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'The crimes by which Wulfbald ruined himself with his lord': The Limits of State Action in Late Anglo-Saxon England

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Historiographically, J. H. Round may have defeated Edward Freeman on most of their myriad points of contention, but on one major issue, the strength and sophistication of the Anglo-Saxon state on the eve of the Conquest, he lost decisively. Despite the best efforts of R. Allen Brown to defend Round's views, the historical orthodoxy that emerged in the second half of the twentieth century was Freeman's, namely that Anglo-Saxon royal governance was in the late tenth and eleventh centuries a mature and powerful institution that (in Joel Rosenthal's words) 'provided the basement and a good deal of the above-ground levels in the house that Duke William is generally credited with building'.[1]

If anything, over the last three decades of historical writing, the power and effectiveness of royal government in Anglo-Saxon England has grown to a degree that would have startled Freeman. Surveying the England that William conquered, Prof. James Campbell, the leading advocate of the 'maximalist' view of the Anglo-Saxon state, finds a country effectively governed from above through the agency of royal officials and the mechanisms of administrative routines. Late Saxon England, as he describes it, was

> divided into shires, and the shires into hundreds. Almost all land was assessed in hides and the like for purposes of taxation and service ... That the country was divided into shires, each under a royal official, the sheriff, gave a degree of general control that made uniformity in administrative action possible. The system of assessment enabled kings to levy taxes on the country as a whole, sometimes at very high rates ... England was so organized as to give its eleventh-century rulers powers which others lacked.[2]

'Maximalists' can also point to royal control over coinage so firm that it permitted periodic withdrawal of currency and recoinage; to the development of a centralized royal chancery; to a unified military system in which recruitment of soldiers was treated like a land tax; and

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1 Joel T. Rosenthal, 'A Historiographical Survey: Anglo-Saxon Kings and Kingship since World War II', *Journal of British Studies*, 24 (1985): 72-93, at p. 81.

2 James Campbell, 'The Significance of the Anglo-Norman State in the Administrative History of Western Europe' (1980), repr. in Campbell, *Essays in Anglo-Saxon History* (London: Hambledon, 1986), pp. 171-2. This is a theme that recurs often in Campbell's work. See, e.g., in the same volume, 'Observations on English Government from the Tenth to the Twelfth Century' (1975), repr. in Campbell, *Essays in Anglo-Saxon History*, pp. 155-70, and the essays collected in Campbell, *The Anglo-Saxon State* (London: Hambledon and London, 2000).

to a system of cadastral assessment based at least roughly upon the value of landed estates.[3] In short, to quote James Campbell once more, 'the administration of the late Anglo-Saxon state was commandingly effective'.[4]

Similar arguments have been made for the effectiveness of, and royal control over, the Anglo-Saxon legal system. This case has been most vigorously pressed by the late (and much missed) Patrick Wormald in a series of learned articles and in his *magnum opus*, *The Making of English Law: King Alfred to the Twelfth Century* (Oxford: Blackwell Publishers, 1999). Wormald found the origins of the English Common Law not in the innovations of Henry I or Henry II but in the Anglo-Saxon legal system that they had inherited. 'There is a plausible connection', Wormald averred, 'between the vigour of the pre-conquest judicial regime, unparalleled in the Europe of its time, and the fact that in England alone were kings able to greet the advent of Learned Laws with an indigenous system, over which they claimed and mostly achieved a monopoly control'.[5] Through a careful analysis of charter evidence, Wormald undertook to overturn Pollock's and Maitland's conception of Anglo-Saxon law which defined wrongs as torts rather than crimes, and to refute their presentation of Anglo-Saxon legal procedure as 'archaic Germanic', 'rude and simple', in which 'the forms were sometimes complicated, always stiff and unbending'; mistakes in form, 'fatal at every stage'; and 'trial of questions of fact, in anything like the modern sense,

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3 On royal regulation of the currency, see Ian Stewart, 'Coinage and Recoinage after Edgar's Reform', in *Studies in Late Anglo-Saxon Coinage: In Memory of Bror Emil Hildebrand*, ed. by Kenneth Jonsson (Stockholm: Svenska numismatiska föreningen, 1990), pp. 465-85; Mark Blackburn, 'Mints, Burhs, and the Grately Code, cap. 14.2', in *The Defence of Wessex: The Burghal Hidage and Anglo-Saxon Fortifications*, ed. by David Hill and Alexander R. Rumble (Manchester: Manchester University Press, 1996), pp. 160-75. For governmental influence upon economic development, see J. R. Maddicott, 'Trade, Industry and the Wealth of King Alfred', *Past and Present*, 123 (1989): 3-51; S. R. H. Jones, 'Transaction Costs, Institutional Change, and the Emergence of a Market Economy in Later Anglo-Saxon England', *Economic History Review*, 46 (1993): 658-678. For development of a royal chancery, see S. D. Keynes, 'Regenbald the Chancellor (sic)', in *Anglo-Norman Studies X: Proceedings of the Battle Conference, 1987*, ed. by R. Allen Brown (Woodbridge: Boydell, 1988), pp. 185-222. For bookland and military organization, see Richard Abels, 'Bookland and Fyrd Service in Late Anglo-Saxon England', in *Anglo-Norman Studies VII: Proceedings of the Battle Conference, 1984*, ed. by R. Allen Brown (Woodbridge: Boydell, 1985), pp. 1-25; Abels, *Lordship and Military Obligation in Anglo-Saxon England* (Los Angeles and London: University of California Press, 1988). For hidage assessments and value: F. W. Maitland, *Domesday Book and Beyond; Three Essays in the Early History of England* (Cambridge: CUP, 1897), pp. 532-45; Abels, 'Bookland and Fyrd Service', pp. 15-25; Abels, *Lordship and Military Obligation*, pp. 97-108; J. McDonald and G. D. Snooks, 'Were the Tax Assessments of Domesday England Artificial? The Case of Essex', *Economic History Review*, 38 (1985): 353-73; McDonald and Snooks, *Domesday Economy: A New Approach to Anglo-Norman History* (Oxford: OUP, 1986).

4 James Campbell, 'Hundreds and Leets: A Survey with Suggestions', in *Medieval East Anglia*, ed. by Christopher Harper-Bill (Woodbridge: Boydell, 2005), pp. 153-67, at p. 167.

5 Patrick Wormald, 'Giving God and King their Due' (1997), repr. in Wormald, *Legal Culture in the Early Medieval West: Law as Text, Image and Experience* (London: Hambledon, 1999), pp. 333-55.

unknown'.[6] Wormald demolished this straw man and offered in its place a radically different model for Anglo-Saxon legal procedure and the settlement of disputes in which oaths mattered, but 'so ... did what modern justice would consider evidence, and such evidence was preferably in writing'.[7] Suits took place in royal courts — and Wormald reminds us that the courts of hundred and shire were in fact 'royal' — presided over by agents of the Crown, and conducted according to procedures laid down by royal authority.[8] The judgments of these courts were enforced by royal agents to the benefit of the Crown, which profited through fines, regardless of whether the accuser or accused prevailed.

The late Anglo-Saxon state as it was revealed to Wormald through the charters played 'an aggressive and interventionist part in [legal] proceedings'.[9] Kings and their officials did not merely referee rival claims; they defined and punished crime. For Wormald, the large number of estates recorded in tenth- and eleventh-century charters as forfeited to the king is particularly illuminating, in contrast to Ottonian and Salian Germany, the only polity in tenth- and eleventh-century Europe that rivaled the late Anglo-Saxon state in terms of centralized authority. 'We have moved', Wormald asserted, 'from a polity where injury is redressed to one with a developed notion of crime and punishment'.[10] This was even true for the bloodfeud.[11] 'English kings', Wormald musically intoned, 'no longer merely wrote themselves into the discords of society. They in effect re-orchestrated the whole symphony of feud in a royal key'.[12] From the vantage point of the charters and law codes, Wormald could see the late Anglo-Saxon 'state' beginning to claim Weber's 'monopoly of legitimate violence'.[13] These conclusions, Wormald insisted, did not rest upon law codes or other such expressions of royal ideology; they emerged from a close study of charters through which one could glimpse the realities of Anglo-Saxon law. 'It is not because kings made rules for the control of feud, the holding of courts and the punishment of "crimes", which might even encompass "false" pleading, that I believe these things to have happened', Wormald explains. 'It is because I *find* them happening in ground-level conflicts'.[14] Wormald's analysis of the charter evidence for lawsuits led him

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6 F. Pollock and F. W. Maitland, *The History of English Law to the Accession of Edward I*, 2 vols, reissue ed. by S. F. C. Milsom (Cambridge: CUP, 1968), i, pp. 38-41, quoted by Wormald, 'Charters, Law and the Settlement of Disputes', in *Legal Culture*, p. 290.

7 Wormald, 'Charters', in *Legal Culture*, p. 309.

8 Wormald, 'Charters' and 'Giving God and King their Due', in *Legal Culture*, pp. 306, 348.

9 Wormald, 'Giving God and King their Due', in *Legal Culture*, p. 309.

10 Wormald, 'Giving God and King their Due', in *Legal Culture*, p. 342.

11 Wormald, 'Charters', in *Legal Culture*, p. 309.

12 Wormald, 'Giving God and King their Due', in *Legal Culture*, p. 341.

13 Wormald, 'Giving God and King their Due', in *Legal Culture*, pp. 340-1.

to the same conclusion as James Campbell: that the government of the late Anglo-Saxon state was powerful and often played an active role in the lives of ordinary Englishmen.

But the charter evidence is not quite so clear cut as Wormald made it out to be. Indeed, there is no better evidence for both the aspirations and limitations of the late Anglo-Saxon state than an Old English memorandum attached to a Latin charter, Sawyer 877, issued by King Æthelred II in 993. The story it tells of a king's thegn named Wulfbald who repeatedly defied the judgments of royal courts, including a meeting of the *witan*, serves as a much needed corrective to the sometimes exaggerated claims made for the judicial power of the late Anglo-Saxon state. Sawyer 877 reminds us that just because a public court pronounced judgment does not mean that the judgment was necessarily executed. As Paul Hyams has recently warned, however, one should be cautious about assuming that the legislative aspirations of tenth-century English kings and their clerical advisers translated into 'achievements of power', especially given 'absence of a royal technology of power to facilitate the implementation of the king's orders far from his physical presence'. This was particularly true for disputes among powerful local landowners that did not directly involve royal lands or create a major breach of the king's peace.[15]

A distinctive feature of the charters issued by King Æthelred II *Unraed* is that they often include explanations of how the king obtained the land that he was granting. In a number of instances the narratives refer to crimes committed by the former owners that led to forfeiture of the land.[16] Æthelred's charters are not unique in referring to crimes that led to an estate's forfeiture. One of the most discussed Anglo-Saxon charters, Sawyer 1444, dated to Edward the Elder's reign, describes in detail the conviction, forfeiture, outlawry, and pardon of a king's thegn, Helmstan, and the subsequent dispute over land at Fonthill which Helmstan used to purchase ealdorman Ordlaf's support. What is unusual is the regularity with which references to crime and forfeiture appear in the charters from Æthelred's reign. As Simon Keynes suggests, these accounts of the crimes that had led to the land coming into the king's hands were inserted into the charters 'to strengthen the new owner's title to the estate', which was particularly desirable in the late tenth century, given the reaction against the Benedictine reform during the brief reign of Æthelred's predecessor, Edward the Martyr, and the political in-fighting that marked much of Æthelred's rule. Keynes is also correct, I believe, in associating the appearance of these

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14 Wormald, 'Giving God and King their Due', in *Legal Culture*, p. 352.

15 Peter Sawyer, *Anglo-Saxon Charters: An Annotated List and Bibliography* (London: Royal Historical Society, 1968); Paul Hyams, *Rancor and Reconciliation in Medieval England* (Ithaca: Cornell University Press, 2003), p. 101.

16 S. Keynes, 'Crime and Punishment in the Reign of Æthelred the Unready', in *People and Places in Northern Europe 500-1600: Essays in Honour of Peter Hayes Sawyer*, ed. by I. Wood and N. Lund (Woodbridge: Boydell, 1991), pp. 67-81, at pp. 76-77.

explanatory statements with the growing emphasis in this period with the process known as *team*, that is, 'vouching to warranty, by which the possessor of property claimed by someone else would cite the person from whom he had himself acquired it to prove that the property had been that person's to give or sell in the first place'.[17] But to my eye what they most resemble are the stories in the near contemporary *Libellus Æthelwoldi* and in later monastic histories explaining how the monks acquired (or lost) lands. As Sarah Foot has argued, charters are also a form of historical writing; those that contain embedded narratives, such as Sawyer 877, 'do so to reconcile discord and prevent future dispute. ... These texts legislate for the future by recounting the past in such a way as to legitimize and make necessary the present act of giving'.[18] As with the *Libellus* and monastic histories, the purpose of the narratives embedded in charters was to shape and fix historical memory in favor of the beneficiaries, so that when a future claim arose against their possession, they would not only have the charter as evidence, but public memory on their side as well, which would be especially important if the claimants could produce their own charters giving title to the disputed land.

The lengthy, vernacular embedded narrative in Sawyer 877 is extraordinary for the light it sheds on criminal justice, land law, self help, and, in particular, the strengths and limitations of Anglo-Saxon mechanisms of royal governance in the late tenth century. This charter records in Latin a grant by King Æthelred II to his mother Ælfthryth of an estate at Brabourne and five other properties in Kent, adding up to sixteen *sulungs* of land in all, that had been forfeited to the crown by a king's thegn named Wulfbald because of the misdeeds that he had committed. The Latin charter concludes with a statement (in Latin) that the king rightfully possessed these estates 'by the most just judgment of all my chief men' on account of the crimes committed by Wulfbald. What follows then is a detailed exposition in Old English of those crimes and of Wulfbald's repeated defiance of royal justice.

The Old English memorandum reads as follows:

> These are the crimes by which Wulfbald ruined himself with his lord [*wyþ his hlaford forworhte*], namely first, when his father had died, he went to his stepmother's estate and took everything that he could find there, inside and out, great and small. Then the king sent to him and commanded him to restore the plundered goods [*reaflac*]; then he ignored that, and his wergeld was assigned to the king. And the king sent to him a second time and repeated his command; and then he ignored that, and for the second time his wergeld was assigned to the king. On top of all this, he rode and seized the land of his kinsman,

17 Keynes, 'Crime and Punishment in the Reign of Æthelred the Unready', p. 77.

18 *Libellus Æthelwoldi* in *Liber Eliensis* trans. by Janet Fairweather (Woodbridge: Boydell, 2005); Sarah Foot, 'Reading Anglo-Saxon Charters', in *Narrative and History in the Medieval West*, ed. by Elizabeth M. Tyler and Ross Balzaretti (Turnhout: Brepols, 2006), pp. 39-65, at p. 62.

> Brihtmaer of Bourne. Then the king sent to him and commanded him to give up the land; then he ignored that, and his *wergeld* was assigned to the king for the third time. The king sent to him once again and commanded him off; then he ignored that, and his *wergeld* was assigned to the king for a fourth time. Then the great meeting was held at London. Earl Æthelwine was there and all the king's councillors. Then all the councillors who were there, both ecclesiastics and laymen, assigned the whole of Wulfbald's property to the king, and himself likewise to be disposed of as the king desired, whether to live or die. *And he* [*Wulfbald*] *retained all this, uncompensated for, up to the time of his death* (*7 he hæfne ealle þis ungebet oþe he forþferd*) [emphasis added]. And after he was dead, on top of all this, his widow along with her child went and slew Eadmær the king's thegn, Wulfbald's uncle's son, and fifteen of his companions on the estate at Bourne, which he had held by plunder, despite the king. And then Archbishop Æthelgar had the great synod at London, and he himself and all his property were assigned to the king.[19]

The introductory words of the charter, 'These are the crimes by which Wulfbald ruined himself with his lord', ring ironic. The charter tells us that Wulfbald, ignored two royal commands to return property that he had looted from his stepmother's estate, and, as a result, his *wergild* was assigned to the King twice. He then ignored two additional royal commands to restore an estate that he had seized from a kinsman. Each time his *wergild* was again assigned to the King. His contumacy finally provoked the King's *Witan* in London, presided over by Earldorman Æthelwine of East Anglia, to assign all his property to the King and place Wulfbald himself in the King's mercy. And yet, despite having had his *wergild* assigned to the King four times, his estates legally confiscated, and his person placed at the mercy of the King, Wulfbald died in possession of the disputed lands and property without having made any amends. Wulfbald's death set off a bloody battle over the estate of Bourne, pitting his widow and their son against Wulfbald's uncle's son. Only after the deaths of a king's thegn and his fifteen companions, and yet another judgment by a second great council in London, this time presided over by Archbishop Æthelgar, did Wulfbald's possessions finally pass into the hands of the king.

The historical context for Wulfbald's story can be established from internal evidence within the charter. The great London synod that posthumously condemned Wulfbald took place between November 988 and February 990, the dates of Archbishop Æthelgar's brief

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19 The charter is edited by Sean Miller, *Anglo-Saxon Charters IX: Charters of the New Minster, Winchester* (Oxford: OUP, 2001), pp. 144-8 (no. 31), and A. G. Robertson, *Anglo-Saxon Charters* (Cambridge: CUP, 1956), no. 63 (with translation). I have followed Dorothy Whitelock's translation in *English Historical Documents Volume I c.500-1042* (Oxford: OUP, 1955) [hereafter *EHD I*], pp. 531-4 (no. 120), with some emendations.

episcopate, and Wulfbald's crimes probably should be assigned to the first decade of King Æthelred's reign.[20] There are few sources for this period, and few events mark it. As is well known, Viking raids started again in 980, but they were small and sporadic and probably had little impact except in their immediate locale. The one great dramatic event, other than the murder of Æthelred's brother and predecessor, King Edward, in 978, was the young king's ravaging of the diocese of Rochester in 986. The act was in response to Bishop Ælfstan's dispossession of one of Æthelred's *ministri* of an estate that belonged to the Church of Rochester but which the king had granted to this retainer.[21] The ravaging of a borough or shire was the most extreme weapon in the royal arsenal of coercion and punishment in late Anglo-Saxon England, and Æthelred, ten years later, repented of using it against the Church of Rochester in support of a man who had taken advantage of his youth and inexperience and proved to be 'the enemy of God almighty and the whole people' (*dei omnipotentis ac totius populi inimico*) by killing a royal reeve who tried to interfere with his many acts of theft of plunder.[22] It is telling that we see here the King employing the same sort of extra-judicial violence in a dispute over the possession of land as Wulfbald and his widow were to exercise on a more modest scale.

Sawyer 877, with its tale of unpunished crime, self-help remedies, and violence, clearly represents a challenge to the 'maximalist' position. 'The major interest of this document', Dorothy Whitelock explained in the first volume of *English Historical Documents* in 1955, 'is the picture it gives of the weakness of Ethelred's regime'.[23] Accordingly, there have been attempts in recent years to recast the charter. Patrick Wormald, for instance, emphasized that the legal procedures and penalties outlined in the charter are consistent with those appearing in the law codes of Æthelred and Cnut. He found it significant that Sawyer 877 used the word *reaflac* for the goods Wulfbald took from his stepmother, and that the penalty assessed against Wulfbald for this robbery was forfeiture of his *wergild*, since both the term and the penalty appear in II *Cnut* 63. Wormald also points out that II *Cnut* 19 legislates for disputes over property, such as Wulfbald's with his kinsmen, in which the possessor of the property refuses multiple royal summonses.[24] In arguing this, however, Wormald finessed the *specific* requirements of the law, which specifies four summonses rather than the two for each offense as in the charter and has nothing about forfeiture of *wergild*.[25] Wormald also ignored entirely Wulfbald's successful

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20 Miller, *Anglo-Saxon Charters IX*, p. 151.

21 Ann Williams, *Æthelred the Unready: The Ill-Counselled King* (London: Hambledon and London, 2003), pp. 26-27.

22 Sawyer 893. See comments by Williams, *Æthelred*, pp. 26-27; Simon Keynes, *The Diplomas of King Æthelred 'the Unready' (978-1016): A Study in their Use as Historical Evidence* (Cambridge: CUP, 1980), pp. 184-5.

23 *EHD I*, no. 120, 531.

defiance of the royal will. Peter Kitson and Ryan Lavelle recently tackled the latter problem. Both, in effect, deny that Wulfbald did successfully defy the king. In Kitson's reconstruction of events, Wulfbald paid his *wergild* on all four occasions but refused to give up the disputed property. Kitson (in the words of Sean Miller) 'recasts the story as one of a man of the world who expects to be able to get away with anything provided he pays for it rather than a minor lord defying all royal authority'.[26] Both Kitson and Lavelle claim, moreover, that Wulfbald was executed shortly after his life was judged forfeit by the London council over which ealdorman Æthelwine presided.

Kitson's and Lavelle's reinterpretation of Sawyer 877 seems to me, however, to be wrong on all counts. Not only does it ignore the plain language of the charter — *And he* [*Wulfbald*] *retained all this, uncompensated for, up to the time of his death* (*7 he hæfne ealle þis ungebet oþe he forþferd*) — but it would have Wulfbald paying, without the help of kinsmen, enormous sums of money for his defiance of the King's orders. Wulfbald's property and the designation of the King as his lord argue for his status as a King's thegn. If so, the payment of four *wergeld*s would have amounted to £240, far more than the disputed land was worth.

Simon Keynes' reading of Sawyer 877 is closer to the mark. Keynes admitted that on its face, Sawyer 877 seems to reflect badly on King Æthelred's government, at least in the early years of the reign, and accepted the charter's evidence for the unpunished defiance of royal summonses and legal judgments. He rejected, however, that such things were in any way unique to Æthelred's judicial regime. 'Wulfbald's repeated disregard of royal commands', Keynes pointed out, 'reminds one of the difficulties which earlier tenth-century kings had experienced in bringing powerful men to justice, and of the provision which they made for persistent offenders; so it is possible that Wulfbald's defiance of authority reflects weakness inherent in the legal system itself, rather than the inability of a particular king to enforce the law'.[27] The difficulties that tenth-century kings experienced in dealing with powerful, defiant criminals are reflected in the legislation of King Athelstan. IV *Athelstan* 3, for example, posits that there are those who are so rich or belong

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24 Wormald, 'Giving God and King their Due', in *Legal Culture*, p. 351.

25 As does Miller, *Anglo-Saxon Charters IX*, p. 151. II Cn 19 reads: 'And no one shall make distraint of property either within the shire or outside it, until he has appealed for justice three times in the hundred court. §1. If on the third occasion he does not obtain justice, he shall go the fourth occasion to the shire court, and the shire court shall appoint a day when he shall issue his summons for the fourth time. §2 And if this summons fails, he shall get leave, either from the one court or the other, to take his own measures for the recovery of his property'. Cf. II As 3: 'He who applies to the king before he pleads as often as is required for justice at home, shall pay the same fine as the other would have had to pay if he had refused him justice'.

26 Peter Kitson, *A Guide to Anglo-Saxon Charters* (forthcoming), cited by Miller, *Anglo-Saxon Charters IX*, p. 151.

to so powerful a kindred that they cannot be restricted from crime or from protecting or harbouring criminals.[28] One might add that the power of kings to enforce their will over their ostensible agents was also limited. I remember how amused I was when researching the activities of William the Conqueror's sheriffs to discover a royal writ to Archbishop Lanfranc, dated to around 1082, ordering the sheriff of Cambridgeshire, Picot, to destroy the mill he had constructed in the borough, because it was damaging the mill belonging to the burgesses. By the time of the Domesday Inquest Picot had three mills in Cambridge 'which have taken away the pasture and destroyed many houses'.[29]

To be sure, the unpunished defiance of Wulfbald is anomalous in the charter evidence, but, as the law codes suggest, it was probably not all that unusual in legal disputes. The reason that it appears so is the bias of the surviving evidence: when royal charters recount lawsuits, it is to explain how the land came into royal hands. This means that lawsuits in which the king had no direct interest usually did not find their way into charter memoranda. Nor did lawsuits in which the wrong-doer remained successfully defiant to the end. Sawyer 877 is unusual in that it concerns an intra-familial dispute that later exploded into a major breach of the king's peace. The people whom Wulfbald wronged were his stepmother and his uncle Brihtmær, and his actions are best thought of as help remedies in a disputed inheritance. It is also perhaps significant that the disputes in Sawyer 877 involved the contested rights of widows. Just as Wulfbald looted the estate of his stepmother after the death of his father, so Wulfbald's widow and *her* child attacked Eadmer and his companions in Bourne.[30] An intra-familial dispute of this sort was less likely than inter-familial disputes to pull in outside parties by pitting families against one another or to draw the attention of a great lord and bring about his intervention. Anglo-Saxon kings were

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27 Keynes, 'Crime and Punishment', p. 79.

28 *The Laws of the Earliest English Kings*, ed. and trans. by F. L. Attenborough (Cambridge: CUP, 1922), pp. 146-7: 'If there is anyone so rich or belong to so powerful a kindred that he cannot be restricted from crime or from protecting or harbouring criminals ... he shall be led out of his native district with his wife and children, and all his goods, to any part of the kingdom which the king chooses, be he noble or commoner, whoever he may be ... And henceforth, let him never be encountered by anyone in the district; otherwise he shall be treated as thief caught in the act'. See also III As 6 and, esp. VI As 8.2

29 *Regesta Regum Anglo-Normannorum: The Acta of William I (1066-1087)*, ed. by David Bates (Oxford: OUP, 1998), no. 126; *DB* i. 189r. As sheriff, Picot was notoriously rapacious. The monk of Ely remembered him as 'a starving lion, a footloose wolf, a deceitful fox, a muddy swine, an impudent dog'. *Liber Eliensis*, book 2, chap. 131, trans. by Fairweather, p. 250. Interestingly, King William's response to the many complaints which the abbot of Ely brought against Picot was to order the sheriff to recognize the abbey's lordship over the thegnland tenements he had seized and to provide the abbot with knight service the abbey owed to the Crown. *Liber Eliensis*, book 2, chap. 134, pp. 259-60. For Picot, see Richard Abels, 'Sheriffs, Lord-Seeking and the Norman Settlement of the South-East Midlands', in *Anglo-Norman Studies, 19. Proceedings of the Battle Conference 1996*, ed. by Christopher Harper-Bill (Woodbridge: Boydell, 1997), pp. 33-4.

certainly concerned about kinsmen aiding one another in criminal enterprises and protecting each other from the law; they showed, however, no interest in actively refereeing disputes among kinsmen unless they had something to gain thereby. The shire court was an arena in which Wulfbald's kinsmen could express in public their grievances, but those grievances, even if justified, were of insufficient interest to the royal sheriff to motivate him to expend time and effort on enforcing the judgments of the courts. Self-help was even written into law. II Cnut 19 decrees that no one is to make distraint of property (*name*) without first appealing to the shire court four times. If the fourth summons fails, 'he shall get leave, either from the one court or the other, to take his own measures for the recovery of his property'.[31] Wulfbald died in possession of his property with his crimes *ungebet* because these crimes were only against his own relatives.

What finally stirred the 'state' into action was the killing of Eadmær and fifteen of his companions. Eadmær's seizure of the manor of Bourne after the death of his uncle Wulfbald was, again, a self-help remedy, as was the response of Wulfbald's widow. The battle that ensued between their supporters, however, constituted a breach of the king's peace that could not go unnoticed or unpunished. In late tenth-century England, all criminal acts, at least conceptually, constituted treason, as they involved breaking an oath of loyalty to the king extracted from all free men.[32] But before the deaths at Bourne, the king's interest in what amounted to an intra-familial dispute had been incidental; now it was central. The posthumous judgment against Wulfbald encompassed not only his widow but his whole kindred. Even those who had suffered at his hands lost out, as all Wulfbald's holdings, including those claimed by his kinsmen, were forfeited to the king.

As I mentioned earlier, more than anything else, the closest analogue to the Old English memorandum of Sawyer 877 is the late tenth-century *Libellus Æthelwoldi*. This work consists of a series of narratives explaining how Bishop Æthelwold obtained land for the monks of Ely, and how his purchases and donations to the monastery were defended by the monks after the death of King Edgar. Unlike the King in his charters, Bishop Æthelwold and the monks did not always emerge triumphant and in possession of the land. Eadmær's seizure of Bourne upon Wulfbald's death is closely paralleled by a number of

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30 Note the special protections afforded widows in Æthelred's and Cnut's codes (V Atr 21=VI Atr 26, VI Atr 39=II Cn 52, VI Atr 47). See Marie-Françoise Alamichel, *Widows in Anglo-Saxon and Medieval Britain* (Oxford: Peter Lang, 2008), p. 91.

31 A. J. Robertson, *The Laws of the Kings of England from Edmund to Henry I* (Cambridge: CUP, 1925), pp. 182-3.

32 Patrick Wormald, 'Frederic Maitland and the Earliest English Law' and '*Engla Lond*: The Making of an Allegiance', in *Legal Culture*, pp. 45-69, 359-82; David Pratt, 'Written Law and the Communication of Authority in Tenth-Century England', in *England and the Continent: Studies in Honour of Wilhelm Levison (1876-1947)*, ed. by D. Rollason, C. Leyser, and H. Williams (Turnhout: Brepols, 2010), pp. 37-38.

cases in the *Libellus*. A man named Thurferth, for example, took by force from the monks two estates in Norfolk which, many years before, had been forfeited to King Edmund because of the crimes of its owner and which subsequently had been given to the abbey by King Edgar.[33] In the case of five hides at Brandon and Livermere, Suffolk, the monks had to depend on divine vengeance to recover their property. Despite having vouched these estates to warranty 'in the witness of the whole hundred', the monks nevertheless lost them to Ingulf who took them 'forcibly and unjustly'. Only after Ingulf, his widow, and his son all died in quick succession did the monks regain their land in the form of a donation from Ingulf's brother, 'who feared things would turn out similarly for himself'.[34]

The monastic author of the *Libellus* composed a narrative of the actions through which Bishop Æthelwold obtained land for Ely and the means by which the monks defended those acquisitions against claims for the same reason that monasteries, if need be, commissioned the forgery of charters. Both were mechanisms for shaping historical memory. The embedded narratives in Æthelred's charters served the same function: they were mini-histories meant to be read aloud in court, so that the claims within the charter could be further reinforced by appeal to known historical 'fact'.

The purpose of this paper was not to challenge the characterization of the late Anglo-Saxon polity as a 'state', nor to deny the precocity and relative sophistication of its administration.[35] Tenth- and eleventh-century English kings were capable, if they chose, of intruding into the lives of their subjects and, in particular, of extracting monies from them to an extent greater than in any other contemporary polity in Western Europe. Nevertheless, we ought not to exaggerate their power. 'The task of government at a distance', Paul Hyams observes, 'was infinitely harder in eleventh-century Europe when the technology of domination was infinitely weaker than in our own time'.[36] Nor should we assume that Anglo-Saxon kings or their agents always felt obliged to execute the judgments of royal courts. Whether a court's judgment was executed could depend upon whether the king or his local agent perceived a direct interest in the suit. An individual with wealth and power, such as Wulfbald, could defy with impunity the decision of a court if the dispute was internal to his family — and did not culminate in a major breach of the king's peace. Even in cases of this sort, the resolution of disputes ultimately lay in the consensus of the local community, and this is why we have the Old English memorandum in Sawyer

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33 *Libellus Æthelwoldi*, chaps. 53 and 54, in *Liber Eliensis*, book 2, chaps 42 and 43, 137.

34 *Libellus* Æthelwoldi, chap. 46, in *Liber Eliensis*, book 2, chaps 35, 133-4.

35 For which, see Rees Davies, 'The Medieval State: the Tyranny of a Concept?', *Journal of Historical Sociology*, 16 (2003): 280-300, at p. 289.

36 Paul Hyams, 'Feud and the State in Late Anglo-Saxon England', *Journal of British Studies*, 40 (2001): 1-43, at pp. 42-3.

877. In writing an account of how Wulfbald's lands came into the hands of the king, the royal scribe created an 'official history' of those events and a public memory designed to protect the bequest against those who might later contest it, especially those in possession of rival charters.