



# Æthelstan, Wulfstan and a revised history of tithes in England

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*The law-text known as I Æthelstan is commonly accepted as the earliest evidence of a legal obligation to pay tithes in England. As it turns out, it might not be. The extant Old English version of I Æthelstan does indeed legislate for tithe payments. However, this version is an eleventh-century revision of the original text, probably penned by Archbishop Wulfstan of York (d. 1023). As I will argue in this article, the original version, which survives only as contained in a twelfth-century translation into Latin, appears to be a call for a one-off charitable alms payment.*

In the early twelfth century, a large number of pre-conquest laws were translated into Latin. These translations, collectively known as the *Quadripartitus*, are largely literal renderings of their Old English counterparts.<sup>1</sup> There is, however, one noteworthy exception: the

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<sup>1</sup> The first, and still most comprehensive, study of *Quadripartitus* is that of Felix Liebermann, who found the translator’s (‘Q’) language to be close to the sources: see F. Liebermann, *Quadripartitus: Ein englisches Rechtsbuch von 1114* (Halle, 1892), esp. pp. 46–7. Modern studies focus primarily on Q’s choices in translating specific (legal) terms. This focus dominates to a degree that suggests Q’s translations are notable only in their treatment of specific words. Such studies include B.R. O’Brien, ‘Translating Technical Terms in Law-Codes from Alfred to the Angevins’, in E. Tyler (ed.), *Conceptualizing Multilingualism in England, 800–1250* (Turnhout, 2011), pp. 57–76, esp. pp. 63, 70; B. O’Brien, ‘The *Instituta Cnuti* and the Translation of English Law’, *Anglo-Norman Studies* 25 (2003), pp. 177–98; J.P. Gates, ‘English Legal Discourse in *Quadripartitus*’, in S. Jurasinski and A. Rabin (eds), *Languages of the Law in Early Medieval England: Essays in Memory of Lisi Oliver* (Groningen, 2019), pp. 241–61; and R. Sharpe, ‘Official and Unofficial Latin Words in 11th- and 12th-Century England’, in R. Ashdowne and C. White (eds), *Latin in Medieval Britain*

*Quadripartitus* translation of the law known as *I Æthelstan* differs in significant ways from the extant Old English version. This situation has long been associated with Archbishop Wulfstan of York (d. 1023), who seems to have made modifications to the Old English text a century after it was first issued in Æthelstan's reign (924–39). As we shall see in this article, Wulfstan's revisions are more extensive than previously thought, and, in fact, they have changed the very legal message of Æthelstan's original decree.

Wulfstan's habit of tampering with older law-texts was first noted by Dorothy Whitelock, who observed interpolations in the laws of Kings Edmund and Edgar seemingly made by Wulfstan. Her case was based on the fact that passages on church payments in these laws were different in manuscripts known to have been owned and used by Wulfstan and in manuscripts with no association to Wulfstan.<sup>2</sup> She was later followed in this argument by Patrick Wormald, who noted changes not just in Edmund's and Edgar's laws, but also a parallel intrusion in a passage on church dues in *I Æthelstan*, the Old English version of which only survives in Wulfstan's manuscripts.<sup>3</sup> Wormald also noted some further potential interpolations and alluded to Wulfstan's involvement.<sup>4</sup> What is more, Whitelock and others have concluded that the word *lagu* ('law'), which is found in *I Æthelstan*, is unlikely to have been in use as early as Æthelstan's reign.<sup>5</sup> So, it has

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(Oxford, 2017), pp. 247–70. As Gates's, Sharpe's and O'Brien's studies show, the liberties Q took were in his renditions of legal terms, which were usually transliterated and sometimes expanded with an explanation. As a contrast, O'Brien gives several examples of how other twelfth-century translations deviate in more substantial ways from their sources (e.g. '*Instituta Cnuti*', pp. 193–5). Moreover, the translation in *Quadripartitus* is often suggested to be more faithful than the one in *Leges Henrici Primi*, also authored/translated by Q; see N. Karn, '*Quadripartitus, Leges Henrici Primi* and the Scholarship of English Law in the Early Twelfth Century', *Anglo-Norman Studies* 37 (2015), pp. 149–60, e.g. at pp. 150, 158, and L.J. Downer (ed. and trans.), *Leges Henrici Primi* (Oxford, 1972), pp. 12–28. See below on p. 239 for more on Q.

<sup>2</sup> Dorothy Whitelock's observations on the interpolations are found in *English Historical Documents Vol. I, c. 500–1042* (London, 1979), pp. 431–3, and D. Whitelock, M. Brett and C. N.L. Brooke (eds), *Councils and Synods: With Other Documents Relating to the English Church. I: A.D. 871–1204* (Oxford, 1981), pp. 60–3.

<sup>3</sup> P. Wormald, *The Making of English Law: King Alfred to the Twelfth Century. Vol. 1, Legislation and its Limits* (Oxford, 1999) [hereafter *MEL*], pp. 188–9, 295, 302, 309, 314–15; and 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*], pp. 25–6. See below on n. 28 for the manuscripts containing *I Æthelstan*.

<sup>4</sup> Wormald noted, as we shall see below, that one biblical citation is different in the two versions and that a sentence was 'somehow dropped from the vernacular version' (*MEL*, p. 302 and nn. 173, 174). He does not go into the implications of these differences.

<sup>5</sup> Whitelock noted that *lagu* is probably a later interpolation, though she did not explicitly attribute it to Wulfstan: see 'Wulfstan and the so-called Laws of Edward and Guthrum', *EHR* 56 (1941), pp. 1–21, at p. 19 n. 3. Others have made the same observation; see below on p. 235.

long been acknowledged that the language of the Old English *I Æthelstan* does not date entirely from Æthelstan's reign.

As we shall see, the changes made to *I Æthelstan* are more extensive than this and have significant implications for our reading of the law.<sup>6</sup> In fact, the revisions and interpolations changed the legal substance of the text: the original version (as reflected by the *Quadripartitus* Latin) calls for a one-off charitable alms payment, while the rewritten version (the extant Old English) imposes a general legal obligation to pay tithes. This observation is important, because the extant Old English text has long been seen as the first secure evidence that tithes were a fixed and ongoing legal obligation in England as early as Æthelstan's reign.<sup>7</sup> That is a natural conclusion to draw based on the Old English text itself: it contains a command to pay tithes (I As prol., 1), biblical and patristic quotations on the topic (I As 2–3), a command to pay other church dues (I As 4), a reminder of why tithes and other taxes are to be paid (I As 5) and a penalty clause fining those who fail to pay (I As 5). However, as we shall see in this article, the Latin version differs in multiple ways throughout the text, including in being devoid of penalties, in its biblical and patristic framing, and in some of its legal details. All in all, the original as contained in the Latin translation seems to call for a one-off charitable donation of a tenth of everyone's produce, not legally mandated tithes. While it is worth bearing in mind that Æthelstan could have issued two separate versions, and that the *Quadripartitus* translator (henceforth 'Q') was working from one and that the other later made its way into Wulfstan's manuscripts, the case set out below might convince readers that this scenario is not likely.

The current scholarly impression that *I Æthelstan* imposed a general obligation to pay tithes could be due to the fact that both extant versions use the term 'tithes' (*teodungaldecimae*). However, as I will shortly demonstrate, this term does not have to refer to the mandatory tax of 10 per cent of produce and earnings payable to the church by all Christians and enforced by secular authorities. Nevertheless, for the

<sup>6</sup> Despite observing several of the differences discussed in this article, Wormald's ultimate conclusion was that the extant Old English text could be taken 'at near its face value': Wormald, *MEL*, p. 302. As the following footnote shows, Wormald maintained the view that *I Æthelstan* represented the earliest English royal legislation to impose tithes, which can only mean that he trusted the content of the extant Old English version.

<sup>7</sup> *I Æthelstan* is taken as the earliest evidence of legally fixed tithes in England in Wormald, *MEL* ii, p. 35; B.R. Taylor, 'Continuity and Change: Anglo-Saxon and Norman Methods of Tithe-Payment Before and After the Conquest', *Bulletin of the John Rylands Library* 83 (2001), pp. 27–50, at p. 32; F. Tinti, 'The "Costs" of Pastoral Care: Church Dues in Late Anglo-Saxon England', in F. Tinti (ed.), *Pastoral Care in Late Anglo-Saxon England* (Woodbridge, 2005), pp. 27–51, at p. 32; J. Blair, *The Church in Anglo-Saxon Society* (Oxford, 2005), pp. 440–1.

sake of clarity, I will use two different terms in this discussion, namely 'tithes' and 'alms'. I use tithe(s) to refer to the payment reflected in the extant Old English text, that is a payment which is part of the system of enforceable taxation just described.<sup>8</sup> I argue that the *Quadripartitus* version calls for an eleemosynary tithe, but I will refer to this as alms. While a word denoting alms does not appear in either text, the choice is justified by the fact that the payment in the original seems unlikely to be annual or ongoing; that there are no provisions for its enforcement nor penalties for non-fulfilment; and that, as we shall see, the biblical and exegetical framing of this payment draws on a late antique and early medieval tradition associated with charity and almsgiving. None of this is to say that payments conceived of as eleemosynary could not become fixed and regularized – such as was the case with Peter's Pence in the tenth century – but this choice of terms allows me to distinguish between a one-off donation and an ongoing legal obligation.<sup>9</sup>

### Early medieval tithes

To understand how a call for alms could be transformed into an obligation to pay tithes, we first need to look at the development of tithe payments. In fact, *decimae* ('tithes') and *elemosinae* ('alms') started their early medieval lives together. There is Old Testament precedent for a payment of a tenth of first-fruits and animals, but these prescriptions were in various ways set aside in late antique and early medieval Christian practice and writings.<sup>10</sup> Yet, the Old Testament terminology was partly kept. Augustine and others used the term *decimae* with reference to the Old Testament as a suggested minimum amount for voluntary alms.<sup>11</sup> Several other writers used the Old Testament verses on tithes as a way to promote almsgiving.<sup>12</sup> Yet the payments called for by these authors were not the fixed tithes known from later centuries. Authors emphasized that alms should be given out

<sup>8</sup> I am following the definitions set out in E. Shuler, 'Caesarius of Arles and the Development of the Ecclesiastical Tithe: From a Theology of Almsgiving to Practical Obligations', *Traditio* 67 (2012), pp. 43–69, at p. 44.

<sup>9</sup> For the regularization of Peter's Pence, see R. Naismith and F. Tinti, 'The Origins of Peter's Pence', *EHR* 134 (2019), pp. 521–52.

<sup>10</sup> Commands to pay tithes are found in Ex. XXII.29, Lev. XXVII.30–2, Deut. XII.6, XIV.22. Examples of how patristic writers dealt with these verses are given in R. Finn, *Almsgiving in the Later Roman Empire: Christian Promotion and Practice 313–450* (Oxford, 2006), pp. 49–50.

<sup>11</sup> Finn, *Almsgiving*, pp. 51, 56; and Shuler, 'Caesarius and the Tithe', pp. 45–9.

<sup>12</sup> Finn, *Almsgiving*, p. 56.

of love for God and one's neighbour and that this love should guide the amount donated.<sup>13</sup>

The obligation to pay a fixed tariff as *decimae* ('tithes') appeared in the sixth century. This development took place in Gaul, where Bishop Caesarius of Arles seems to have been the first to draw an explicit distinction between *decimae* and *elemosina*.<sup>14</sup> Caesarius presented tithes as a fixed tariff and maintained that alms were to be given out of a sense of charity and love from the possessions remaining after tithes had been paid.<sup>15</sup> This view seems to have become established on the Continent in the following centuries. It is found in the regulations of the church councils of Tours (567) and Macon (585), while Charlemagne's Capitulary of Herstal (779) was the first piece of secular legislation to prescribe Caesarian tithing.<sup>16</sup> Later centuries saw writers and churchmen such as Hincmar of Rheims and Ghaerbald of Liège embrace the legally mandated tithe.<sup>17</sup>

The situation across the Channel is less clear. A small handful of eighth-century texts mention tithes, some of which might indicate systematic payments. However, these are by no means straightforward evidence, as Wormald showed.<sup>18</sup> Among these texts are the acts of a 786 church council held in Mercia and Northumbria, which call for tithes, but this text is notoriously problematic as evidence for English practices.<sup>19</sup> That is partly because these decrees were the result of a papal envoy attempting to bring the English church into line with Roman practices.<sup>20</sup> Its tithing impositions may thus reflect these

<sup>13</sup> Shuler, 'Caesarius and the Tithe', p. 48; and Finn, *Almsgiving*, p. 189.

<sup>14</sup> For Caesarius' perception of tithes, see Shuler, 'Caesarius and the Tithe', e.g. on pp. 43–4, 65–6; and G. Constable, *Monastic Tithes, From their Origins to the Twelfth Century* (Cambridge, 1964), pp. 19–21.

<sup>15</sup> Shuler, 'Caesarius and the Tithe', pp. 43–4.

<sup>16</sup> For more on tithes in these laws, see R. Kottje, *Studien zum Einfluss des Alten Testaments auf Recht und Liturgie des frühen Mittelalters (6.–8. Jahrhundert)* (Bonn, 1970), pp. 63–5; and Shuler, 'Caesarius and the Tithe', pp. 65–6.

<sup>17</sup> Wormald, *MEL ii*, p. 41. As Wormald here pointed out, these texts were known to the English.

<sup>18</sup> These texts are discussed in Wormald, *MEL ii*, pp. 39–43.

<sup>19</sup> The text of the council report is printed as 'Alcuini epistola 3' in *Epistolae Karolini Aevi II, MGH Epistolae 4*, ed. E. Dümmler (Berlin, 1895), pp. 19–29. For an introduction to the 786 church council decrees and their problems, see J. Story, *Carolingian Connections: Anglo-Saxon England and Carolingian Francia, c.750–870* (Aldershot, 2003), pp. 57–61; P. Wormald, 'In Search of King Offa's "Law-Code"', in his *Legal Culture in the Early Medieval West* (London, 1999), pp. 201–24; and C. Cubitt, *Anglo-Saxon Church Councils c. 650–c. 850* (London, 1995), pp. 153–90. One problem is that the decrees only survive in the form of a report written by a papal legate addressed to the pope. Moreover, the extant text is of Frankish origin and no manuscript has survived from England: the letter is dated by Charlemagne's regnal years and, as discussed in the footnote below, there are signs that it may have been written by Alcuin, who was attached to Charlemagne's court.

<sup>20</sup> For the papal envoys' motivations, including to encourage conformity, see Cubitt, *Church Councils*, pp. 63 n. 12, 153; and Story, *Carolingian Connections*, pp. 59–60.

aspirations rather than reality.<sup>21</sup> Both Wormald and John Blair have taken the silence about tithes in sources dating to the two and a half centuries after 786 to mean that these decrees were, in Blair's word, 'a dead letter in England' on this point.<sup>22</sup>

The earliest evidence for a royal call for tithes in England – if we put *I Æthelstan* to the side for the moment – is in a decree of King Edmund's from the 940s, which states that 'Teoðunge we bebeodað ælcum Cristene men be his Cristendome' ('Tithes we command for all Christians according to his Christianity'); non-payment was penalized with excommunication.<sup>23</sup> A fuller treatment of tithes in royal legislation appears in *II–III Edgar*, issued in the 960s or 970s. This decree contains a command to pay tithes, the dates on which the payment is due and the earliest provisions for a secular penalty (a fine); it also contains detailed instructions for how law enforcement should go about exacting this fine.<sup>24</sup> The documentary record seems to support the impression created by Edmund's and Edgar's laws, namely that tithes had become a legal obligation around the middle of the tenth century: the first mention of the payment of tithes in a document can be dated to 955.<sup>25</sup> As Wormald's study of taxation showed, this is in contrast to other church payments, for instance *cyricsceatt* ('church-scot'), which appears frequently in the charters of earlier centuries after its first mention in Ine's laws in the seventh century.<sup>26</sup> This situation is reflected in the literary evidence too. For instance, Bede's *Historia ecclesiastica* contains a mention of *decimae*, but only as an illustration of a bishop's exceptional piety, and a tenth-century homily from the

<sup>21</sup> The Englishman Alcuin may be the author of the decrees, possibly strengthening the case in favour of seeing the text as reflecting English realities. For the case for Alcuin's authorship, see Cubitt, *Church Councils*, pp. 161–8, 177–8, 182–90, and more recently by B. Carella, 'Alcuin and the Legatine Capitulary of 786: The Evidence of Scriptural Citations', *The Journal of Medieval Latin* 22 (2012), pp. 221–56. Doubts about Alcuin's authorship are set out by D.A. Bullough, *Alcuin: Achievement and Reputation* (Leiden, 2002), pp. 350–6.

<sup>22</sup> Blair, *The Church*, p. 436; and Wormald, *MEL ii*, pp. 43–4.

<sup>23</sup> I Em 2. *Die Gesetze der Angelsachsen vol. I: Text und Übersetzung*, ed. F. Liebermann (Halle, 1903), p. 184. All other references to Anglo-Saxon laws are to Liebermann's edition, using his abbreviations. Translations are my own throughout unless otherwise noted. The second part of I Em 2, which concerns other church dues, bears traces of Wulfstan interpolations, as I set out above on p. 226 and below on pp. 232–5. However, the first part calling for tithes shows no signs of being a Wulfstan interpolation.

<sup>24</sup> II–III Eg 3–3.1; see below on pp. 251–2 for the text of this passage.

<sup>25</sup> Wormald, *MEL ii*, pp. 35–44; and Tinti, 'The Cost of Pastoral Care', p. 44.

<sup>26</sup> Wormald finds 'remarkably rich' evidence for the payment of *cyricsceatt*; see *MEL ii*, pp. 28–34. For more on *cyricsceatt* in general, see Wormald, *MEL ii*, pp. 28–34; Blair, *The Church*, pp. 434, 440; and Tinti, 'The Costs of Pastoral Care', pp. 28–31. The payment is attested in Ine's laws (Ine 4 and 61).

Blickling collection – which we shall come across again later – refers to tithes and alms interchangeably.<sup>27</sup>

This history tells us two things. One is that the use of *decima(e)* or *teodung(a)* does not necessarily refer to something like the later medieval system of legally imposed tithes. It was also used within the context of voluntary and charitable payments, both in England and on the Continent. Secondly, the system of legally fixed tithes was a relatively late development, which – despite its Old Testament precedent – grew out of the practice of almsgiving. Based on surviving evidence, it could seem that the regularization of tithe payments may have happened in fits and starts in England, with the eighth century representing a start, false or otherwise. As we shall see in the conclusion, several other English church dues were being paid in the centuries when continental churches relied on tithes for their income; the English church may not have felt the same need for this new imposition. By the mid-tenth century, it nevertheless seems that there was a (royal) effort to exact tithes in England.

The upshot is that there are two possible scenarios in which we could place the suggested original version of *I Æthelstan*. One is that the system of annual and enforced tithe payments was not yet in place in England and that *I Æthelstan* represents an early stage in the development of the regular payment through a call for a one-off payment of ‘tithes’ of produce. The other is that the system of annual and enforced tithe payments was in place, and that *I Æthelstan* was calling for an additional charitable payment. I will return to these possibilities in the conclusion, but in either case, as we shall now see, *I Æthelstan* itself cannot be taken as evidence for the existence of a system of mandatory tithes in England in the early tenth century.

### *The two extant versions*

We must distinguish between three different versions of *I Æthelstan*: the tenth-century original issued by Æthelstan, the eleventh-century Old English text, and the twelfth-century Latin translation. Only the later

<sup>27</sup> The relevant passage in Bede is found in B. Colgrave and R.A.B. Mynors (eds), *Bede's Ecclesiastical History of the English People* (Oxford, 1991), IV.29, at pp. 442–3. The Blickling homily is edited and translated in R. Morris, *The Blickling Homilies of the Tenth Century* (London, 1880), pp. 39–40. For its dating, see M. McC. Gatch, ‘The Unknowable Audience of the Blickling Homilies’, *ASE* 18 (1989), pp. 99–115, at p. 102. While much of Blickling IV is based on Sermo 33 by Caesarius (see below), the passages on almsgiving are a departure from the source, as noted in Gatch, ‘The Unknowable Audience’, pp. 103–4, and R. Willard, ‘The Blickling-Junius Tithing Homily and Caesarius of Arles’, in T.A. Kirby and H.B. Woolf (eds), *Philologica: The Malone Anniversary Studies* (Baltimore, 1949), pp. 65–78.

two are still extant.<sup>28</sup> Their texts are set out in Table 1 below, which also shows their most significant divergences (marked in bold). The differences between the two extant texts can be divided into three groups: some are indications that Wulfstan was involved in making revisions (I As 2, 4); some may suggest that the *Quadripartitus* version reflects the original tenth-century text (I As 3); and some point in the direction that this original text concerned alms, not legally mandated tithes (I As 1, 2, 4, 5). I will start with the first group, revisiting the evidence set out by Wormald and others concerning the passages which show signs of Wulfstan interpolation. From there, I move on to remaining differences and their implications for our reading of the content of *I Æthelstan*.

### *Wulfstan's known interpolations*

The most significant passage in terms of establishing Wulfstan as interpolator concerns a set of church payments other than the tithes found at I As 4. Here, the *Quadripartitus* version states that reeves must collect *cyricsceatt* ('church-scot').<sup>29</sup> This payment is also mentioned in the Old English version – which, as we've seen, only survives in Wulfstan's manuscripts – though here it is listed alongside *sawlsceatt* ('soul payment') and *sulhelmessan* ('plough alms'). These last two payments are nowhere to be found in the *Quadripartitus* version.

As Wormald noted, Wulfstan's involvement in making this change in *I Æthelstan* is suggested by comparable intrusions in Edmund's and Edgar's laws.<sup>30</sup> The case for Wulfstan's tampering with these texts was set out by

<sup>28</sup> The extant Old English version of *I Æthelstan* is found in two manuscripts. The earlier, and better witness, is British Library, Cotton Nero A. i(B), which contains Wulfstan's canon law collection and many other Wulfstan texts, and has occurrences of the Wulfstan hand. See N. R. Ker, *Catalogue of Manuscripts Containing Anglo-Saxon* (Oxford, 1957), no 164; '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. 321–4; and 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), no. 341. The second manuscript is Cambridge, Corpus Christi College, 201 [hereafter CCCC 201], a slightly later copy of a Wulfstan collection, see Gneuss and Lapidge, *AS Manuscripts*, no. 65; Ker, *Catalogue*, no. 49; and Wormald, *MEL*, pp. 208–9. The twelfth-century Latin translation is found in all complete *Quadripartitus* manuscripts, with little textual variation. For an overview of these manuscripts and their content, see P. Wormald, 'Quadripartitus', in his *Legal Culture in the Early Medieval West: Law as Text, Image and Experience* (London, 1999), pp. 81–114, and *MEL*, pp. 236–44.

<sup>29</sup> See above on p. 230 and below on pp. 246–7 for more on the church-scot. *Quadripartitus* gives this word in Latinized Old English.

<sup>30</sup> Wormald, *MEL*, pp. 188–9, 295, 302, 309, 314–15 and n. 173; and in *MEL ii*, pp. 25–6.

Table 1 The text of *I Æthelstan* in Old English and *Quadripartitus*

I Æthelstan OE	I Æthelstan Latin
<p>[I As prol.] Ic Æðelstan cyngingc mid geþeahthe Wulfhelmes arcebiscopes 7 eac minra oþerra biscopa cyþe þam gerefan to gehwylcere byrig 7 eow bidde on Godes naman 7 on ealra his haligra 7 eac be minum freondscipe beode þæt ge ærest of minum agenum gode agyfan þa teoþunga, ægþer ge on cwicum ceape ge on þæs geares eorðwæstmum, swa man rihtast mæge oððe gemetan oððe getellan oððe awegan 7 þa biscopas þonne þæt ylce don on heora agenum gode, 7 mine ealdormen 7 mine gerefan þæt sylfe. [I As 1] 7 ic wille þæt biscopas 7 þa gerefan hit beodan eallum þam þe him hyran scylan 7 <b>þæt hit to þam rihtan andagan gelæst sy.</b></p>	<p>[I As prol.] Ego Æþelstanus rex, consilio Wulfhelmes archiepiscopi mei et aliorum episcoporum meorum, mando prepositis meis omnibus in (toto) regno meo et precipio in nomine Domini et sanctorum omnium et super amicitiam meam, ut in primis de meo proprio reddat Deo decimas utriusque in vivente captali et in ornotinis frugibus terre, et episcopi (mei) similiter faciant de suo proprio et aldermanni mei et prepositi mei. [I As 1] Et volo ut episcopi (mei) et prepositi (mei) hoc iudicent omnibus qui eis parere debent et hoc <b>ad terminum expleant quem eis ponimus, id est Decollatio sancti Iohannis baptiste.</b></p>
<p>[I As 2] Utan geþencan hu Iacob cwæð se heahfæder: ‘Decimas et hostias pacificas offeram tibi’ 7 <b>hu Moyses cwæð on Godes lage: ‘Decimas et primitias non tardabis offerre Domino’.</b> [I As 3] Us is to geðencanne hu ondrystlic hit on bocum gecweden is: Gyf we þa teoþunga Gode gelæstan nellap, <b>þæt he us benimeð þara nigon dæla þonne we læst wenað 7 eac we habbað þa synne to eacan.</b></p>	<p>[I As 2] Cogitemus quid Iacob pater excelsus dixerit Deo: ‘Decimas et hostias pacificas offeram tibi. <b>Et Dominus (ipse) dixit in ewangelio suo: ‘Omni habenti dabitur et habundabit’.</b> [I As 3] Recondendum quoque nobis est quam terribiliter in hiis libris positum est: Si decimam dare nolumus, <b>ut auferantur nobis nouem partes et decima sola relinquitur.</b></p>
<p>[I As 4] 7 ic wille eac þæt mine gerefan gedon þæt man agyfe þa <b>cyricsceattas 7 þa sawlsceattas</b> to þam stowum þe hit mid rihte togebyrige 7 <b>sulhælmessan on gearre</b>, on þe gerad þæt þa his brucan æt þam haligan stowan þe heora cyrcan began willað 7 to Gode 7 to me geearnian willað. <b>Se ðe þonne nelle, þolige þare are oððe eft to rihte gecyrre.</b></p>	<p>[I As 4] Et volo ut <b>cyricsceatta</b> reddantur ad eum locum cui recte pertinent, et inde gaudeant in ipsis locis qui hec dignius erga Deum et nos uolunt deseruire.</p> <p>[I As 4.1] <b>Hortatur nos sermo diuinus eterna cum terrenis, celestia cum caducis promereri.</b></p>

Table 1. (Continued)

I Æthelstan OE	I Æthelstan Latin
<p>[I As 5] Nu ge gehyrað, cwæð se cyng, hwæs ic Gode ann, 7 <b>hwæt ge gelæstan sceolan be minre oferhyrnesse.</b> 7 gedoð eac þæt ge me unnon mine agenes þe ge me mid rihte gestrynan magan. Nelle ic þæt ge me mid unrihte ahwar oht gestryan, ac ic wille eowres agenes geunnan eow rihtlice on þa gerad þe ge me unnan mines 7 beorgað ægþer ge eow ge ðam þe ge myngian scylan wið Godes yrre 7 wið mine ofer[h]yrnesse.</p>	<p>[I As 5] Nunc auditis, quid Deo precupiam et <b>quid complere debeatis.</b> Facite etiam ut michi mea propria cupiatis, que michi poteritis recte acquirere. Nolo ut aliquid michi iniuste conquiratis. Sed omnia uestra uobis concedo, eo tenore quo mihi mea similiter exoptetis. Cauete simul et uobis et eis quos ammonere debetis ab ira Dei et transgressione mea.</p>

The extant Old English version is from the text in British Library, Cotton Nero A.i(B), and the Latin version from the *Quadripartitus* manuscripts, both copied from Liebermann, *Die Gesetze*, pp. 147–9. There are some variant readings in the extant OE version in CCCC 201, which are not included here. A translation can be found in F.L. Attenborough (trans.), *The Laws of the Earliest English Kings* (Cambridge, 1922), pp. 122–5. It should be noted here that the Old English version of I As printed by Liebermann under the siglum ‘Ld’ has been shown to be a translation from the *Quadripartitus* Latin into Old English by a sixteenth-century editor, Laurence Nowell. See K. Sisam, ‘The Authenticity of Certain Texts in Lambard’s “Archaionomia” 1568’, *The Modern Language Review* 20.3 (1925), pp. 253–69.

Whitelock and later Wormald,<sup>31</sup> and goes as follows: the decree *I Edmund* mentions *cyricsceatt* in all manuscripts, but only a Wulfstan manuscript lists *sulhælmessan* and *romfeoh* too.<sup>32</sup> The version of *II–III Edgar* contained in Wulfstan’s manuscripts includes *cyricsceatt* as well as *sawlsceatt* and *sulhælmessan*, whereas ‘independent’ versions only have *cyricsceatt*.<sup>33</sup> In fact, Wulfstan’s version of *II–III Edgar* contains several

<sup>31</sup> Whitelock, *English Historical Documents*, pp. 431–3; Whitelock, Brett and Brooke, *Councils and Synods*, pp. 60–3. Wormald provides a more detailed discussion in *MEL*, pp. 188–9, 295, 302, 309, 314–15 and n. 173, and in *MEL ii*, pp. 25–6. *I Æthelstan* is also included among Wulfstan’s ‘Revisions and Reworkings’ in Andrew Rabin’s recent *Old English Legal Writings: Wulfstan* (Harvard, 2020), pp. xxxiv–xxxv and 426–7; Rabin lists those interpolations noted by Wormald and Whitelock.

<sup>32</sup> I Em 2 in CCCC 201 mentions *cyricsceatt* as well as *sulhælmessa* and *Romfeoh*, (i.e. Peter’s Pence), whereas *Textus Roffensis*, CCCC 383 and *Quadripartitus* give *cyricsceatt 7 almesfeoh* ‘church-scot and alms-money’.

<sup>33</sup> *Sulhælmessan* and *sawlsceatt* appear in *II–III Eg* 2.3 and 5.2 in CCCC 201 and Harley 55, both associated with Wulfstan, but not in *II–III Eg* in *Quadripartitus* and Cotton Nero A. 1(A). See Wormald, *MEL*, pp. 188–9, 206–10 for more on these manuscripts.

clauses – on fasting, church peace, weights and measures, and more – which are missing from independent versions. What is more, these interpolated clauses have topical and stylistic similarities to Wulfstan's own texts. All in all, then, it seems likely that Wulfstan inserted references to these additional payments in *I Edmund* and *II–III Edgar*, as well as *I Æthelstan*.

Wulfstan's tampering is suggested also by other occurrences of typical Wulfstan language in the extant Old English text of *I Æthelstan*. This includes what Wormald identified as a possible Wulfstan interpolation in the phrase 'þolige þare are oððe eft to rihte gecirre' (I As 4), as the relevant senses of *ar* (namely 'benefice, endowment') and *gecirran* (namely 'turn to (what is right)') are only otherwise attested in Wulfstan's laws.<sup>34</sup> As we shall soon see, this entire penalty clause is absent from the *Quadripartitus* version.<sup>35</sup> Another trace of eleventh-century language – first pointed out by Whitelock – is found in the phrase *on Godes lage* (I As 2), a phrase missing from *Quadripartitus*.<sup>36</sup> The Scandinavian loanword *lagu* ('law') eventually came to replace English equivalents, but it is widely recognized that its use to refer to 'God's law' in *I Æthelstan* is suspiciously early.<sup>37</sup> Other early attestations of the word are in reference to the laws of the Danes, and it is not until the reign of Æthelred that it is used more generally to refer to 'law'.<sup>38</sup> Moreover, *lagu* is overwhelmingly Wulfstan's preference for expressing 'law' and he appears to be the first writer to use *lagu* to refer to God's law as well as secular law.<sup>39</sup> In fact, as Malcolm Godden and others have pointed out, we know that Wulfstan changed other words for 'law' (such as *æ*) into *lagu* when he revised one of Ælfric's pastoral letters, and the copy of this letter is actually contained in the same manuscript as one of the revised versions of *I*

<sup>34</sup> Wormald, *MEL*, p. 302. The whole phrase can be translated as 'He who is not willing [to attend to his church] shall either forfeit his benefice or revert to a proper discharge of his duties.' Translation from Attenborough, *The Laws*, p. 125.

<sup>35</sup> Wormald also noted the phrase's absence from the Latin (*MEL*, p. 302 n. 173). However, he did not note the fact that the entire penalty clause – of which this phrase is part – is lacking and the implications of that. This is discussed further below.

<sup>36</sup> Whitelock, 'Wulfstan and the so-called Laws of Edward and Guthrum', p. 19 n. 3. She does not attribute the interpolation explicitly to Wulfstan.

<sup>37</sup> In addition to Whitelock's note cited above, see for instance 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, 110.

<sup>38</sup> It refers to Danish law in IV Eg 2.1, 12, 13.1.

<sup>39</sup> As noted in Fischer, 'Lexical Change', pp. 109–10, and R. Dance, 'Sound, Fury, and Signifiers; or Wulfstan's Language', in M. Townend (ed.), *Wulfstan, Archbishop of York* (Turnhout, 2004), pp. 29–61, at p. 53.

*Æthelstan*.<sup>40</sup> These words lend circumstantial support to Wulfstan's proposed involvement, as does an added – and superfluous – triplet in the Old English text, which fits with Wulfstan's known predilection for unnecessary repetition.<sup>41</sup>

### *Q's use of the original text*

Thus, the extant Old English prose does not seem to date entirely from *Æthelstan's* reign. Yet, that does not preclude the possibility that most of the extant Old English represents the original text, which is perhaps why these known interpolations have not already led to a reassessment of the content of *I Æthelstan*. However, remaining divergences should sow serious doubts about the authenticity of the essence of the Old English version, i.e. its legal imposition of tithes. That will become clear in the following sections, but first, let us look at the reasons why the *Quadripartitus* version is more likely to reflect the original and why the textual differences between the two versions were probably not introduced by Q.

After the command to collect 'tithes', both surviving versions contain an exhortative message about the consequences of non-payment, stating that failure to pay tithes will result in the loss of nine parts (I As 3). This idea stems from a sermon by Caesarius of Arles, 'De reddendis decimis' (Sermo 33), which warns those who withhold tithes that they will be 'reverted to a tenth' and that nine parts will be taken away.<sup>42</sup> This sermon circulated widely – indeed, parts of it were translated in the Blickling homily mentioned above<sup>43</sup> – and the exhortation about the loss of nine parts was extracted and included in a number of texts (sometimes with attribution to Augustine), including in the 786 church council decrees, the *Collectio Canonum Hibernensis* and homilies.<sup>44</sup>

<sup>40</sup> M. Godden, 'Ælfric's Changing Vocabulary', *English Studies* 61 (1980), pp. 206–23, on p. 214. For a broader discussion of Wulfstan's preference for *lagu* and substitution of other terms, see S. M. Pons-Sanz, *Norse-Derived Vocabulary in Late Old English Texts: Wulfstan's Works, a Case Study* (Odense, 2007), pp. 91–8. The relevant manuscript is CCCC 201.

<sup>41</sup> I As prol. OE: 'oððe gemetan oððe getellan oððe aweġan' ('measure or count or weigh'). For a general discussion of the repetitive features of Wulfstan's language, see A.P.M. Orchard, 'Crying Wolf: Oral Style and the *Sermones Lupi*', *ASE* 21 (1992), pp. 239–64, e.g. on pp. 248–9.

<sup>42</sup> 'Novem tibi partes retractae sunt, quia decimam dare noluisti. . . ut, si tu illi decimam non dederis, tu ad decimam revocaris': Sermo 33, edited in *Sancti Caesarii Arelatensis sermones*, ed. G. Morin, CCSL 103–4 (Turnhout, 1953), pp. 144–5.

<sup>43</sup> This homily is known as Blickling IV: see above n. 27 for references to its edition and relevant literature. As the works referred to above argue, this homily is in large part based on Caesarius' Sermo 33, though with some significant departures.

<sup>44</sup> For the 786 decrees, see *MGH Epistolae* 4, pp. 25–6. For the *Hibernensis*, see R. Flechner, *The Hibernensis: A Study and Edition, vol. 1* (Washington, DC, 2019), pp. 96–7. The warning is found also in Blickling IV, see Morris, *Blickling Homilies*, pp. 39–40, and in one Old English version of the so-called 'Sunday Letter'; see D. Haines (ed.), *Sunday Observance and the Sunday Letter in Anglo-Saxon England* (Woodbridge, 2010), pp. 138, 187.

Both surviving versions of *I Æthelstan* state that they are quoting something ‘written in books’ (I As 3), which is usually taken to be a reference to Caesarius or a version of his work. However, neither Caesarius’ sermon nor derived texts contain anything textually similar to the second half of the sentence as it appears in *I Æthelstan* in Old English. The full passage reads:

Us is to ðencanne hu ondrislic hit on bocum gecweden is: Gif we þa teoðunga Gode gelæstan nellað, þæt he us benimað þara nigon dæla þonne we læst wenað 7 eac we habbað þa synne to eacan. (I As 3)

We should consider how terribly it is said in books: if we refuse to render the tithes to God, that he will take away the nine parts when we least expect it and we will also have increased our sin.

I have been unable to identify the part starting ‘when we least’ in any other surviving text. Wormald suggested that it was taken from the chapter on tithes found in some recensions of the *Collectio Canonum Hibernensis*,<sup>45</sup> in particular the version found in the manuscript Oxford, Bodleian Library, Hatton 42.<sup>46</sup> There is indeed a passage on the loss of nine parts in this manuscript, but it is not particularly close in wording to the Old English *I Æthelstan* and nothing else implies that it is a likely source.<sup>47</sup> However, as we shall see in the conclusion, Hatton 42 and the *Hibernensis* may have influenced the revision of the text in the eleventh century.

It is not necessarily significant that there is no direct source for this passage in the Old English version; it could have come from memory or a source now lost. That said, it surely is significant that *Quadripartitus* gives a different version of the sentence and that this version might be traceable to an extant text. The *Quadripartitus* passage reads:

<sup>45</sup> The recensions of the *Hibernensis* that treat tithes are listed in Kottje, *Einfluss des Alten Testaments*, p. 65 n. 44.

<sup>46</sup> Wormald, *MEL*, p. 306 and n. 196. Wormald stated here that he would provide a fuller discussion of this point in the second volume of *MEL*, which never materialized in a complete form. Part of Wormald’s argument was based on the fact that Hatton 42 may have arrived in England in the tenth century, as argued in F.A. Rella, ‘Continental Manuscripts Acquired for English Centers in the 10th and Early 11th Centuries: A Preliminary Checklist’, *Anglia* 98 (1980), pp. 105–16, at p. 114.

<sup>47</sup> The relevant part in Hatton 42 reads: ‘Da mihi decimam. Si non dederis mihi decimam, auferam novem. Si dederis mihi decimam, multiplicabo novem’; Flechner, *The Hibernensis*, p. 96.

Recolendum quoque nobis est, quam terribiliter in hiis libris positum est: Si decimam dare nolumus, ut auferantur nobis novem partes et decima sola relinquatur. (I As 3)

We also ought to bear in mind how terribly it is put in these books: if we do not wish to give a tithe, that nine parts are taken away from us and only a tenth is left behind.

The first part bears some resemblance to Caesarius' 'novem tibi partes retractae sunt, quia decimam dare noluiti'.<sup>48</sup> The second part does not follow Caesarius, but it is close to another text, known as 'De supremo iudicio' attributed to St Eligius of Noyon. It reads: 'Nolite fraudare decimam, ne vobis novem partes auferantur et sola decima remaneat'.<sup>49</sup> Admittedly, there are differences between the passage in *Quadripartitus* and the Eligius sermon, though this might be a consequence of the passage having been translated first from Latin into Old English (in the tenth century) and then from Old English into Latin (by Q).

This seventh-century text is an instruction in Christian laws and customs in the form of a sermon.<sup>50</sup> It is to a large degree based on other sources, with its tithing chapter being mostly drawn from Caesarius' 'De reddendis'.<sup>51</sup> While no copy is known from Æthelstan's day, it is possible that parts existed in florilegia or canonical compilations. That is indicated by its first known appearance in an English manuscript in the twelfth century: a few of its chapters appear in Cambridge, St John's College, MS 42 under the heading 'Sermo ad penitentes'.<sup>52</sup> A comparable sermonic tract, Pirmin's *Scarapsus*, supports

<sup>48</sup> 'Nine parts were withdrawn from you, because you were unwilling to give the tithe.' Sermo 33, *Sancti Caesarii Arelatensis sermones*, ed. Morin, p. 144.

<sup>49</sup> 'Don't embezzle the tithe, lest nine parts should be taken away from you and only the tithe remain.' Eligius of Noyon, *Praedicatio de supremo iudicio*, ed. B. Krusch, *MGH SRM* 4 (Hanover, 1902), p. 755.

<sup>50</sup> The text is generally considered to be genuine, and its earliest manuscript dates to the first half of the eighth century. For more on the dating, see J. McCune, 'Rethinking the Pseudo-Eligius Sermon Collection', *EME* 16 (2008), pp. 445–76, at p. 446 and n. 4; and Y. Hen, 'Martin of Braga's *De Correctione Rusticorum* and its uses in Frankish Gaul', in M. De Jong and E. Cohen (eds), *Medieval Transformations: Texts, Power, and Gifts in Context* (Leiden, 2001), pp. 35–49, at p. 38.

<sup>51</sup> Hen, 'Martin of Braga', pp. 38–40.

<sup>52</sup> These were identified by J.E. Cross, 'Wulfstan's *De Anticristo* in a Twelfth-Century Worcester Manuscript', *ASE* 20 (1991), pp. 203–20, at pp. 207, 214. As Cross argued, this manuscript does to a degree rely on pre-conquest material (pp. 216–20). Otherwise, 'De supremo' exists in two manuscripts, each containing substantial parts but not the complete text, see *MGH SRM* 4, p. 750.

the notion that chapters of such texts circulated independently.<sup>53</sup> Perhaps ‘De Supremo’ (or a text like it) circulated more widely in parts, which may still exist among unidentified Latin canonical writings. Indeed, the chapters in the St John’s manuscript were only identified in the 1990s and are not listed with the correct attribution in the manuscript catalogue nor among the witnesses to the text in its edition.<sup>54</sup> While it is near impossible to prove that Eligius’ sermon was used, it is entirely possible that extracts from such a text – either now lost or still tucked away in some manuscript – were known to the writers of *I Æthelstan*.

These two observations – namely that the Old English version of the quotation is otherwise unknown, while the *Quadripartitus* version closely resembles a Caesarius-based text – allow us to speculate about which version came first. This is possible based on what we know about *Quadripartitus*, namely that all translations appear to be the work of one individual and that this individual rarely strayed far from his sources.<sup>55</sup> Occasionally, Q made mistakes, perhaps because English was not his native language, and, as several studies have shown, he grappled with vernacular (legal) terms.<sup>56</sup> However, in general, he did not add or remove material to any significant extent, nor change its substance.<sup>57</sup>

It seems unlikely, therefore, that the surviving Old English version of the quotation about the loss of nine-tenths is the original, because then we would have to suggest that Q departed from his usual adherence to the source text (for reasons that are difficult to explain), and that he, by chance, brought the quotation closer to an extant Caesarius-based text. A more plausible scenario could be that the original Old English version of *I Æthelstan* contained a quotation similar to the one in the Eligius sermon. As was his habit, Q translated this as he found it. Between the text’s composition in the tenth century and Q working in

<sup>53</sup> All the manuscripts containing *Scarapsus* are listed in *MGH Quellen zur Geistesgeschichte des Mittelalters* 25, ed. E. Hauswald (Hanover, 2010), pp. lxiii–xciv. Wulfstan copied passages from *Scarapsus* into his collection of canon law and used some as homilies: see *The Homilies of Wulfstan*, ed. D. Bethurum (Oxford, 1957), pp. 306–7, 323–5; and K. Jost, *Wulfstanstudien* (Bern, 1950), pp. 45–62.

<sup>54</sup> The identification was made in Cross, ‘Wulfstan’s *De Anticristo*’; and see *MGH SRM* 4, p. 750 for the manuscripts used for the edition.

<sup>55</sup> For the argument that Q was one individual, see Wormald, ‘*Quadripartitus*’, p. 102 and references therein.

<sup>56</sup> Examples of errors and discussion of Q’s native language can be found in Liebermann, *Quadripartitus*, pp. 46–7; Wormald, ‘*Quadripartitus*’, p. 107; and Downer, *Leges Henrici Primi*, pp. 25–7. The fullest discussion of Q’s possible identity is found in Downer, *Leges Henrici Primi*, pp. 37–44. See above n. 1 for references to studies on Q’s translation choices.

<sup>57</sup> Q departs from the Old English text in one place, namely the prologue to Alfred’s law code, which translates Exodus XXI–XXIII. Q inserts the Vulgate text of these Exodus chapters rather than give a back-translation of the ninth-century translation. But this is not his habit elsewhere, and as we shall see shortly, Q does not substitute a very unusual variant form of a Genesis verse included in *I Æthelstan*.

the twelfth, our eleventh-century rewriter made alterations to the quotation as part of his revision of the whole text. If we accept that the revisions were Wulfstan's work, these alterations would make perfect sense given the archbishop's known habit of tweaking, changing and revising his own and others' texts.<sup>58</sup>

### *Penalties*

This far we have seen that Wulfstan is likely to have been the rewriter and that the extant Latin version is likely to reflect the original. We can then make more sense of remaining differences. As will be clear from this section and the next, the Old English version deviates from the Latin in two legal details – penalties and payment date – both of which suggest that the original did not impose tithes as an ongoing legal obligation.

Beyond the divine anger implied by Caesarius' admonition, there are no penalty clauses in the *Quadripartitus* version. In contrast, the Old English version of *I Æthelstan* contains two: it penalizes failure to collect the additional church payments (I As 4) and it penalizes non-payment of tithes (I As 5). The passage concerning tithes states that non-payment is punished by *oferhyrness*, literally 'disobedience'. The roughly twenty occurrences of *oferhyrness* in the corpus of surviving Old English – all in legal texts – indicate that the primary use of this term is to denote 'the fine incurred by disobedience'.<sup>59</sup> This is also the case in its first occurrence in the Old English *I Æthelstan*, which reads: 'Nu ge gehirað, cwæð se cyngc, hwæs ic Gode ann 7 hwæt ge gelæstan sculon be mynre oferhyrnesse' ('Now you hear, says the king, what I want for God and what you should render on pain of [the fine for] my disobedience', I As 5). The preposition *be* here expresses the sense 'on pain of', so the Old English is clearly stating that failure to pay will incur the heavy fine of 120 shillings payable to the king.<sup>60</sup> This is not the case in the *Quadripartitus* version, which

<sup>58</sup> As described *inter alia* in Orchard, 'Crying Wolf', pp. 240, 251. Michael Elliot described Wulfstan's methods as 'highly revisional' in the context of his canon law collection: M. 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. 6–7.

<sup>59</sup> See *Dictionary of Old English Web Corpus*, compiled by A. diPaolo Healey with J. Price Wilkin and X. Xiang (Toronto, 2009). For a discussion of the use and meaning of *oferhyrness* and the disobedience fine, see 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. 54–60.

<sup>60</sup> See *Dictionary of Old English: A to I* online, ed. A. Cameron, A. Crandell Amos, A. diPaolo Healey et al. (Toronto: Dictionary of Old English Project, 2018), *s.v.* 'be', senses 1.F3.b and 1.F3.c

gives: 'Nunc auditis quid Deo precupiam et quid complere debeatis' ('Now you hear what I desire for God and what you ought to fulfil', I As 5) and makes no mention of disobedience, a fine or any other penalty for non-payment. *Oferhyrness* is mentioned again at the end of the same passage in the Old English, though not with a punitive sense.<sup>61</sup> The second punishment clause is for failure to collect the other church payments (*cyricsceatta*, *sulhælmessa* and *sawlsceatta*). The Old English reads 'Se þe þonne nelle, þolige þare are oððe eft to rihte gecirre' ('He who is not willing [to attend to his church] shall either forfeit his benefice or revert to a proper discharge of his duties', I As 4),<sup>62</sup> and as mentioned above, contains Wulfstanesque words. Nothing comparable is found in *Quadripartitus*.

### *Payment date*

In *Quadripartitus*, 'tithes' are to be paid 'ad terminum . . . quem eis ponimus, id est Decollatio sancti Iohannis baptiste' ('at the date . . . which we have set for them, that is the Beheading of St John the Baptist', I As prol.). The feast of the beheading (29 August) is nowhere mentioned in the Old English, which only specifies payment 'to ðam rihtan andagan' ('on the appointed day'). Late August is indeed a strange time for tithe payments. It is too late for tithes of animals and too early for tithes of most crops, and would only be a reasonable time for some fruits. I have found no indication that 29 August had any association with tithe payments elsewhere. In later centuries in England, tithes of animals were due by Pentecost and tithes of crops by the autumn equinox or by the Feast of All Saints (1 November).<sup>63</sup> However, if the original version of *I Æthelstan* was not legislating for an ongoing annual payment of tithes, this date is unproblematic, as it

<sup>61</sup> The punitive sense of *oferhyrness* is usually conveyed through verb collocation. In occurrences with a clear punitive sense, *oferhyrness* occurs with *betan* ('to compensate, pay'), *gesellan* ('to give, pay'), *gyldan* ('to pay') and *beon scyldig* ('be liable for'), as well as with *be* ('on pain of'). There is no such indication that *oferhyrness* is referring to a fine in its second occurrence in I As 5, where the sense seems to be more general 'disobedience'. This is also the case in one other occurrence of *oferhyrness* in the legal corpus (IV Eg 1). In fact, this is supported by Q's translation of *oferhyrness* in its second occurrence in I As 5: he renders it as *transgressio*, whereas all other occurrences of *oferhyrness* in *Quadripartitus* (all of which have the punitive sense, as Q does not translate IV Eg) are given in Latinized Old English: see Gates, 'English Legal Discourse', pp. 242–3.

<sup>62</sup> Translation from Attenborough, *The Laws*, p. 125.

<sup>63</sup> These dates are first found in Edgar's laws (II Eg 3) and are later copied by Wulfstan in his decrees for Æthelred and in Cnut's code (V Atr 11.1, VI Atr 16, VIII Atr 9–9.1, I Cn 8.1). The only other piece of legislation to regulate for tithe payments, *I Edmund*, does not specify a date. Cnut's letter of 1027 specifies that fruit is to be given by mid-August and crops by St Martin's Day: Liebermann, *Die Gesetze I*, p. 227.

would refer to anything that had been produced up to that date in a specific year.<sup>64</sup>

### *Biblical and patristic framing*

Both versions of *I Æthelstan* back up the message to pay ‘tithes’ with two biblical quotations (I As 2). Both *Quadripartitus* and the Old English start with the same quotation, namely an altered and abbreviated version of Genesis XXVIII.22, where Jacob says ‘Decimas et hostias pacificas offeram tibi’. *Hostias pacificas* is an addition to the Vulgate, and this version of the verse is rare before Æthelstan’s time.<sup>65</sup> In fact, the verse is rarely cited in general, including in literature on tithes and alms.<sup>66</sup>

In contrast, the next verse cited by the Old English version is standard in writings on tithes. This passage quotes Moses on *Godes lage*: ‘Decimas et primitias tuas non tardabis offerre Domino’ (I As 2). This is the first part of Exodus XXII.29, which is one of the handful of direct commands for tithe payments in the Old Testament. In early medieval texts, the quotation is found in the context of tithes, for example in the *Hibernensis* version discussed above, the 786 council report, the Council of Arles (813) and Pirmin’s *Scarapsus*.<sup>67</sup> In fact, Exodus XXII.29 is also found at the head of the chapter on tithes in Wulfstan’s own collection of canon law.<sup>68</sup> What is more, the variant reading of Exodus XXII.29 given in the Old English *I Æthelstan* is rare, but it does appear in the first line of the tithing chapter in the *Hibernensis* version contained in one of the manuscripts owned, used, cited and annotated

<sup>64</sup> The fact that *Quadripartitus* calls for *hornotinae fruges terrae* (‘fruit of the earth of the current year’s output’), may be relevant too.

<sup>65</sup> This version of the verse is used in Council of Milan (867) (*MGH Concilia* 4, ed. W. Hartmann (Hanover, 1998), p. 161) and in some versions of a responsory for the Second Sunday of Lent, including at least one tenth-century version. For a complete list, see Cantus ID 6668, on D. Lacoste (2011–), T. Bailey (1997–2010), and R. Steiner (1987–96), *Cantus: A Database for Latin Ecclesiastical Chant – Inventories of Chant Sources*, available from <http://cantus.uwaterloo.ca/> [accessed 24.11.19].

<sup>66</sup> Results from Brepols Vetus Latina database and Brepols Cross Database Search-tool suggest that only the first half of this verse is commonly cited. The part used in *I Æthelstan* is very rarely used on its own, and I have only been able to find one text which uses the relevant part in the context of tithes, namely a sermon by Pseudo-Maximus of Turin. This text presents an intriguing mix of the standard texts on tithes, which I will explore in a future publication.

<sup>67</sup> Flechner, *The Hibernensis*, p. 96; *MGH Epistolae* 4, pp. 4, p. 25 (786 decrees); *MGH Concilia* 2.1, ed. A. Werminghoff (Hanover, 1906), p. 251 (Council of Arles (813)); and *MGH Quellen zur Geistesgeschichte des Mittelalters* 25, ed. E. Hauswald (Hanover, 2010), pp. 87–8 (Pirmin, *Scarapsus*). Pirmin’s work was known in England in the eleventh century, as Wulfstan used *Scarapsus*, see *Homilies*, ed. Bethurum, pp. 306–7, 323–5.

<sup>68</sup> J.E. Cross and A. Hamer (eds), *Wulfstan’s Canon Law Collection* (Cambridge, 1999), pp. 95, 141–2.

by Wulfstan, Hatton 42.<sup>69</sup> Thus, this verse was both standard within literature on tithing and familiar to Wulfstan.

In the *Quadripartitus*, the Genesis quotation is followed by Matthew XXV.29: ‘Omni habenti dabitur et abundabit’ (‘To everyone who has, shall be given and he shall abound’). This chapter of Matthew contains the story of the virgins and the lamps and the parable of the talents, after which this verse appears. Unlike Exodus XXII.29, this verse is not to my knowledge used elsewhere in the context of tithes; Matthew was usually only drawn on for its implicit criticism of Old Testament tithing (Matt. XXIII.23). Matthew XXV.29 is, however, used in the context of charity, for instance by Defensor, Paschasius Radbertus, Hrabanus Maurus and Gregory the Great<sup>70</sup> in works which appear to have been known in Anglo-Saxon England.<sup>71</sup> Indeed, Matthew XXV.29 is used to emphasize the king’s charitable generosity in a charter – albeit possibly spurious – which records a grant of land from Æthelstan to an abbot.<sup>72</sup>

<sup>69</sup> This is shown in Ker, ‘The Handwriting of Wulfstan’, pp. 328–30, and P. Wormald, ‘Archbishop Wulfstan and the Holiness of Society’, in his *Legal Culture in the Early Medieval West: Law as Text, Image, and Experience* (London, 1999), pp. 225–51, at pp. 238–9. Wulfstan appears to have used this manuscript for sources, given that he seems to have copied a law from Ansegis’ collection of capitularies from Hatton 42 into VI Æthelred (*Latin*) and his canon law collection: VI Atr Lat 15.1/Hatton 42 fol. 205v/Ansegis II.34/45. For the canon law collection, see Cross and Hamer (eds), *Canon Law Collection*, p. 122.

<sup>70</sup> Gregorius Magnus, Homily IX, *Homilae in Euangelia*, CCSL 141, ed. R. Étaix (Turnhout, 1999), pp. 62–3; Hrabanus Maurus, *Commentariorum in Ecclesiasticum libri decem*, PL 109, ed. Migne, col. 974; Hrabanus Maurus, *Expositio in Matthaem*, CCCM 174A, ed. B. Löfstedt (Turnhout, 2000), p. 665; Paschasius Radbertus, *Expositio in Matheo*, CCCM 56A, ed. B. Paulus (Turnhout, 1984), p. 694; Defensor, *Liber Scintillarum*, CCSL 117, ed. H. Rochais (Turnhout, 1957), p. 5.

<sup>71</sup> Gregory’s homily is attested in almost a dozen English manuscripts, as early as the eighth century; see T.N. Hall, ‘The Early English Manuscripts of Gregory the Great’s “Homilies on the Gospel” and “Homilies on Ezechiel”: A Preliminary Survey’, in R.H. Bremmer, C. Dekker and D.F. Johnson (eds), *Rome and the North: The Early Reception of Gregory the Great in Germanic Europe* (Paris, 2001), pp. 115–36. See also J.D.A. Ogilvy, *Books Known to the English, 597–1066* (Cambridge, MA, 1967), p. 151. Defensor’s *Liber Scintillarum* exists in hundreds of manuscripts (H.-M. Rochais, ‘Les manuscrits du “Liber Scintillarum”’, *Scriptorium* 4 (1950), pp. 294–309), including complete versions in three Anglo-Saxon manuscripts, one of which has a continuous gloss in Old English: see J.R.H. Bremmer, ‘The Reception of Defensor’s “Liber scintillarum” in Anglo-Saxon England’, in P. Lendinara (ed.), *. . . un tuo serito di fiori in man recando: scritti in honori Maria Amalia D’Aronco* (Udine, 2008), pp. 85–7. It is found in one of Wulfstan’s manuscripts (CCCC 190) and he also used it as a source for some of his homilies; see *Homilies*, ed. Bethurum, pp. 339–40.

<sup>72</sup> S404/no. 22 in S.E. Kelly (ed.), *Charters of Abingdon Abbey. Part 1*, Anglo-Saxon Charters 7 (Oxford, 2000), pp. 92–4, and see pp. 95–9 for a discussion of its authenticity. Text and translation in J. Hudson (ed.), *Historia ecclesie Abendonensis. Vol. 1*, Oxford Medieval Texts (Oxford, 2007), pp. 34–7.

In fact, the whole of Chapter 25 of Matthew was widely used to admonish charity and the giving of alms in the early Middle Ages,<sup>73</sup> and in particular, it was associated with charity that led to heavenly reward.<sup>74</sup> This theme appears in *I Æthelstan* too. The idea is expressed in a sentence in *Quadripartitus* which is completely lacking from the Old English: ‘Hortatur nos sermo divinus eterna cum terrenis celestia cum caducis promereri’ (‘Divine teaching urges us to earn eternal things with earthly, heavenly with transitory’; I As 4.1). As Wormald and others have pointed out, this closely resembles the proems of several of Æthelstan’s royal diplomas, and, in fact, variations of the idea appear in charters from the entire Anglo-Saxon period.<sup>75</sup>

The basic idea and phrasing stems from the earliest Christian period, and at some point it migrated to the context of Matthew’s gospel.<sup>76</sup> For example, a Caesarius sermon on almsgiving used the parable of the virgins and lamps to state that ‘enim accipit terrena, ut reddat caelestia, accipit caduca, repensaturus aeterna’ (‘for he accepts earthly things to give heavenly, he accepts transitory things, and he will give eternal in return’).<sup>77</sup> The theme appears with crystal clear connection to Matthew in the *Liber questionum evangelii*, an eighth-century Irish commentary on that gospel. Its comment on Matthew XIX.21 reads: ‘Uendidisti terrena et caduca; possidebis caelestia et aeterna’ (‘You have sold earthly and transitory things; you will possess heavenly and eternal things’).<sup>78</sup> The *Liber questionum* was known and used in Anglo-Saxon England, and its potential influence on Anglo-Saxon thought might be indicated by two charters, which place Matthew XIX.21 next to the theme of

<sup>73</sup> For instance, Caesarius used the story of the virgins as an analogy for almsgiving, comparing *caritas* to the *oleum* of the parable; see Caesarius, Sermo 29 and Sermo 156, in *Sancti Caesarii Arelatensis sermones*, ed. Morin, pp. 127, 637; and Finn, *Almsgiving*, p. 161 for similar use of the parable by others. Moreover, the final part of Matthew XXV sets out the ‘corporal works of mercy’, which had a profound connection with charity in early patristic writings, as set out in Finn, *Almsgiving*, p. 178.

<sup>74</sup> This is shown in R. Garrison, *Redemptive Almsgiving in Early Christianity*, *Journal for the Study of the New Testament* 77 (Sheffield, 1993), p. 64.

<sup>75</sup> Wormald, *MEL*, p. 302 (where he noted that this sentence ‘was somehow dropped’ from the vernacular version) and n. 174. See also S. Foot, *Æthelstan: The First King of England* (New Haven, 2011), pp. 133, 139–40; and F. Liebermann, *Die Gesetze der Angelsachsen vol. III: Einleitung zu jedem Stück: Erklärungen zu einzelnen Stellen* (Halle, 1916), p. 98. I have identified the idea in about forty royal diplomas through the search on eSawyer (and the list might not be exhaustive). See also *Codex diplomaticus aevi saxonici* 1, ed. J.M Kemble (London, 1839), pp. x–xi for more on this theme and other standard themes in proems.

<sup>76</sup> It appears *inter alia* in the writings of Clement of Alexandria, a second-century theologian. See Garrison, *Redemptive Almsgiving*, p. 11.

<sup>77</sup> Sermon 156, *Sancti Caesarii Arelatensis sermones*, ed. Morin, p. 637. Other iterations appear in Sermones 31 and 158, pp. 138, 648.

<sup>78</sup> *Liber questionum in Evangelii*, ed. J. Rittmueller, CCSL 108F (Turnhout, 2003), p. 307.

eternal rewards.<sup>79</sup> It might not be a coincidence that *I Æthelstan* put this reminder of heavenly rewards near a quotation from Matthew, whether through inspiration from a written source like the *Liber questionum* or because the connection had more widespread circulation.

The idea that generosity and charity led to redemption has clear relevance for royal grants: kings could dispose of their dangerous worldly wealth to gain salvation. A few royal diplomas even refer to such land grants as *elemosina* ('alms').<sup>80</sup> Other Anglo-Saxon sources, including homilies, testify to a belief that almsgiving led to heavenly rewards.<sup>81</sup> There are no surviving textual expressions of a belief in the redemptive powers of tithes. Thus, that *I Æthelstan* uses this language to talk about a donation of 'tithes' is another indication that the original text was calling for an eleemosynary payment of 'tenths' of produce, rather than tithes as we know them from later times.

## Conclusion

As Wormald and others noted, changes were clearly made to the text of *I Æthelstan* after it was issued in the early tenth century. But we can only see how substantial this transformation was if we consider not just Wulfstan's additions but also the wider implications of the changes made to the biblical framing and legal details. By removing the Matthew verse, the idea of a heavenly reward and the payment date, and inserting the standard tithing verse from Exodus XXII.29 and penalties, the eleventh-century reviser shifted the focus from voluntary charity to legal obligation.

There is circumstantial support for this theory too. The reason Q did not incorporate any of the eleventh-century rewritten material can be explained by the fact that he did not have access to (or, at any rate, did not use) any of Wulfstan's manuscripts.<sup>82</sup> Furthermore, given that there

<sup>79</sup> The use of *Liber* in England is discussed in J. Rittmueller, 'Links between a Twelfth-Century Worcester (F. 94) Homily and an Eighth-Century Hiberno-Latin Commentary (*Liber questionum evangelii*)', in T.N. Hall, T.D. Hill and C.D. Wright (eds), *Via Crucis: Essays on Early Medieval Sources and Ideas in Memory of J.E. Cross* (Morgantown, 2002), pp. 331–54. The two charters are S591 and S618.

<sup>80</sup> E.g. S1268, S132, S1414, S149, S263, S290, S338, S370, S627, S746, S808, S975.

<sup>81</sup> See Foot, *Æthelstan*, p. 139 and n. 45. For evidence from homilies, see A. Olson, 'Perfecting One's Fast: Almsgiving and the Penitential Seasons in the Anglo-Saxon Homilies', *International Journal of Regional and Local History* 8 (2013), pp. 129–46, at e.g. p. 132 and n. 16.

<sup>82</sup> This is suggested by the fact that none of the laws only found in Wulfstan's manuscripts (i.e. V, VI and VIII Atr) are included in *Quadripartitus*. Q included Wulfstan's *Gefyncðu* tracts (*Gefyncðu*, *Norðleoda laga*, *Mircna Laga*, *Að* and *Hadbot*), but, as Wormald demonstrated, *Quadripartitus* contains a separate textual family of these tracts than that found in Wulfstan's manuscripts (see *MEL*, pp. 391–2). There is no indication that Q had access to Cotton Nero A.i(B).

is a handful of laws which have only survived in their *Quadripartitus* versions, it is not unreasonable to think that the original underlying Q's translation could be lost.<sup>83</sup> In fact, one of the texts only surviving in *Quadripartitus* is *I Æthelstan's* companion piece.<sup>84</sup> Finally, as we saw above, Q did not have a habit of making substantive changes when he translated the laws. All in all, it is thus plausible that Q never knew the revised version, that Q did not introduce the differences into his text, and that the original is now lost.

The payment in the now-lost original could have been a precursor to regular mandatory tithe payments or a call for a separate payment in addition to regular tithes. On the whole, the first alternative seems more likely, given that the texts call for a payment of crops and animals. It would be strange if the king should demand an extra payment of a tenth of produce on top of a regular payment of a tenth of produce. If the payment in the original *I Æthelstan* represents an early stage of the later system, it would form a parallel to the development of the Peter's Pence, which also started out as an irregular voluntary payment before becoming regularized as an ongoing obligation.<sup>85</sup>

This scenario makes sense in the context of the early English church. As Eric Shuler argued, the active promotion of mandatory tithes in Gaul – and thus the theological and practical separation from alms – was due to the church's need for regular income.<sup>86</sup> This need may not have been felt as strongly in early Anglo-Saxon England, given that there were other mandatory annual payments to the church, such as the church-scot, seemingly collected from the seventh century onwards.<sup>87</sup> Indeed, as Blair has argued, when tithes were introduced in England they would have come in addition to an existing 'web of custom' encompassing several payments due to the church, not least the church-scot, which – in Blair's view – formed an English parallel to continental tithes in the eighth and ninth centuries.<sup>88</sup> Thus, the English church did not share the Frankish church's incentives to regularize tithe payments. This

<sup>83</sup> The texts only extant in *Quadripartitus* versions are *Æthelstan Alms, III, IV Æthelstan, III Edmund, IV, VII Æthelred* and the *Alfred-Guthrum Appendix*.

<sup>84</sup> This is *Æthelstan's* 'charity ordinance', which is Liebermann's 'As Alms' (*Gesetze I*, pp. 148–9). See Wormald, *MEL*, pp. 304–8 for more on this text. All *Quadripartitus* manuscripts place As Alm and I As together, and it is possible that Q originally found them together in his source: see Wormald, *MEL*, p. 242.

<sup>85</sup> Naismith and Tinti, 'The Origins of Peter's Pence', pp. 521–2.

<sup>86</sup> Shuler, 'Caesarius and the Tithe', pp. 55–6. See also Blair, *The Church*, pp. 437–40 for further comparison between the continental and English situation as regards church dues.

<sup>87</sup> Ine 4 and 61. Wormald discussed the documentary evidence for actual payments of the church-scot; see *MEL ii*, pp. 28–34.

<sup>88</sup> Blair, *The Church*, pp. 436–40.

context could also account for a potentially gradual introduction of tithes: the imposition may have been difficult to exact given that tithes would have been an additional – and heavier – burden.<sup>89</sup>

The original version of *I Æthelstan* may then represent a stand-alone act of piety, and these have precedent in Anglo-Saxon England. In the mid-ninth century, King Æthelwulf of Wessex made a grant of a tenth of all land.<sup>90</sup> Some of the charters attesting to this grant, the so-called decimation charters, state that the king's motivation was to earn eternal blessings and ensure the prosperity of his kingdom.<sup>91</sup> Some extant sources connect the grant to Æthelwulf's pilgrimage to Rome in 855, which could be further indication of his spiritual motivation.<sup>92</sup> The choice of a tenth of land may not have been a coincidence for such an act of pious charity. The same could go for Æthelstan.

Another context is suggested by a later event. In the early eleventh century, a viking attack drove King Æthelred to issue a decree (penned by Wulfstan) instituting a three-day programme of penance, which included almsgiving, fasting and more.<sup>93</sup> No equivalent to such an attack is known from Æthelstan's reign, though there were periods of turmoil.<sup>94</sup> Another decree of Æthelstan's (*V Æthelstan*) reveals that the king was displeased with the state of justice and peace in the kingdom. This text implements extraordinary measures such as a temporary amnesty for thieves, forcible removal of wrongdoers from their districts, and the singing of psalms for the king.<sup>95</sup> This suggests that Æthelstan was inclined to issue (in writing) time-limited injunctions as remedies for general unrest. This is supported by charter evidence. Some of Æthelstan's charters from the winter of 932–3 call for the singing of psalms for the king, and in the same period the king demanded that

<sup>89</sup> For the argument that tithes would have been a heavier burden than other payments, see Blair, *The Church*, p. 436.

<sup>90</sup> The 'Second Decimation' charters are edited in S.E. Kelly, *Charters of Malmesbury Abbey, Anglo-Saxon Charters II* (Oxford, 2005), p. 71. It is unclear precisely what this 'decimation' meant in practice, and three possibilities are discussed in S. Keynes, 'The West Saxon Charters of King Æthelwulf and His Sons', *EHR* 109 (1994), pp. 1109–49, at pp. 1120–1.

<sup>91</sup> This motivation clause is found in the 'Second Decimation' charters, see Kelly, *Charters of Malmesbury*, pp. 69–79. Similar motivations are given in the historical record of this event, see *The Anglo-Saxon Chronicle MS. A*, ed. J.M. Bately (Cambridge, 1986), s.a. 855.

<sup>92</sup> The mention of Rome is found in S315, which is discussed in Kelly, *Charters of Malmesbury*, pp. 66–7. See also Keynes, 'Charters of Æthelwulf', p. 1120, n. 4; and Naismith and Tinti, 'The Origins of Peter's Pence', pp. 527–8.

<sup>93</sup> This is the text known as *VIII/VIIA Æthelred*, both printed in Liebermann, *Die Gesetze I*, pp. 260–2.

<sup>94</sup> See Foot, *Æthelstan*, pp. 145–6.

<sup>95</sup> V As 3.1, V As prol.1, V As 3.

alms be given to the poor as a condition for two land grants.<sup>96</sup> Simon Keynes suggested that there was a particular effort to gain divine favour at this time, and such a period of propitiation could be where Æthelstan's call for a 'tithe' belongs.<sup>97</sup>

The practicalities of the payment are obscure. Only the *Quadripartitus* specifies the recipient, namely God.<sup>98</sup> The actual collection may have taken place at church, where people could be expected to be on a feast day such as the *Decollatio*.<sup>99</sup> In fact, there is some indication that this call was heeded. The text known as *III Æthelstan*, which survives only in *Quadripartitus*, is a decree issued by the bishops, thanes, nobles and commoners of Kent in response to several of Æthelstan's acts of legislation. Its first clause reads:

Et hoc incepimus . . . primum est de decima nostra, ad quod multum cupidi sumus et voluntarii, et tibi suppliciter gratias reddimus admonitionis tue. (III As 1–1.1)

And this we have undertaken, . . . firstly concerning our tithes, which we are very eager and willing [to give] and we thank you humbly for your admonition.

It is tempting to connect the use of *voluntarius* ('willing') and *admonitio* ('admonition') to the theory set out above, though it is perhaps a temptation best resisted given that the original wording is unknown.<sup>100</sup> In any case, there is nothing in this description that would go against the idea that Æthelstan had requested an isolated payment.

<sup>96</sup> 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 pp. 236–8 and nn. 42 and 48.

<sup>97</sup> This was suggested in Keynes, 'Royal Government', p. 238 n. 48. Levi Roach suggested a connection between these charters and what Wormald identified as a possible conspiracy against Æthelstan around 933; see L. Roach, 'Public Rites and Public Wrongs: Ritual Aspects of Diplomas in Tenth- and Eleventh-Century England', *EME* 19 (2011), pp. 182–203, at p. 199; and for Wormald's discussion, see *MEL*, pp. 307–8.

<sup>98</sup> *Quad I As* prol: 'De meo proprio reddant Deo decimas . . .'. The removal of God as recipient in the Old English could indeed also be relevant to the argument presented here.

<sup>99</sup> The *Decollatio* is included in all surviving Anglo-Saxon calendars: R. Rushforth, *Saints in English Kalendars before A.D. 1100*, Henry Bradshaw Society 117 (Woodbridge, 2008), Table VIII.

<sup>100</sup> There are not enough examples of these words elsewhere in *Quadripartitus* to reconstruct the Old English original. Q used *admonitio* twice in his translation of *VI Æthelstan*, where it renders *mynegung* ('admonition, claim', VI As 7) and *menio* ('many', VI As 6.3). For the second occurrence, Q seems to have confused *menio* ('many') and *manung* ('admonition'). There are no other occurrences of *voluntarius*.

The upshot is that we have to look to the 940s and Edmund's laws to find evidence of the first royal legislation on tithes in England. The decree in question, *I Edmund*, appears to be the work of Archbishop Oda, who may have been one of the forces behind the push for mandatory tithes.<sup>101</sup> Tithes are mentioned again thirty years later in Edgar's laws, and by this time, there is little reason to doubt that the system of fixed mandatory payments was in place.

This is then the context in which our eleventh-century revisionist was working. I have already set out the evidence pointing in Wulfstan's direction, including the manuscript transmission, the parallel intrusions in other texts, the instances of Wulfstanesque language, and his familiarity with Exodus's tithing verse. It only remains to ask why Wulfstan would make such changes. Part of the reason is the subject matter. Wulfstan saw church payments as vital to the proper functioning of society, especially in times of crisis, as is clear from *VIIa Æthelred*, the decree written by Wulfstan for Æthelred in response to a viking attack:

7 æghwilce gear heonon forð gelæste man Godes gerihta huru rihtlice, wið ðam þe us God ælmihtig gemiltsige 7 us geunne þæt we ure fynd ofercuman motan. (VIIa Atr 8)

And each year from now on, we should pay God's dues exceedingly correctly, so that God the almighty shows mercy and grants us victory over our enemies.

Wulfstan's homiletic texts deal with the topic of church payments extensively, and, as Joyce Tally Lionarons has shown, Wulfstan appears to have made a deliberate effort in his homilies to define tithe payments and admonish their regular payment as an addition to – not

<sup>101</sup> Tithes are dealt with also in Oda's canonical tract ('The Constitutions of Oda'), which used the 786 church council decrees for the chapters on tithes and alms. Oda emphasized to an even greater degree than the original that they are two separate payments, by discussing the two payments in two separate chapters. For the connections between the 786 council, Oda's Chapters and *I Edmund*, see 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 pp. 156–7; 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; Whitelock, Brett and Brooke, *Councils and Synods*, pp. 67–8.

as a replacement of – other dues.<sup>102</sup> This lends further support to the idea that regular tithes were not a long-established practice in Wulfstan's day.

Wulfstan's interest in tithes extended to tithing provisions in royal law of the past. While the manuscripts associated with Wulfstan are full of ecclesiastical texts and laws, they contain only four pieces of Anglo-Saxon royal legislation not written by Wulfstan himself – the only four in the corpus that mention tithes.<sup>103</sup> One of these is the decree *IV Edgar*, which Wulfstan not only copied, but also, rather unusually, translated into Latin.<sup>104</sup> This text offers one of the longest musings on tithes in Anglo-Saxon law, and it states that it was issued to remedy a *færcwealm* ('a sudden plague'), caused by people withholding *nedegafol* ('necessary taxes') owed to God.<sup>105</sup> This must have resonated with Wulfstan who, as we just saw, considered church payments as vital to peace and prosperity.

Wulfstan's belief in the efficacy of church taxation might thus explain his interest in *I Æthelstan*, but it does not fully account for his changes. The manuscript context may offer some clues, especially that of British Library, Cotton Nero A.i(B). *I Æthelstan* is found in the first section of this manuscript, where it is followed by *I Edmund, II–III Edgar* and some of Wulfstan's own laws for Æthelred.<sup>106</sup> Preceding *I Æthelstan* are Wulfstan's writing on the duties of different ranks of society and two homilies on Christian living.<sup>107</sup> There is a focus on biblical law, which

<sup>102</sup> Joyce Tally Lionarons, *The Homiletic Writings of Archbishop Wulfstan* (Woodbridge, 2010), esp. pp. 168–70. Lionarons's discussion is based primarily on the homilies known as Napier 23 and 61, which are edited in *Wulfstan: Sammlung der ihm zugeschriebenen Homilien nebst untersuchungen über ihre echtheit*, ed. A. Napier (Berlin, 1883), pp. 116–19 and 310–11. Translations can be found in A. Rabin, *The Political Writings of Archbishop Wulfstan of York* (Manchester, 2015), pp. 162–7. For other parallels between Wulfstan's treatment of church dues in laws and in homilies, see S. Keynes, 'An Abbot, an Archbishop, and the Viking Raids of 1006–7 and 1009–12', *ASE* 36 (2007), pp. 151–220, at p. 189.

<sup>103</sup> These are *I Æthelstan*, *I Edmund, II–III Edgar* and *IV Edgar* found in CCCC 201, Cotton Nero A.i(B), Harley 55 and CCCC 265. For more on these texts in these manuscripts, see I. Ivarsen, 'The Production of the Anglo-Saxon Laws: From Alfred to Cnut', Ph.D. thesis, University of St Andrews (2020), pp. 92–3.

<sup>104</sup> Both the Old English and Latin versions of IV Eg are found in CCCC 265, Liebermann siglum 'C'. For Wulfstan as the possible translator, see Ivarsen 'The Production of the Anglo-Saxon Laws', pp. 85–90.

<sup>105</sup> IV Eg 1. In fact, the only other occurrence *færcwealm* in the corpus is in a Wulfstan homily (Napier, *Sammlung*, p. 271), where it is used in a similar context as in *IV Edgar*. This homily and its relationship to law is discussed in detail in 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.

<sup>106</sup> These first three quires of Cotton Nero A.i(B) may have formed an independent booklet at some point, as argued in Wormald, *MEL*, pp. 198–201..

<sup>107</sup> The first twelve folios of the section are made up of parts of the work known as 'Institutes of Polity', see Wormald *MEL*, p. 200 for a list of chapters and the overview of the manuscript in Rabin, *Political Writings*, pp. 210–11. The homilies are Homily Xc and XIX, in *Homilies*, ed. Bethurum, pp. 200–10, 251–4.

is especially clear in the homily immediately preceding *I Æthelstan*. It consists in a Latin rendition and Old English translation of Mosaic law from Leviticus, and, as Andrew Rabin noted, the rendition is more like a ‘reworking’ designed ‘to draw a direct parallel with the English of his own time’.<sup>108</sup> The final line of the homily reads: ‘Ðis synd þa Godes word þe God sylf gedihte 7 Moyse befæste 7 eal hit mæg to bysne æghwylcere þeode, gyme se þe wille’ (‘These are God’s words that God himself commanded and Moses set them down and may it all be an example to each people; heed it he who wishes to’).<sup>109</sup> This forms a natural transition to Æthelstan’s legislation, concerned, as it is, with a point of Old Testament law. And indeed, *I Æthelstan* represents another reworked text updated to Wulfstan’s own time.

Thus, Wulfstan may have included *I Æthelstan* among the other tithes laws and used all of these texts as examples of how some Anglo-Saxon royal law was ultimately based on biblical law. The only trouble was that *I Æthelstan* did not look like proper tithing legislation to Wulfstan. He may therefore have made some simple adjustments to bring out what he assumed to be correct. There is no reason to think of this as forgery. Wulfstan was merely bringing the text in line with the law that he knew and with the Bible, which does, after all, call for tithes. This is reminiscent of the methods identified in the canon law collection of Burchard of Worms, which Greta Austin summed up with the motto ‘If you can’t find the text that fits all your parameters exactly, alter it.’<sup>110</sup> Austin showed how Burchard made alterations to extant texts, often to bring them into line with biblical principles.<sup>111</sup> Perhaps Burchard’s contemporary, Wulfstan, was operating with a similar methodology and belief in the malleability of legislation.

Wulfstan may have wanted a ‘corrected’ version of *I Æthelstan* because of the text’s implied penalty, namely Caesarius’ exhortation about the loss of nine-tenths. Wulfstan’s own legislation on tithes replicated the text of *II–III Edgar*, which actually restated this warning, but in a rather less exhortative way:

And if anyone then does not wish to render the tithe as we have declared, the king’s reeve, the bishop’s reeve, and the mass-priest of

<sup>108</sup> Rabin, *Political Writings*, p. 173.

<sup>109</sup> Homily XIX, in *Homilies*, ed. Bethurum, pp. 251–4; and see Rabin, *Political Writings*, pp. 173–6 for a translation.

<sup>110</sup> G. Austin, ‘Burchard of Worms’, in P.L. Reynolds (ed.), *Great Christian Jurists and Legal Collections in the First Millennium* (Cambridge, 2019), pp. 458–70, at p. 465. I’m grateful to Michael W. Heil for suggesting this parallel.

<sup>111</sup> See also G. Austin, ‘Jurisprudence in the Service of Pastoral Care: The “Decretum” of Burchard of Worms’, *Speculum* 79 (2004), pp. 929–59, esp. p. 933.

the minster should go to him and take without his consent the tenth part to the minster to which it belongs and take the ninth part for him and divide the eight parts in two and the landlord gets half and the bishop half, be it the king's man or a thegn's. (II Eg 3.1)

Originally, Caesarius' warning referred to loss of nine parts through bad harvests and foul weather, a punishment from God. Edgar's more quotidian version of this sanction was repeated by Wulfstan in the laws he wrote for Æthelred and Cnut. To Wulfstan, then, *I Æthelstan* may have provided both the theological explanation and legal precedent for his own laws on tithes. The only problem was that the text as he found it needed some slight adjustments to look more like a proper law.

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