a canonical treatise using not just the 786 church council decree, but also other canonical sources.⁵ These drafters may then have been *au fait* with a number of different legislative genres as both readers and authors. It would be very interesting to compare Anglo-Saxon ideas of codification and compilation to the principles underlying canonical collections. Finally, it is not at all straightforward to draw the line between 'canon' and 'secular/royal' law in this period, as will have been clear from such texts as *Wihtrad*, *I Edmund*, 'Canons of Edgar' and more. I based my corpus on textual links between texts, but it would certainly be worthwhile to consider the laws I have discussed here alongside some of the more canonical texts.

Finally, the results of this study can be placed more firmly within the extant manuscript contexts. As I set out at the start, many manuscripts containing Anglo-Saxon law are relatively far removed in time from the composition of the law texts. The layout and paratextual features of the laws in their current manuscripts is therefore liable to represent later scribal practices or reflect later usage or interpretation of the laws, rather than that of those who composed them. For that reason – combined with a limitation on space – I have not used the manuscript evidence as much as I have used other forms of textual evidence. Nevertheless, there is much potential for such an approach in future studies. Firstly, even though most manuscripts were written some time after the laws they contain, some features may have been carried over from their original form. Secondly, some manuscripts are contemporaneous with the laws they contain; Wulfstan's manuscripts in particular might provide further clues on how best to untangle his texts and understand his methods. Thirdly, the evidence these manuscripts provide about the later lives of texts is valuable in itself. For instance, Alfred's code accumulated more material in some manuscripts, such as *Iudex*, a translation of Alcuin on the topic of just judges. The inclusion of yet another jurisprudential

⁴ The extant evidence is set out in M. Elliot, 'Canon Law Collections in England ca 600–1066: The Manuscript Evidence', unpublished PhD thesis (University of Toronto, 2014).

⁵ See Whitelock et al., *C&S*, p. 68.

element – the basic topic of which seems to correspond to one of the code’s overall messages – could tell us something about the after-life of a programmatic texts such as Alfred’s. Wormald’s study of the manuscripts provides an excellent starting point for such further considerations.

Insights into the production of the Anglo-Saxon laws can thus be useful for a number of other fields. Moreover, the methods I have used to assess these circumstances can be applied to other early medieval legislation. But, as I hope to have demonstrated, there is much independent value in a study of the circumstances of production of the laws. It has shown that there were different forms of legislation, a distinct legislative style and an idea that different types of texts served different purposes. The picture that emerges after stripping back the assumptions imposed by nearly 800 years continuous interest in the laws is of a system where writing and law had a complex – but rather sophisticated – relationship.

7 Appendix: Formal characteristics of the Anglo-Saxon legislative language

‘It would be absurd to have eight separate subsections, each beginning with “No person shall”.’¹

Such was the opinion of the legislative draftsman Sir Geoffrey Bowman, expressed in an article on ‘The Art of Legislative Drafting’. Even a brief glance at the Anglo-Saxon laws will show that there seems to have been nothing absurd about this kind of repetition to an Anglo-Saxon legislative drafter. Just as Bowman would consider repetition unconventional, it seems to have been part and parcel of the legislative style in Anglo-Saxon England.

Repetition is not the only stylistic feature of the Anglo-Saxon laws. More can be found in syntax, verb forms, paratextual elements and so on. This could indicate that there was a shared and collective idea about the right (and wrong) way to compose and express promulgated law. In the conclusion to this appendix as well as in chapter 3, I discuss the implications of such an observation. Firstly, however, I will give an overview of the features in question; these include the content and form of prefaces, as well as grammatical linking, syntax and expressions of obligation. As we shall see, the terse and list-like prose of the laws is created by the repetition of syntactical forms, fronted objects, lawgiving verbs and coordinating conjunctions and by the avoidance of logical connectors and of variation in expressions of obligation.

7.1 Method

The method I use to determine the existence of conventional features is partly based on register analysis, a method used in modern corpus linguistics. In short, it is an investigation of linguistic choices: what words in what order were chosen to express any given message and could it have been done differently. This kind of analysis is traditionally done on a body of texts in the same genre. In linguistics, ‘genre’ can and has been used in different ways,

¹ G. Bowman, ‘The Art of Legislative Drafting’, *Amicus Curiae* 64 (2006), pp. 2–9, at p. 6.

though at the heart of modern definitions is situational context.² That means that a genre consists in utterances (texts or speech) which have the same participants, relationship between participants, circumstances of production, setting, communicative purposes, topic and so on.³ While the Anglo-Saxon laws may have shared such situational characteristics to a degree, we cannot always know, as the preceding chapters have shown. Therefore, for the purposes at hand, the genre for my analysis is made up of the corpus identified in chapter 1.

The next step of the method is to identify relevant features of the language. In modern linguistics, the method consists in matching linguistic features with the situational characteristics of the genre under analysis.⁴ Again, we cannot do quite the same for the Anglo-Saxon laws, because we do not know all their situational characteristics. Therefore, I seek instead to identify those linguistic features that are either more prevalent in legislation than in other genres or which are conventional rather than functional.⁵

I use ‘conventional’ and ‘functional’ as they are typically used in linguistics. A functional feature refers to language used because there is no other way to achieve or express what the author is trying to achieve or express. This kind of language could be used by two authors independently of each other. An example from the Anglo-Saxon laws is the very frequent use of indefinite pronouns *hwā* or *man* (‘anyone’). There are not many alternatives and the usage is determined by the laws’ objectives: they are legislating rather than, say, describing specific cases involving specific actors. Such features – characteristic but functional – will not be discussed here.

The other category – conventional features – represents unnecessary but standard linguistic choices. If we can establish that there are many ways of expressing a message, but observe that the same way is consistently chosen for the same task across texts and periods, we can call that a conventional feature. Such features allow us to talk about a ‘legislative language’, because the co-occurrence of a significant number of these across the corpus indicates that there were certain conventions guiding the way in which law was written. These features seem to have been used because they were expected rather than because they were

² I use ‘genre’ to refer to groups of text connected by situational context though the term ‘register’ is also used for the same purpose elsewhere. See the overview of usage in D. Biber and S. Conrad, *Register, Genre, and Style* (Cambridge, 2009), pp. 21–2.

³ Biber and Conrad listed such situational characteristics in *Register, Genre, and Style*, p. 40.

⁴ Biber and Conrad, *Register, Genre, and Style*, p. 64.

⁵ This amounts to what modern linguists might call ‘register features’. Biber pointed out that most linguistic features can be present in all types of texts, but that distribution between texts differ and that is what makes certain features significant: D. Biber, *Dimensions of Register Variation: A Cross-Linguistic Comparison* (Cambridge, 1995), p. 29.

demanded by the message to be expressed.⁶ As the discussion at the end of the appendix will show, there have been previous suggestions that legislative drafters were deliberately looking back and archaizing their language to harness the authority of past law. I argue instead that observable similarities are the result of a shared sense of the conventions of written law.

There have been a few previous studies of the standards of the laws' language. One of these approximated a register analysis in that it attempted to match the objectives of Anglo-Saxon written law with its linguistic features. Risto Hiltunen's 'An aspect of "ESP" in a historical perspective: the case of Anglo-Saxon law' takes the idea of modern legal language as ESP ('English for Special Purposes') as a starting point, arguing that the language of the laws was specialized. The main problem of this study is that Hiltunen took for granted that the objectives of Anglo-Saxon legislative writing were the same as today's (including, for example, avoidance of ambiguity). He also made assumptions about law in general, for instance that there was 'a level of dignity and authoritativeness [in the language] appropriate for the law'.⁷ Consequently, he sought out features that are relevant to modern laws rather than taking the Anglo-Saxon laws on their own terms. The unfortunate conclusion to his study is that the Anglo-Saxon laws contain features associated with modern laws 'in embryo', perhaps reflecting the tendency to consider the laws primarily in terms of development and evolution (as discussed in the introduction).⁸ As we shall see below, what characterizes the language of Anglo-Saxon laws is not necessarily what characterizes the language of modern law.

Other problems are posed by another study of the conventions of the legislative language. Mary Richards' 'Elements of a Written Standard in the Old English Laws' argues that legislative writers deliberately aimed for a particular 'written standard', partly in order to harness the authority of older laws.⁹ Her main evidence was vocabulary, which means that many of her conclusions are not particularly convincing. Vocabulary choices are to a large degree guided by the topic of an utterance, and they are therefore mostly a functional feature that says little about conventions. What is more, vocabulary is not confined to the written

⁶ Biber and Conrad, *Register, Genre, and Style*, p. 16.

⁷ R. Hiltunen, 'An aspect of "ESP" in a historical perspective: the case of Anglo-Saxon law', in T. Nevalainen (ed.), *To Explain the Present: Studies in the Changing English Language in Honour of Matti Rissanen* (Helsinki, 1997), pp. 51–62, at p. 53.

⁸ Hiltunen, 'An aspect of "ESP"', p. 60. A similar sentiment was expressed in a syntactical study of the laws by Jürg Schwyter, who called a type of subordination (nesting) in Anglo-Saxon law 'a brave start' to its use in modern law; Schwyter, 'Syntax and Style', p. 221.

⁹ Richards, 'Written Standard', e.g. pp. 6, 17.

sphere of law. On top of that, as mentioned in chapter 1, this study is also problematic in that it adopts Liebermann's full corpus without any discussion.

A better variable is used in Jürg Schwyter's 'Syntax and Style in the Anglo-Saxon Law-codes'. Syntax is more detached from the legal content than vocabulary, because several different forms were available to express the same message. What is more, unlike vocabulary, there are significant discrepancies between spoken syntax (fluid) and written syntax (fixed), and it therefore allows us to separate spoken conventions from written to a greater degree. Schwyter's conclusions about characteristic features of the Anglo-Saxon legal syntax, some of which will be referred to below, are therefore more convincing.¹⁰ As we shall now see, the evidence afforded by syntax can be complemented with a range of other grammatical and paratextual features.

7.2 Conventional features of the laws' language

7.2.1 Paratextual features: numbering, epilogues and prefaces

In modern linguistics, matters of overall structure of complete texts are considered to be 'generic features': the greeting and farewell of a letter are markers of 'letter' as a genre. These features are often conventional and expected rather than required for an utterance to function the way intended.¹¹ A letter might serve its functions perfectly well – as well as be recognizable as a letter – without a greeting at the start, but the expectation of the writer and recipient is that there is one. For the Anglo-Saxon laws, conventions in structure appear to have included the presence of a preface. Two other structural devices – numbering and epilogues – appear only infrequently, arguably suggesting a convention in their absence.

Numbered clauses and chapter divisions are rare, as far as we can tell based on surviving manuscripts (though we should remember that most of these are not original).¹² Based on surviving evidence, it seems that most legal texts were written continuously. There are some exceptions: in Cotton Nero A.i(A), almost every new clause of *I-II Cnut* starts on a new line, often with a coloured initial. Large or coloured initials at the start of new sentences

¹⁰ Schwyter, 'Syntax and Style', pp. 219–20.

¹¹ Biber and Conrad described this as 'the culturally expected way of constructing a text belonging to that variety' in *Register, Genre, and Style*, p. 16.

¹² For reasons of space, I cannot go into every manuscript and its way of dividing clauses. For remaining manuscripts and texts, see the manuscript section in Wormald, *MEL*, pp. 162–263.

or clauses are also found in some texts in *Textus Roffensis* and CCC 383, though usually not accompanied by a line shift. A few other texts and manuscripts mark out separate clauses in other ways. Alfred and Ine's laws are numbered throughout in all manuscripts using Roman numerals, and, as we saw in chapter 4, these chapter numbers are given in a separate list alongside chapter titles in the first section of the code.¹³ As I discuss below, each chapter in *VI Æthelred Latin* is marked by a 'K', as are some of the chapters in the Old English version. These are probably original: they are used in Cotton Claudius A.iii, a manuscript belonging to Wulfstan. Part of Æthelstan's Grately text (*II Æthelstan*) has a section numbered in the text from *ofer* ('second(ly)') to *seofode* ('seventh(ly)'), as we saw in chapter 3 and which the next section discusses again. In some manuscripts, some of the clauses of *II Æthelstan* also have headings, in the form of *be* 'about' and a noun (e.g. II As 10.1: *Be wore gewitnesse*, 'About false witnessing'). This is the case in *Textus Roffensis* and CCC 383, though they are lacking in this text's oldest manuscript, Cotton Otho B.xi.¹⁴ *III* and *VI Æthelstan* are also numbered with words in the text and more consistently than *II Æthelstan*. The numbered chapters in *VI Æthelstan* are also unique in being long: the longest is around 500 words (VI As 8), which is equivalent in length to complete texts such as *I Æthelred* or *Wibtræd*. That said, most of its eight chapters are around 150–200 words. Within each such long chapter, the prose is much the same as in other texts – which is to say that it is terse and list-like, as I will describe below. Nevertheless, given the in-text numbering, *VI Æthelstan* almost has as a capitular style, reminiscent of, for instance, some Carolingian capitularies or council decrees.

An equally rare structuring device is epilogues; only six texts conclude with statements that signal that the text is over. Two texts conclude with comments on the laws: *IV Edgar* sets out instructions for the copying and distribution of the text, while the writers of *III Æthelstan* (the bishops and ealdormen of Kent) express their hopes that the king will approve of their decisions.¹⁵ Two other decrees, *VI Æthelred Latin* and *II Æthelstan*, contain information on the promulgation of the laws of the type usually found in prefaces.¹⁶ Two

¹³ See above on pp. 137–8 for a discussion of Alfred's code's chapter list.

¹⁴ This is the case both in the surviving fragments of Cotton Otho B.xi and in Nowell's transcript in BL, Add. 43703.

¹⁵ IV Eg 15–15.1 and III As Epil.

¹⁶ VI Atr Lat 40.2: 'ego N \Wulfstanus/... eadem ad sequentium memoriam...litteris infixi', 'I N' \Wulfstan/ fixed them [legal statutes and decrees] in letters in the order remembered'. 'Wulfstanus' (and 'æþelredo' a few lines above) were inserted above the line in MS K (fol. 35r) by what appears to be Wulfstan's own hand. The text itself has 'N' ('a rege N' and 'ego N ...archiepiscopus'). Wulfstan and Æthelred are, however, mentioned in the text of the decree's prologue (VI Atr Lat prol). There is no Old English equivalent to this prologue or epilogue and neither Wulfstan nor Æthelred are mentioned in the Old English text of VI Atr. Similarly, the epilogue in *II Æthelstan* is found in the Latin *Quadripartitus* version of the text as well as in Nowell's transcript

Wulfstan texts finish on a liturgical note: *II Cnut* finishes ‘God ælmihtig us eallum gemiltsie, swa his willa sy! Amen’ (II Cn 84.6) and one manuscript version of *V Æthelred* concludes ‘Sit nomen Domini benedictum et rel.’.¹⁷ The remaining texts finish without warning, though whether this is the result of their drafting or their subsequent textual history is uncertain.

In contrast, more than three quarters of our texts have something that could be labelled prefatory material; both codes have prefaces, and almost all decrees do too.¹⁸ As chapter 4 showed, the prefatory material to Alfred’s code is extensive, but the vast majority of texts have relatively short prefaces which contain contextual information on their promulgation. Prefaces are broadly similar in two ways: they use the same ‘hypertheme’ and they give much of the same information.

A hypertheme is a topic sentence; it is a sentence with which the laws describe themselves and it gives information about and frames the following text.¹⁹ The majority of texts describe themselves as *gerædness*, almost always in the sentence ‘ðis is seo gerædness þe... geræddon/gecwedon’ (‘this is the decree that...decided’). All told, the hypertheme ‘ðis is seo gerædness’ occurs fourteen times in the laws, as we saw in chapter 2.²⁰ For example, *II-III Edgar* opens: ‘Ðis is seo gerædnys þe Eadgar cyng mid his witena geðeahte gerædde...eallum his leodscipe to þearfe’ (‘This is the decree that King Edgar decided with the counsel of his *witan*...for the benefit of all his people’). Another example is found in the opening of *I Æthelred*: ‘Ðis is seo gerædnys ðe æþelred cyning 7 his witan geræddon eallon folce to friþes bote’ (‘This is the decree that King Æthelred and his *witan* decided for the betterment of the peace for the whole people’).²¹ While *gerædness* is the most frequent, the corpus also contains other descriptors, including *frid* (‘peace’; AGu), *fridmal* (‘peace agreement’; II Atr) and *laga*

of Cotton Otho B.xi and not in the two surviving Old English versions in *Textus* and CCC 383. However, as Wormald suggested, Nowell’s transcript of Otho B.xi in BL Add. 43703 may be based on a pre-conquest original which contained the epilogue; see Wormald, ‘Lambarde Problem’, p. 164.

¹⁷ V Atr 35.1 in Cotton Nero A.i(B), fol. 119v. This text is printed in the column marked MS G² in Liebermann; there are two versions of V Atr in this manuscript which Liebermann called MS G¹ and MS G².

¹⁸ The only decrees lacking prefatory material are II As and VIIa Atr. As we just saw, the *Quadripartitus* translation of II As contains prefatory information in an epilogue; and the only surviving manuscript version of VIIa Atr gives an inscription stating ‘Ðis man gerædde ða se micle here com to lande’ (‘This was decreed when the great army came to the land’; CCC 201, p. 30). *Hundred*, II Atr App, IV Atr, *Ordal*, *Northu* and *Wer* do not have prefaces in their extant form. Æthelberht’s laws are introduced with a rubric with his name in *Textus*, but it is probably not original: see Oliver, *Beginnings*, p. 83.

¹⁹ See also Schwyter, ‘Syntax and Style’, p. 191.

²⁰ EGu, IV As (*iudicia*, Quad. only), VI As, III Em (*institutio*, Quad. only), II-III Eg, I Atr, V Atr, VI Atr, VIII Atr, IX Atr, X Atr, Cn 1018, I-II Cn, *Dunsate*.

²¹ These two examples also contain a motivational clause expressed with the construction *to* (here ‘for the purpose of’) + a noun phrase. These are fairly common, though they are usually found in other parts of law texts than the preface, especially the phrase *to þearfe* ‘for the benefit, need’. *DOE Corpus* s.v. *þearfe*.

(‘law’; III Atr). The hypertheme ‘ðis is seo gerædness’ is also found in three charters and two regulatory texts.²² This could be a sign that such features had wider currency within the realm of deliberations, judgments and assemblies, but it is also possible that other regulatory texts were deliberately mimicking the style of the royal laws.

A different kind of hypertheme is found in the opening to the decree *IV Edgar*: ‘Her is geswutelod on þisum gewrite..’ (‘It is declared here in this document..’). This phrase is found so frequently – and almost exclusively – in charters, that it is hard to imagine that Edgar’s text is not influenced by charter language.²³ Again, this could be a deliberate implant from a different genre, though it could also be the result of a scribe working with both kinds of texts inadvertently using a familiar form. As chapter 3 demonstrated, this is one of several unusual features of *IV Edgar*, and the use of this formulaic opening should perhaps be seen in the context of the specific circumstances of production of this text.

Prefaces also give much of the same information. They usually mention a king, almost always by name.²⁴ The presence of archbishops and bishops is noted,²⁵ and some of them are named.²⁶ The presence of councillors and ealdormen is often mentioned, though they are never individually named.²⁷ As we saw in chapter 3, many prefaces also give the name of the place at which the decisions were made or promulgated.²⁸ Finally, most texts are also similar in their transition from preface to provisions: twenty texts, from *Ine* to *I-II Cnut*, introduce the first actual legal clause with the words *ðæt is ærest* (‘that is first’).²⁹

²² S1215, 1292, 1381. One regulatory text is the Bedwyn guild regulation; it is edited in M. Förster, *Der Flussname Themse und seine Sippe: Studien zur Anglisierung keltischer Eigennamen und zur Lautchronologie des Altbritischen* (München, 1941), p. 791–2; and translated in D. Whitelock (ed.), *English Historical Documents. [Vol.1], c.500-1042* (London, 1979), pp. 605–6. The other regulatory text is known as the bishops’ regulation; it is printed and translated in Whitelock et al., *C&S*, p. 403.

²³ The phrases like ‘her is geswutelod an ðis gewrite’ or ‘her swutelap on þysan gewrite’ are found in (at least) the following charters: S325, 806, 817, 939, 951, 981, 1219, 1220, 1224, 1232, 1400, 1406, 1409, 1421, 1426, 1449, 1455, 1459, 1460, 1461, 1462, 1465, 1468, 1469, 1470, 1471, 1473, 1478, 1485, 1503, (1504, 1512), 1524, 1525, (1528), 1537, (1608) (1185).

²⁴ H1/Ea, Wi, Ine, AGu, EGu, I Ew, II Ew, I As, As Alm, V As, I Em, II Em, III Em, II-III Eg, IV Eg, I Atr, II Atr, III Atr, V Atr (‘the king’ is mentioned, but he is not named), VII Atr, VIII Atr (‘the king’ is mentioned, but he is not named), IX Atr, X Atr, Cn 1018, I-II Cn.

²⁵ Wi, Ine, I As, As Alm, II As, VI As 11-12 (Whittlebury), I Em, III Em, V Atr, VI Atr OE, VI Atr Latin.

²⁶ Wi, Ine, I As, As Alm, II As, VI As 11-12 (Whittlebury), I Em, VI Atr Latin.

²⁷ Wi, Ine, AGu, EGu, II Ew, V As, VI As, IV As, VI As 11-12 (Whittlebury), II Em, III Em, II-III Eg, IV Eg, I Atr, II Atr, III Atr, V Atr, VI Atr, VII Atr, VIII Atr, IX Atr, Cn 1018, I-II Cn, *Dunsate*. The only mention of ealdormen by name in Anglo-Saxon legislation is in IV Eg 15.1, which details instructions for the copying and circulation of this decree. See chapter 3, section 3.2.1, for more on this passage.

²⁸ Wi (Berghamstede), II Ew (Exeter), [II As (Grately)], V As (Exeter), IV As (Exeter), VI As 11-12 (Whittlebury), I-II Em (London), III Em (Colyton), I Atr (Woodstock), III Atr (Wantage), VII Atr (Bath), IX Atr (Woodstock), X Atr (Enham), I-II Cn (Winchester).

²⁹ Af, Ine, AGu, EGu, I As, II As, VI As, I Em, II Em, *Hundred*, II Eg, IV Eg, V Atr, VI Atr OE, VIII Atr, IX Atr, X Atr, I Cn. III As has *primum est*, and III Em *imprimis* (both Quad. only).

A variation on the standard preface is found in Æthelstan's writs:

Æðelstan cyningc, mid geþeahte Wulfhelm arceþiscop 7 eac minra oðera biþcopa,
cyð ðam gerefan to hwilcere birig ... þæt ge ærest of minum agenum gode agifan
ða teoðunga...(I As prol)³⁰

King Æthelstan, with the advice of Archbishop Wulfhelm and also my other
bishops, declares to the reeve in each borough...that they first of all give tithes of
my own property...

The elements of the other prefaces are present (actors, verbs of lawgiving, and 'that is first'), but in an abbreviated and amalgamated form. As chapter 3 argues, the legislative writs appear to be distinct type of text, which is identifiable based on audience, issuer and content. This preface could therefore indicate an awareness of stylistic differences between law texts.

Other signs of stylistic awareness can be identified too, namely in the texts that give information on the time and occasion of their promulgation. The occasion at which a law was made is mentioned three times,³¹ and the time of year four times.³² One of these texts, the laws of Wihtræd, contains the most information on time of any Anglo-Saxon law, giving the year of the king's reign, the indiction year and the season.³³ The rarity of such information, but its presence in some texts, could perhaps be explained by generic conventions. The texts that specify the occasion (Wi, I Em, VI Atr Lat) also give the time of year. All three texts are particularly ecclesiastical in nature, perhaps representing 'markedly more religious' proceedings.³⁴ It could be that these texts contained such information through influence from church council decrees. According to Cubitt, the texts of the seventh-century councils of Hertford and *Hæthfeld* in England adopted standards from records of late Roman church councils.³⁵ Part of this standard was to include information on *inter alia* the date of the synod, and, in an English context, these requirements were later

³⁰ The only medieval version of the other writ, As Alms, survives only in *Quadripartitus*. Based on the Latin, however, it seems that its preface would have read much like that of I As.

³¹ Wi (*ymcyme* 'an assembly'), I Em (*seonod* 'synod'), VI Atr Lat (*conventus synodalis* 'synodical gathering?').

³² V As at midwinter, I Em at Easter, VI Atr Latin at Pentecost, and I-II Cn at midwinter. In addition, two manuscript versions of Wulfstan decrees have inscriptions with the exact year: V Atr in MS G¹ (*Anno dominicæ inuarnationis XVIII*) and VIII Atr in MS D (*Anno MXIII ab incarnatione Domini nostri Iesu Christi*).

³³ Wi prol: 'fiftan wintra his rices, þy nigðan gebanne, sextan dæge rugernes', 'fifth winter of his reign, in the ninth indiction, sixth day of Rugern (prob. 'rye-harvest')'. This would indicate the year 695; see the discussion in Whitelock (ed.), *EHD i*, p. 396 and Oliver, *Beginnings*, p. 165.

³⁴ These are Cubitt's conclusions about *Wihtræd* and *I Edmund*, and it holds true for *VI Æthelred Latin* too, as chapter 3 indicated. See Cubitt, 'Bishops and Councils', pp. 156–7.

³⁵ Cubitt, *Church Councils*, p. 79.

specified in a decree of the council of Chelsea (816).³⁶ We have at least one example of such conventions being followed in a royal law: the laws of Wihtræd open with a preface which seems to be word-for-word a copy of a Latin church council prologue.³⁷ Therefore, it could be that there was a sense that texts of a ‘distinctively and exceptionally ecclesiastical nature’ ought to include a different kind of information in their prefaces.³⁸

7.2.2 Textual features: linking, syntax and expressions of obligation

While prefaces may have been influenced by synodical decrees, the main body of text in the laws shows no such signs. Church council records are often organized in chapters, which can be long and discursive, whereas the Anglo-Saxon laws are characterized by terse and list-like prose. As we saw above, only one text, *VI Æthelstan*, can be said to have chapters that to some degree resemble those of council decrees. This section will look at the linguistic features that characterize the prose of the Anglo-Saxon laws. The first section will look at grammatical linking, and the second section deals with syntax. Overall, these two sections will show that the laws’ prose is characterized by terseness, repetition and a lack of logical and grammatical connectors. The third section focuses on a few specific strategies for expressing obligation. One of these strategies is the use of verbs expressing the lawgivers’ will, which shows signs of being guided by stylistic conventions. Other strategies for expressing obligations are less common and arguably suggest that their absence is itself a stylistic trait.

To illustrate the characteristics of the Anglo-Saxon legislative prose, let us look at a passage from the two versions of *VI Æthelred* discussed in chapter 3, one in Old English and one in Latin. Both seem to have been written by Wulfstan and both seem to reflect decisions of the same assembly. It appears that the language has been deliberately adapted to fit different written styles; the Latin to the language of council decrees and the Old English to other Anglo-Saxon laws.³⁹

³⁶ Cubitt discussed this chapter and other aspects of council diplomatics in *Church Councils*, pp. 77–95.

³⁷ For a discussion of the precise traces of Latin in this preface, see Ivarsen, ‘A Vernacular Genre?’; see also Cubitt, ‘Bishops and Councils’, p. 154.

³⁸ Cubitt, ‘Bishops and Councils’, p. 157.

³⁹ For a fuller version of the argument that Wulfstan is deliberately mimicking this style, see Ivarsen, ‘A Vernacular Genre?’ and chapter 3, section 3.3.1.

K. Archipontifices etiam una cum ceterorum consensu pontificum orthodoxorumque iam tunc presentium, salubre hoc piūque celitus afflati elegerunt tradideruntque consilium, ut, si quispiam monachorum uel quepiam monialium ex cuiuspiam monasterio abbatis uel abbatisse (ipsius uidelicet uel antecessorum eius temporibus regiminis) ritu apostatico per proprium arbitrium egressi uel proprii reatu deliquiī expulsi, alicubi reperti fuerint, in monasterium iterum reuertantur et absque ulla contradictione suscipiantur. Caueant etenim abbates nee non et abbatisse, ne illud propheticum de eis dicatur: ‘Quod infirmum fuit non consolidastis, et quod egrotum non sanastis, neque quod perierat inquisistis’.

K. Reuersi ergo monachi uel moniales obseruantie regulari humiliter subiaceant neglegentiasque priores nimium peniteant et a cunctis amodo uanitatibus desistant. Uota enim uel promissa, quo Deo uouerunt, mente sollicita reuoluant factisque eadem persoluere studeant.⁴⁰

7 witena gerædnes is þæt muneca gehwilt, þe ute of mynstre sy 7 regoles ne gyme, do swa him þearf is: gebuge georne into mynstre mid eallum eaðmettum 7 misdæda geswice 7 bete swyþe georne þæt he abrocen hæbbe; geþence word 7 wedd þe he Gode betæhte.⁴¹

It is immediately clear that the Latin version is more verbose, and there is also a range of other discrepancies that illustrate general differences between council decree texts and Anglo-Saxon royal laws. Firstly, the Latin passage gives the main verbs reporting the act of lawgiving in the past tense (*elegerunt tradideruntque consilium*), while the verb is in the present tense in Old English (*witena gerædnes is*). What is more, there is a general tendency in Anglo-Saxon laws to rely on set phrases to express the lawgivers’ will, whereas council acts seem to deliberately strive for variation, as we shall see below. Secondly, the Latin version quotes the Bible, using it to frame and to encourage the rules and behaviour set out in the law. Anglo-Saxon laws rarely cite outside sources in the text, as we have seen in preceding chapters.

⁴⁰ VI Atr Lat 3–3a: ‘Also the archbishops with the agreement of the bishops and the rest of the people of correct faith present at that time, having been divinely inspired, chose that healthy and pious thing and delivered the counsel that if any monk or any nun from the monastery of any abbot or abbess (that is to say from the time of his rule or that of his predecessors) is discovered anywhere, leaves out of their own volition or is expelled because of guilt caused by their own flaws in the manner of an apostate, they should be returned again to the monastery and be accepted without any opposition. Because abbots and also abbesses should beware so that the prophesy is not said about them: ‘The weak you have not strengthened, and that which was sick you have not healed, neither have you sought that which was lost’. K. Therefore, when he has been returned, the monks or nuns should humbly subordinate to the observation of a rule and certainly do penance for their former offences and desist from all foolishness from now on. For they should consider in their mind the vow or promise which they gave to God and devote themselves to fulfilling it with deeds.’

⁴¹ VI Atr OE 3–3a: ‘And the decree of the council is that any monk who is out of the monastery and is not observing a rule, let him do as he should: turn eagerly back to the monastery with all humility and turn from wrongdoings and very eagerly make amends for what he has broken. Let him think about the word and pledge which he gave to God.’

Thirdly, the Latin text contains several grammatical connectors ('because', 'therefore', 'for') which create a sense of logical progression of thought. This kind of discursive prose is lacking in the abrupt Old English text. Finally, the Latin text marks its chapters in the text, a practice mostly unknown in the Anglo-Saxon laws, as we saw above. Such characteristic features of the Anglo-Saxon laws will now be examined in turn.

7.2.2.1 Grammatical linking

One trait of the Anglo-Saxon legal language is disjointedness and lack of progression of thought. It is caused by several things, including the lack of conjunctions beyond 'and' as well as a lack of explicit linking to antecedents. As Schwyter noted, modern legal language is also characterized by using self-contained sentences that do not relate to their surrounding context.⁴² For modern law, this is a deliberate strategy to avoid ambiguity. However, no concern for ambiguity seems to have guided the writing of Anglo-Saxon laws, where it is not uncommon to see, for instance, unmarked changes of grammatical subject within a sentence.

The sense that each sentence in an Anglo-Saxon legal text is a self-contained unit is heightened by a lack of thematic structure.⁴³ The laws thus jump from one thing to another both grammatically and thematically. In fact, there is often a lack of explicit grammatical connection even between thematically linked sentences. For example, three thematically connected sentences in *II Edward* are written without anything to mark the relationship grammatically:

Gif hwa ðifpe betogen sy, þonne niman hine on borh ða þe hine hlaforde befæston...Gif he nyte hwa hine on borh nime, þonne niman þa ðe hit togebyreð on his æhtan inborh...Gif he naðor næbbe ne æhta ne oðerne borh, ðonne healde hine man to dome. (II Ew 3–3.2)

If someone is accused of theft, then those who attached him to a lord should take him on their surety... If he does not know who takes him as surety, then those who are concerned can take security from his property...If he does not have either property or any other security, then he can go to trial.

⁴² Schwyter, 'Syntax and Style', p. 214.

⁴³ I will not go into matters of the thematic structure of the laws, which has largely been done already. Wormald discussed the structure of the earliest laws in "Inter cetera", pp. 185–90. Korte has a discussion of the thematic structure of the Kentish laws (pp. 72–80) as well as Alfred (pp. 84–90) and Cnut (pp. 95–101) in Korte, *Untersuchungen*.

Formally, the first and second sentence could have been connected with a concessive conjunction ('however', 'but') and the third with a coordinating conjunction, though none of these are used. The same is the case, for example, in Cnut's code, in a section of ten sentences on sexual offences where there are no connectors marking their relationship (II Cn 50–54.1). Some rare connectors include *furdor* ('further'), which is used in VI As 6.4 and II Cn 71.4 to expand on a point. In the discussion of the text *II Æthelred Appendix* in chapter 3, we also saw the use of the conjunction *fordam* ('because'), which appears in three maxims in this tract and in two similar maxims in *Ine*. Such examples are, however, few.

That said, there are occasions on which sentences are linked through anaphora, that is to say that they are referring back to a word in the previous sentence. One example of such linking is the phrase 'gif hit hwa do' ('if anyone does it'). Most occurrences of this phrase are found after directives setting out a rule. 'Gif hit hwa do' forms part of a conditional sentence which specifies the punishment for breaking that rule. One example is II As 24.1 'ðæt nan cyping ne sy Sunnondagum, gif hit ðonne hwa do, þolige ðæs ceapes 7 gesylle XXX scillinga to wite' ('That there should be no trading on Sundays. If anyone does it, he should forfeit the goods and pay a fine of 30 shillings').⁴⁴ The grammatical connection here is through *hit* ('it'), which is referring back to the previous sentence as a whole.

Some grammatical linking also takes place through the coordinating conjunctions (7/*and* 'and' or *eac* 'also'), especially in the laws from the tenth century onwards. But coordinating conjunctions are not just used where there is a thematic link between sentences. They are also a way in which to mark the transition to a new thought. For example, three sentences in *III Edgar* (2.1, 2.2, 3) which are unrelated thematically, are linked grammatically by being introduced by the tironian et (7 'and'). In contrast, the immediately preceding sentences (III Eg 2 and 2.1) are connected thematically, but not grammatically. The tendency to use '7' or 'and' to introduce new thoughts is particularly pronounced in *V Æthelred*, where every sentence and new topic is introduced by '7'. Instead of functioning as a logical link between sentences, the coordinating conjunction seems to function in these cases more as a way to signal that a new sentence or a new thought is starting, creating an impression of an itemized list rather than discursive prose.⁴⁵

⁴⁴ *Ine* 2, 4, *Af* 5, *II Ew* 1.3, 5.1, 7, 8 (*overhebbe* 'disobey' instead of *do*), *II As* 1.1, 2.1, 10, 15, 22.1, 24.1, *I Em* 1, 2, *II Em* 6, *I Atr* 3.1, *I Cn* 10.1, *Northu* 61.2.

⁴⁵ Richards, 'Written Standard', p. 10.

7.2.2.2 Syntax

Syntax is a further contributing factor to the terseness of legislative prose. For the most part the Anglo-Saxon laws use the same three syntactical forms in fairly consistent and standard ways. These three are conditionals ('if...then'), relatives ('he who') and statements.⁴⁶ As table 4 shows, conditionals and statements are the most frequent, while relatives are used sparingly, with an average of 7% of sentences across the period.

Texts	Total sentences	Conditionals	Statements	Relatives
All	1928	818 (42%)	905 (47%)	125 (6.5%)
Decrees	1256	511 (41%)	654 (52%)	74 (6%)
Codes	672	361 (54%)	251 (37%)	51 (8%)
Non-Wulfstan texts (decrees + codes)	1141	653 (57%)	397 (35%)	75 (7%)
Wulfstan texts (decrees + codes)	787	213 (27%)	508 (65%)	57 (7%)
Wulfstan decrees	441	97 (22%)	309 (70%)	26 (6%)
Non-Wulfstan decrees	815	408 (50%)	345 (42%)	55 (7%)
<i>I-II Cnut</i> (Wulfstan)	346	116 (33%)	199 (58%)	31 (9%)
<i>Alfred-Ine</i>	326	245 (75%)	52 (16%)	20 (6%)
<i>Alfred</i>	184	154 (87%)	23 (12.5%)	4 (2%)
<i>Ine</i>	142	94 (66%)	31 (22%)	17 (12%)

Table 4: Syntactical distribution

The conditional form is common in many kinds of laws. For example, a large number of clauses in the Frankish *leges* open *si quis*, the Latin equivalent of the Anglo-Saxon *gif hwa* ('if anyone'). In the Anglo-Saxon laws, conditionals are almost always phrased with *gif* ('if'), though the alternative *ðeah* is used about ten times and *buton* ('unless') once.⁴⁷ Some early laws have particularly high shares of conditionals: *Æthelberht*, *Hlothhere and Eadric* and *Alfred* – as well as the eleventh-century text *Northumbrian priests' law* – all have more than 80% conditional sentences. This creates a particularly repetitive and disjointed prose style, which is most pronounced in *Æthelberht's* laws:

⁴⁶ Statements are simple or compound sentences with a main verb stating how things are or should be, and have no subordinate clause (such as a conditional or relative clause) that restricts the validity of what is expressed in the verb. For more on these syntactical forms, see Schwyter, *Old English Legal Language*, p. 63 and 'Syntax and Style', pp. 196–7, 205–8.

⁴⁷ *Deah*: Afel 12 (translating Latin *si*), Ine 6.4, IV Eg 2.2, II Cn 2, 73.2, 75, *Dunsate* 4, *Northu* 10, Cn 1018 4. *Buton*: *Hundred* 4.1.

Gif frigman cyninge stele, IX gylde forgyld. Gif in cyninges tune man mannan of slea, L scill gebete. Gif man frigne mannan of sleahþ, cyninge L scill to drihtinbeage. (Abt 4–6)

If a freeman should steal from the king, let him compensate with 9[-fold] compensation. If a person should kill someone in the king's dwelling, let him pay 50 shillings. If a person kills a free man, 50 shillings to the king as lord-payment.⁴⁸

Again, we see a lack of grammatical connectors between thematically linked sentences, and the sense that these are separate and disjointed sentences is strengthened by the repetition of the same syntactical form, a conditional sentence opening with the word *gif*. On the other end of the scale in terms of conditionals are Wulfstan's eleventh-century texts *I Cnut* (16% conditionals), *V* and *VI Æthelred* (c.15% each) and *Cnut 1018* (4%). However, the idea that it might be a simple divide between early and late texts is perhaps refuted by the seventh-century laws *Ine* and *Wibtrad*, which have respectively 65% and 54% conditionals, and the eleventh-century *II Cnut*, with its roughly 45% conditionals.

In general, Wulfstan's texts show a preference for statements: as table 4 shows, his legal texts have 65% statements, while the corpus as a whole has 47% statements. The corpus without Wulfstan's texts only has 35% statements. However, the distribution in *I-II Cnut* is not as lopsided, with 58% statements and 34% conditionals, and *II Cnut* on its own has almost half conditionals. Another feature is the relatively low number of relatives, which is at its highest in *Ine* and *II Æthelstan* (c.12%) and *III Æthelred* (10%). The rarity of this form is perhaps surprising, given the fact that the relative functions just like a conditional, grammatically and in meaning.⁴⁹

While these general percentages give us a useful overview, they can also be misleading. For example, *I Edward* technically has 15% relatives, but that just means that two of its fourteen sentences are relatives. Similar problems relate to the distribution across time: Schwyter argued that relatives became more common across the period (from 7% of sentences in the early period to more than 16% in Wulfstan's text). However, his numbers are based on dividing the laws into four broad periods. This hides such facts that *Ine* has 12% relatives and *I-II Cnut* have around 9%.⁵⁰

⁴⁸ Text and translation from Oliver, *Beginnings*, pp. 62–3.

⁴⁹ Schwyter, 'Syntax and Style', p. 205; B. Mitchell, *Old English Syntax*, 2 vols (Oxford, 1985), §3701. Most relative sentences function almost exactly like conditionals: see for example II As 6.3: 'se þe ðeof wreca wille 7 nanne mon ne gewundige, gesylle þam cyninge CXX scilling...', 'he who wishes to take revenge on a thief and hurts no man, he should give the king 120 shillings...'.
⁵⁰ Schwyter, 'Syntax and Style', pp. 205–7.

A more illuminating way to examine the syntax of the laws is thus to look at the ways in which syntactical forms were used deliberately, i.e. when they were chosen for stylistic reasons or to create structure in a text. Wulfstan offers some indication that there were stylistic reasons for choosing one form over another. He occasionally used different forms to express much the same content when he recycled themes in his texts, and possibly when he borrowed from older laws.⁵¹ That this was done deliberately could be indicated by the fact that the syntactical distribution in *I-II Cnut* is closer to the general corpus than it is in texts such as *VI* and *VIII Æthelred*, which may have been intermediary – perhaps not official – copies.⁵² As we shall see below, a similar trend is evident in Wulfstan’s use of lawgiving expressions: in *I-II Cnut* he consistently used the ‘standard’ options, whereas he was more liable to use non-standard expressions in some of Æthelred’s decrees. This is the case even where he copied laws directly from his decrees into *I-II Cnut*. Perhaps then Wulfstan was guided by some conventional sense of how law should be expressed.

Other texts might suggest that syntax was used deliberately to create structure or other effects. As we saw above, there are several laws in *II Æthelstan* and *I Edmund* phrased as a statement + ‘gif hit hwa do’. A law like *II As* 15: ‘þæt nan scyldwyrhta ne lece nan scepes fel on scyld, 7 gif he hit do, gilde XXX scillinga’ (‘that no shieldmaker should put sheepskin on a shield, and if he does it, he should pay 30 shillings’) could be imagined as a more straightforward conditional: *‘If a shieldmaker puts sheepskin on a shield, he should pay 30 shillings’. These could be examples of a deliberate choice of statement over conditional to give prominence to the initial rule.⁵³ A similar effect is created by *II-III Edgar*’s systematic combination of forms. Two-thirds of the text is made up of statements, which are used to introduce all rules, while conditionals and relatives are used only for dealing with the punishment for breaking that rule.⁵⁴ For example, when legislating on the payments of church-dues, *II Edgar* stipulates the recipients of church-scot (*cyricsceatt*) and the deadlines for tithe and church-scot payments in two statements (*II Eg* 2.2, 3). This is followed by a long conditional clause, setting out the sanctions for non-payment of the tithe (*II Eg* 3.1). Most of the distinct thematic sections in *II-III Edgar* open with three or four statements, followed

⁵¹ For example, *VIII Atr* 42/*II Cn* 66-66.1, *VIII Atr* 40/*II Cn* 7.1, *III Atr* 3.4/*II Cn* 30, and *I Cn* 10.1/*Ine* 4, *II Cn* 8.1/*II As* 14.1 and *EGu* 7/*II As* 24.1.

⁵² This is one of the overarching conclusions reached in Wormald, ‘Æthelred the Lawmaker’.

⁵³ This resembles one of the conclusions reached in Daube, *Forms*, pp. 23–4, namely that phrasing a provision as statement + conditional gives more prominence to the rule itself.

⁵⁴ Wormald discussed this strategy in *MEL*, p. 315.

by conditionals and relatives. The final part of *III Edgar* consists of four statements with a fronted verb. The awkwardness of the first of these could suggest that a statement was deliberately chosen over the more natural option, namely a conditional: III Eg 7.3: ‘7 gesece se æbæra ðeof ðæt þæt he gesece, oþþe se ðe on hlafordsearwe gemet sie, þæt hi næfre feorh ne gesečen’ (‘and let the proven thief – or someone caught in treason – seek whatever [refuge] he may seek, [though] they may never gain their lives’).

Another seemingly deliberate syntactical strategy is found in *II Æthelstan*. Many clauses are introduced by in-text headings, which take the form of *we cwædon + be* (‘about’) + a noun phrase, such as II As 4: ‘Ond we cwædon be hlafordsearwe ðæt he beo his feores scyldig, gif he his ætsacan ne mihte...’ (‘And we said about treachery against one’s lord that he is to lose his life if he is not able to deny it...’).⁵⁵ There are six such constructions in *II Æthelstan*, five of which occur within the first seven chapters.⁵⁶ Fronting of the topic of the law – in this example, treachery – seems to be a deliberate strategy, used to mark the transition from one idea to next and perhaps to draw attention to the change of topic. The same effect is produced through different means in *I Edmund*, where each new thought is introduced by a different phrase. Its first provision starts ‘þæt is ærest’, the second by fronting the topic of the clause (‘teoðunge we bebeodað’, ‘about tithes we command’), the third with a simple ‘gif hwa’, the fourth with a relative ‘se þe’, the sixth with ‘eac we gecwædon’, and it finishes with a plural relative (‘ða þe’). Overall, as these few examples suggest, the laws are characterized by the use of the same syntactical forms, though there is variety in the ways in which they are employed and combined.

7.2.2.3 *Langiving verbs*

Within this syntactical framework, there are a number of ways to express obligation more explicitly. The most common is to use verbs expressing the lawgivers’ desires and commands. As will become clear, a very small number of different verbs is used and each verb consistently appears in the same persons and tenses. Other verbal constructions expressing obligation or necessity are much rarer but occur often enough to raise the question of why they are usually lacking.

⁵⁵ Schwyter compared this construction to headings or rubrics in ‘Syntax and Style’, p. 216. See also Mitchell, *Syntax*, §3881-3.

⁵⁶ II As 2, 4, 5, 6, 7, 19.

There are only three verbs used to express the action of lawgiving:⁵⁷ *cweþan* ('to say, speak'), *willan* ('to will, wish')⁵⁸ and *(be)beodan* ('to command').⁵⁹ This restricted selection suggests a convention in itself. The sense that there is conventional usage is strengthened by the fact that each verb is almost always used in the same tense, but that tense is not the same for each verb. *Cweþan* almost always appears in the past: there are 40 occurrences in the past tense, and only two in the present.⁶⁰ All occurrences of *willan* (45 occurrences) and *(be)beodan* (29 occurrences) are in the present.⁶¹ Thirdly, there is also consistency in the person of each verb. 35 occurrences of *willan* are in the first person singular, and ten in the first person plural.⁶² *Cweþan* is almost always in the first person plural (39 occurrences). There are only three occurrences in the third person singular.⁶³ There are no occurrences of *willan* in the third person singular and no occurrences of *cweþan* in the first person singular.

It seems that these conventions were mostly a feature of the tenth-century non-Wulfstan decrees. They are hardly present in Alfred and Cnut's long codes. In fact, laws before the tenth century have a total of only eight occurrences of lawgiving verbs: six in *Alfred*, two in *Ine* and one in *Alfred-Guthrum*. *Ine*'s two occurrences (both *bebeodan*) are in the prefatory part of the text and are not used in the same way as other occurrences (*Ine* 1, 1.1). In *Alfred*, such verbs are found throughout, but all six occur in two clusters.⁶⁴ One of *Alfred*'s occurrences is also unique in appearing in the then-clause of a sentence: 'Se ðe stalað on Sunnaniht...ðara gehwelc we willað sie twybote' ('He who steals on a Sunday...each of those we wish to be double compensation'; Af 5.5). In the tenth-century laws, all occurrences of these verbs in this sense are found in so-called dependent sentences, where the lawgiving

⁵⁷ I only discuss verbs used in a main clause stating the action of lawgiving. These observations therefore do not hold true for other constructions which contain these verbs. For example, *cwedan* is a lawgiving verb in II As 12: 'Ond we cwædon þæt mon nænne ceap ne geceapige buton porte' ('and we said that one cannot buy anything outside a town'), but not in II As 14.1: '...swa hit ær beforan cwæð' ('...as it says above').

⁵⁸ This includes the negative form *nellan* (I Em 3 and I As 5).

⁵⁹ This includes the negative form *forbeodan* (*Northu* 10). The use of *willan* and *cweþan* is briefly discussed in Wormald, *MEL*, p. 289.

⁶⁰ Af 42.5 and II As 13 are in the present.

⁶¹ However, one manuscript version of I Em 1 (in CCCC 201) has *(be)beodan* in the past tense where there is no lawgiving verb at all in the other manuscripts (*Textus*, CCCC 383, *Quadripartitus*). This is perhaps the work of Wulfstan, who seems to have tampered with the text of *I Edmund* in this manuscript; see Wormald, *MEL*, p. 309, see also pp. 314–15 for Wulfstan's intrusions into the text of *II-III Edgar*.

⁶² Af 5.5, *Hundred* 7, VIIa Atr 1, VIII Atr 31.1, I Cn 6, II Cn 20, 21, *Northu* 57.1, 57.2, 67.1.

⁶³ These occurrences are found in past-tense narratives reporting an event, namely in the two writ reports contained in *VI Æthelstan*: VI As 12.1 (x2), 12.3. I As 5 also has a third person singular *cweþan*, but this sentence represents Wulfstan's tampering with the original, as I argue in Ivarsen, 'Æthelstan, Wulfstan and a Revised History of Tithes'.

⁶⁴ *Setton/cwedan/bebeodan* in Af 41, 42 and 42.5, *settan* in Af 4.2 and 5, all in the present tense, and *willan* in Af 5.5.

verb is formally the main verb of the sentence and the actual legal content is represented as indirect speech dependent on the lawgiving verb. This could again signal that the tenth-century usage was still not conventional in Alfred's time. Nevertheless, the single occurrence in the Guthrum treaty could indicate that it was moving towards becoming a standard in the late ninth century.

Wulfstan departed from the tenth-century conventions by introducing more variety. His texts show a preference for *willan* in the plural and they also introduce some new phrases. In one version of *V Æthelred* some clauses are introduced by 'ure hlaforðes gerædnes 7 his witenas is' ('the decree of our lord and his *witan* is'). In other Wulfstan decrees, 'witan habbað gecoren' ('the *witan* has chosen') is used twice;⁶⁵ the couplet 'we lærað 7 biddað' ('we instruct and command') is found six times; forms of *biddan* on its own twice; and *læran* once.⁶⁶ Wulfstan also reintroduced the phrase *gecoren 7 gecweden* ('chosen and announced'; VIII Atr 6), which is only otherwise found in the preface to *Alfred-Guthrum*. Wulfstan appears to have been using such forms deliberately, as indicated by the adaptations he made when copying text. For example, as I just said, one version of *V Æthelred* relies on 'ure hlaforðes gerædnes 7 his witenas is', which is consistently shortened to 'witenas gerædnes is' in the other version of *V Æthelred*.⁶⁷ For the making of *Cnut 1018*, which is made up of text copied from *V* and *VI Æthelred*, Wulfstan preserved 'witenas gerædnes is'. As we saw in chapter 5, almost the entirety of *Cnut 1018* made its way into *I-II Cnut*. However, Wulfstan did not keep *Cnut 1018*'s lawgiving phrases. Every instance of 'witenas gerædnes is' in *Cnut 1018* was changed to the more standard *we nyllað*, *we beodað* or *ic wille* (as well as one *we lærað*) in *I-II Cnut*.⁶⁸ It is possible that Wulfstan deliberately changed from one of his own forms ('witenas gerædnes is') to something more common in the laws of previous kings to bring *I-II Cnut* stylistically into line with other laws.

Wulfstan's idiosyncrasies aside, there is observable consistency in lawgiving verbs in the Anglo-Saxon laws. This consistency is even more conspicuous in comparison to some

⁶⁵ V Atr 16 (which is recycled in I Cn 17.1) and VIII Atr 6 uses the slightly different 'habbað gecoren and gecweden'.

⁶⁶ 'We lærað 7 biddað': V Atr 8, VI Atr 5, 6, VIII Atr 3, I Cn 6.1, 7. *Biddan*: II Cn 84 (*ic bidde*) and I Cn 18 (*we biddað* in MSS G and A, MS B has 'we wyllað 7 we biddað'). *Lærað*: *Northu* 10 (*Norðhymbra preosta lagu* might not be written by Wulfstan, but it is very much influenced by Wulfstan's work; see Wormald, *MEL*, pp. 396–7).

⁶⁷ V Atr in Liebermann's MS G² (Cotton Nero A.(B), fols. 89ff) uses 'witenas gerædnes is', whereas V Atr in MS G¹ (Cotton Nero A.(B), fols. 116ff) uses 'ure hlaforðes gerædnes 7 his witenas is'.

⁶⁸ VI Atr 2.1/Cn 1018 11 = I Cn 6 (*we nyllað*); IV Atr 8/Cn 1018 3 = II Cn 1 (*ic wille*); Cn 1018 4 = II Cn 2 (*we lærað*); VI Atr 10-10.1/Cn 1018 5 = II Cn 2.1 (*we beodað*); VI Atr 9/Cn 1018 6 = II Cn 3 (*we beodað*); Cn 1018 7 = II Cn 4 (*we beodað*); Cn 1018 8 = II Cn 4.1 (*we beodað*).

council proceedings, where there is much variety in the choice of verbs. The decrees from the council of Clofesho in 747 use no less than eighteen different lawgiving verbs (all in the perfect tense) in thirty chapters. No verb is recycled until chapter fifteen.⁶⁹ Another text surviving from an English council, that held at Chelsea in 816, has nine different verbs in eleven chapters, and all are in the past tense.⁷⁰ The 786 church council decrees, which I discussed in chapter 4, have twenty chapters and use ten different lawgiving verbs in total.⁷¹ Three are in the present tense, while the rest are in the past. As we saw above, Wulfstan's Latin version of *VI Æthelred* displays some of these tendencies: there are only five lawgiving verbs in it, but they are all different and mostly in the past.⁷²

This is not to say that variety in lawgiving verbs was a fixed norm of English church council decrees: there are few such texts surviving from England and they do not always survive in their original form.⁷³ What is more, some texts show that there was no one form in which to present canons established by church councils: the Hertford council acts of 673, for example, start each chapter with an ordinal number followed by *ut*.⁷⁴ Nevertheless, many of the English decrees correspond to the standards noted by Hamilton Hess for early church council *acta*. As the introduction described, some written forms of the proceedings of church councils had roots in a certain process, which left its mark on the texts. For instance, Hess notes the characteristic use of phrases 'referring back to the authority of the assembly' – all of which are in the past tense – such as *constitutum est* ('it was established') and *decrevit sancta synodus* ('the synod determined'), occasionally also expression like *decrevimus* ('we decided', 'determined') and *censuimus* ('we were of the opinion' or 'we judged').⁷⁵ This might signal that the English council decrees were partly following such a standard.

The variety of lawgiving verbs in council decrees puts the lack of variety in Anglo-Saxon laws into context. What is more, there are no obvious reasons why one lawgiving phrase should be in the past and others in the present. Therefore, these verbs are not

⁶⁹ Haddan and Stubbs, *Councils*, pp. 362–76.

⁷⁰ Haddan and Stubbs, *Councils*, pp. 579–85.

⁷¹ See '786 decrees' in MGH Epist. 4, pp. 19–29.

⁷² These are: *monebant* (VI Atr Lat 1.1), *elegerunt tradideruntque consilium* (3), *predicabant* (6), *interdicimus* (11).

⁷³ For example, the canons of the councils of Herford in 673 and *Hatthfeld* in 680 only survive in Bede's *Historia*. For information on the dating, sources and attendants of these councils, see Cubitt, *Church Councils*, pp. 249–50, 252–6.

⁷⁴ This text is edited in Haddan and Stubbs, *Councils*, pp. 118–22.

⁷⁵ Hess, *Early Development of Canon Law*, p. 69.

lingering features of the oral past of Anglo-Saxon law, as has sometimes been suggested, but perhaps instead the opposite, namely indications of a written standard.⁷⁶

7.2.2.4 *Other expressions of obligation*

Other explicit expressions of obligation are very rare, and their occasional appearances lead us to ask why they are not used more frequently. The expressions in question include imperatives, modal verbs and some other verbal constructions expressing obligation. The legal corpus only has 35 certain and 2 possible imperatives. 32 of these are found in Alfred's biblical prologue, for the most part as translations of Latin imperatives. Here, imperatives are found in simple commandments (such as 'Ne sleah ðu', 'Do not kill', AfEl 5) as well as in then-clauses in conditional sentences. Since the use of imperatives here is entirely guided by Latin, they do not indicate anything about idiomatic Old English legislative language. Another translated imperative is found in *II Cnut*, in a rendering of the Lord's Prayer ('forygyf us, Drihten, ure gyltas...'; 'Lord, forgive us our sins...'; II Cn 2a). There are two imperatives in a law of Ine's (Ine 22), though these could also be translations from Latin, as I argued in chapter 4. Two ambiguous cases are found in laws of Edward and Æthelstan, where the verbs could either be second person plural imperatives or indicatives.⁷⁷ Another imperative construction which makes an occasional appearance is the verb *uton* with an infinitive, which is best translated as 'let us'. It is a form of the verb *witan*, which had taken on this standardized form functioning much like a modal verb expressing a wish or command. It is found frequently across the corpus, often in homilies. It occurs only nineteen times in the laws, all except one of which are in Wulfstan's texts.⁷⁸ These are mostly in his decrees for Æthelred, though there are five occurrences in *I-II Cnut*, all of them in homiletic sections.

All in all, it appears then that imperatives were not a standard option to reach for when writing law in Old English, whether as a main verb in a statement (like *uton*) or as the verb in a then-clause. Nevertheless, the translated occurrences indicate that imperative

⁷⁶ This is a view expressed in R. Hiltunen, *Chapters on Legal English: Aspects Past and Present of the Language of the Law* (Helsinki, 1990), pp. 45–6. Mary Richards mentioned it as a possibility ('Written Standard', pp. 9–10), following Wormald's early opinion as expressed in '*Lex Scripta*', p. 23. Wormald later changed his mind, and rejected that these speaking verbs were evidence of oral lawmaking (*MEL*, p. 289 and fn 121).

⁷⁷ I *Ew* prol, I *As* 5. For ambiguous cases of verb forms, see Mitchell, *Syntax*, §§883–8.

⁷⁸ I *As* 2, VI *As* 8.9, V *Atr* 35, VI *Atr* 31 (*witan*), VIII *Atr* 30, 43 (x5), X *Atr* 3, 4, Cn 1018 1.3, 2, I Cn 18.1, 20, II Cn 8, 68, 84.3. For the argument that the Old English version of *I Æthelstan* should be seen as a Wulfstan text, see Ivarsen, 'Æthelstan, Wulfstan and a Revised History of Tithes'.

constructions were a possibility. Furthermore, the dearth of imperatives in the laws could be contrasted to medical recipes, for example, which could arguably provide some comparison as instructional texts with a high frequency of conditionals.⁷⁹ A text like Bald's *Leechbook* has about 80 times as many imperatives as the laws, most of which are in the then-clause of conditional sentences.⁸⁰ This indicates that the imperative was an option in normative and instructional prose.

Modal auxiliaries are a somewhat more common way to express obligation, though it is still a conspicuously rare strategy in the laws.⁸¹ Modals of obligation in Old English include **sculan* ('shall, must') and *moton* ('to be allowed to, must').⁸² Only the first appears in the relevant sense in the laws, with a total of 93 occurrences.⁸³ This is only a small share of the total number of sentences in the laws, which is around 2000. One text stands out in its use of *sculan*: *Ine* has a total of fifteen such sentences, which means that about one in ten sentences in *Ine* contain *sceal* (sg.) or *sculon* (pl.).⁸⁴ Again, given the possibility that the laws of *Ine* are translated from Latin, these uses of *sceal* (arguably a translation from *debet*) are not necessarily evidence of idiomatic Old English legal language.

In any case, the number of occurrences of *sculan* in *Ine* serves as an illustration of just how unusual the construction is in the other laws. The whole corpus of just over 41000 words has 93 instances of *sceal* or *sculon*, meaning that one in about every 440 words is a form of *sculan*. The same number for *Ine* alone is one in about every 170 words. The number for the corpus without *Ine* is one in about every 490 words. There is a slight uptick in Wulfstan's laws, which have one *sceal* or *sculon* about every 430 words. That said, even Wulfstan seems to have avoided the construction in his laws, suggested by the fact that he used it much more

⁷⁹ In Bald's *Leechbook*, for example, 1 in every 100 words is *gif*, while the laws have one *gif* in every 45 words. These numbers are based on searches in the *DOE Corpus* and the *The York-Toronto-Helsinki Parsed Corpus of Old English Prose*, as are similar numbers given in the following footnotes.

⁸⁰ There are 2351 imperatives in the three books of the *Leechbook* and the total word count is c. 35000. Other texts also have a higher frequency of imperatives, such as the translation of the Benedictine Rule (1 in every 425 words is an imperative).

⁸¹ Mitchell, *Syntax*, §§990–1 listed the following as modal auxiliaries: **sculan*, **motan*, *willan*, *magan*, *agan*, *cunnan*, **durran* and *purfan*. The asterisk signals that these infinitive forms of the verbs are not actually attested.

⁸² The main sense of *moton* is 'to be allowed to', which is its meaning when used in the laws. See Mitchell, *Syntax*, §§1016–7 for a discussion of *motan*. A third possible obligation modal is *agan* 'to own' or 'ought', but it is not entirely clear when this sense of *agan* developed. Mitchell finds possible examples late in the Anglo-Saxon period, though rejects that there is obligation implied in the only potential example of *agan* as auxiliary in the laws (Af 2) (Mitchell, *Syntax*, §§932–3).

⁸³ This is only counting the use of *sculan* as a modal; it also appears as an independent verb with its primary lexical meaning 'to owe', for instance in Alfred's code; see above on p. 113 and fn 13.

⁸⁴ *Sceal* in *Ine*: 15.1, 40, 44.1, 45, 46, 54, 54.2, 57, 59.1, 61, 64, 65, 69, 70, 74. *Sceal* also appears once as a main verb with the meaning 'to owe' (*Ine* 76).

frequently in his other texts: his treatise *Institutes of Polity* has one *scéal* or *sculon* in about every 100 words and his homilies one in every 230 words. We can also compare the distribution of *sculan* in the laws to other normative and instructional texts such as penitentials and medical recipes, where forms of *sculan* appear around 1 in every 300 words. The availability of *sculan* as a way in which to phrase Anglo-Saxon laws and the frequency with which it appears elsewhere makes its absence from Anglo-Saxon law appear significant, perhaps indicating a conventional feature.

We find three other rare constructions for expressing obligation in the laws: *hit gebyrian* ('it is befitting, it belongs'), *riht is* ('it is right, lawful') and *beon* + inflected infinitive. An example of the first is found in *II Edmund*: 'Ðonne syððan gebyreð þæt man sylle ðæs slagan forspecan on hand ðæt se slaga mote mid griðe nyr 7 sylf wæres weddian' ('Then afterwards it is fitting to give the killer's advocate a pledge that the killer may approach in security and himself pledge the wergeld').⁸⁵ *Riht is* is found in the tract *Wer*, which states that 'riht is þæt se slaga...' ('it is right/lawful that the killer...'; *Wer* 3). A variant, 'ne þingð na riht' ('it does not seem right to us') is used once (*II Cn* 24.3). *Riht is* is also found twice in the then-clause of a conditional sentence, both in *Be wifmannes bewedding* (1, 4).⁸⁶ *Beon* + inflected infinitive – which has the same sense of obligation as a Latin *gerund*⁸⁷ – appears three times. Two occurrences are found in *Be wifmannes*: 'Æfter ðam is to witanne...' ('after that it is to be known...'; *Wif* 2) and 'wel is eac to warnianne ðæt...' ('it is proper then to make sure that...'; *Wif* 9).⁸⁸ The same construction is found in *I Æthelstan*: 'Us is to ðencanne...' ('we ought to consider...'; *I As* 3).

Both *Be wifmanne* and *I Æthelstan* are very unusual in using several different expressions of obligation. We just saw how *Be wifmanne* uses both *riht is* and inflected infinitives. *I Æthelstan* actually introduces each new thought with a different expression: 'ic wille', 'uton geþencean', 'us to ðencanne', 'ic wille eac' and 'nu ge gehirað'. *Æthelstan*'s tithing

⁸⁵ *II Em* 7.1. Another occurrence is *VIII Atr* 12. A few further occurrences of *gebyrian* in Wulfstan laws could either carry a sense of obligation and duty or the slightly weaker meaning 'it befits' (*VII Atr* 35, *I Cn* 4, *II Cn* 40.2).

⁸⁶ Other examples are found in *HI* 6, *V Atr* 7, *VI Atr* 4, *I Cn* 2.2, *II Cn* 76, *Grið* 2, 31. The phrase *ealswa hit riht is* ('as is right/proper/lawful') is used by Wulfstan, but always as an embedded clause adding emphasis (i.e. the 'law content value clauses' discussed in chapter 5, section 5.2.1) rather than in the main clause; this is the case in *V Atr* 19, *VIII Atr* 6, *I Cn* 17.2, *II Cn* 84.4.

⁸⁷ Ælfric gave 'is to witanne' as an equivalent to Latin 'sciendum est' in his grammar book; as cited in Mitchell, *Syntax*, §936.

⁸⁸ See Mitchell, *Syntax*, §§934–6, for a description of this construction.

writ is exceptional – both in content, language and textual transmission (see chapter 3) – but it serves to illustrate how rare these features are in other texts.

7.3 Discussion

In the words of F.W. Maitland, ‘our ancient kings and their wise-men...spoke briefly and pointedly’.⁸⁹ In the discussion above, I have tried to set out exactly which linguistic features create such an impression. Laws use primarily two syntactical forms with little logical connection between sentences. The lack of grammatical linking creates a sense of disjointedness. This sense of disjointedness is reinforced by the thematic disconnect between clauses. The combined effect of this is heightened by the frequent repetitions, whether it is of *gif*, lawgiving verbs or other strategies. In addition, this terse and often list-like prose is usually prefaced with stylistically similar prefaces. While some of this might seem obvious, there is a clear conclusion to be drawn here: specific kinds of linguistic features distinguish a specific Anglo-Saxon genre of law texts.

This analysis can be broken down. As we have seen above, there may be some differences between the categories identified in chapter 2, decrees and codes. However, the time difference between the two law codes makes overall comparison of the language of codes and decrees difficult.⁹⁰ There are many observable differences between Alfred’s code and the rest of the laws: notably, Alfred’s code relies almost completely on conditionals and it lacks lawgiving verbs. But the dearth of lawgiving verbs could mean that this strategy only became widespread in the tenth century; it does not have to be a difference between codes and decrees. It is perhaps odd that the first decree of Alfred’s son Edward should use a lawgiving verb in almost every sentence, given the potentially short time span between the issue of Alfred’s code in the 890s and Edward’s laws issued at most thirty years later. However, the content of Alfred’s laws could be older than the law code as a whole. The parts he got from his stated sources (*Offa*, *Æthelberht*, *Ine*) were clearly older, but it could be that the code also contains material which had been issued by Alfred or others before the code was

⁸⁹ F.W. Maitland, ‘Outlines of English Legal History’ in *The Collected Papers of Frederic William Maitland*, vol. II, ed. H.A.L. Fisher (Cambridge, 1911), pp. 417–96, at p. 424.

⁹⁰ General chronological developments have been discussed before: chronology is the main framework for interpretation in Schwyter’s article, and Wormald discussed chronological developments in language and style throughout the section on ‘Legislation as Legal Text’ in *MEL*, pp. 264–415. In general, their conclusion is that the syntax gets more complex (i.e. it has more subordination) over time.

made. Alfred's treaty with Guthrum has an instance of *we cwædon* (AGu 5), indicating that the phrase was not out of place in the ninth century.

Cnut's code offers its own problems, mostly caused by Wulfstan, who brings his personal style into his writings. Yet, there is nothing very surprising in terms of syntax, lawgiving verbs or other constructions in *I-II Cnut*. In fact, as we saw, Wulfstan consistently changed non-standard lawgiving verbs to standard lawgiving verbs before he copied clauses from his decrees into *I-II Cnut*. The syntactical distribution in *I-II Cnut* is also closer to the norm of tenth-century non-Wulfstan decrees. This could indicate that Wulfstan attempted to bring the language of *I-II Cnut* a bit closer to a standard. At first sight this conclusion might seem at odds with the presence of what I described in chapter 5 as homiletic sections in *I-II Cnut*. As I argued there, the style of the prose in these sections resembles Wulfstan's 'high style', which he normally used in (some) homilies. This could suggest that Wulfstan did not care about the stylistic conventions of legislation. However, it can also signal the opposite: the fact that Wulfstan deliberately used a different rhetorical register for sections that contained material not usually found in laws could suggest that he was aware of the conventions of normal Anglo-Saxon legislative drafting. However, those conventions do not seem to be different for codes and decrees.

Examining features of the vocabulary of Edward's laws, Wormald concluded: 'What it may mean is that legal draftsmen were paying close attention to their predecessors'. A similar argument was made by Mary Richards, who proposed that writers looked back to older laws and deliberately made theirs look the same, because it would give a heightened sense of authority to new law.⁹¹ However, there is no reason to suppose that new law needed injections of authority and there seems to be nothing archaizing in the tenth-century laws. I have argued something subtly different, namely that legal writers may have written following certain conventions and a certain style. Thinking in terms of convention rather than imitation explains the similarities at the same time as it accounts for variations and the different texts' often deliberate use of some linguistic strategies. This could mean that legislative drafters had had some kind of training where they learnt these conventions and this style. This knowledge may have been a natural side-effect of reading and studying older laws, or drafters may have deliberately sought to learn the style. In either case, it could imply – as I discuss in chapter 3 – that drafters were not chosen at random.

⁹¹ Richards, 'Written Standard', pp. 6, 17.

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