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An examination of the laws of William the Conqueror.

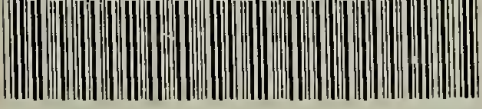
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AN EXAMINATION OF THE LAWS
OF WILLIAM THE CONQUEROR

A Thesis Presented

By

Steven Douglas Sargent

Submitted to the Graduate School of the
University of Massachusetts in partial
fulfillment of the requirements for the degree of

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History

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OF WILLIAM THE CONQUEROR

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CHAPTER I

THE SETTING OF THE LEIS WILLELME:

LEGISLATION UNDER THE NORMAN

KINGS OF ENGLAND

The Leis Willelme is a law book composed of fifty-two chapters which purports to contain the laws and customs of Edward the Confessor as they were granted to the English people by William the Conqueror. It is preserved in French and Latin versions, but which language was used in the original composition is uncertain. Upon the answer to this question depends the determination of the work's date and the assessment of the genuineness of its statutes. The goal of this thesis is to elucidate the nature and significance of the Leis Willelme through the investigation of these issues.

Before proceeding with a detailed examination of the problems associated with the law book, we must first attempt to characterize the legal milieu of post-Conquest England. For the Leis Willelme is hardly a solitary example of its genre. The Norman Conquest upset the Anglo-Saxon legal system, disturbing both law and procedure, and in the end caused a new synthesis from which, beginning in the twelfth century, the common law developed. Yet before this process began to take definite shape there was a period of confusion during which the old law was restated and adapted in an attempt to make it accurately reflect the reality of judicial practice. During this time, which

includes the reigns of the three Norman kings, William I, William II, and Henry I, and that of Stephen, that is, the years 1066-1154, a number of legal works appeared which sought to record the laws either in force in England or which the authors thought should be in force. These works include the Quadripartitus, Leges Henrici Primi, Instituta Cnuti, and Leges Edwardi Confessoris. After examining these documents and the few decrees that can be confidently attributed to one or another of the Norman kings, we can endeavor to characterize the post-Conquest legal milieu and, further, try to fit the Leis Willelme into the overall pattern that these works reveal. Such an inductive process will not necessarily lead to a satisfactory determination of the work's date and significance; these conclusions will more likely result from a careful weighing of the content and language of the document itself. But an acquaintance with the decrees and law books that appeared during the century immediately following the Conquest will help us to reject implausible theories that mean to explain the existence of the Leis Willelme and at the same time to see similarities between the documents that may suggest fruitful hypotheses.

A student beginning the study of early English legal history is perhaps surprised to find three of the Conqueror's writs and Henry I's coronation charter in Felix Liebermann's monumental collection of Old English legislation, Die Gesetze der Angelsachsen.¹ The Conquest is such an epochal event that one wonders how works written under the Norman kings fit into this compilation of Anglo-Saxon law. Yet the explanation of this seeming paradox is fairly simple: the Normans,

¹F. Liebermann, ed. and trans., Die Gesetze der Angelsachsen, 3 vols. (Halle: Max Niemeyer, 1903-16).

having no written law code to rival those of the English, merely suffered the conquered people to keep their customary law in the main, while altering it in detail, writ by writ, until it was gradually transformed during the twelfth century into a new and vital legal system. For this reason much of the legislation that we find in the law books of the first century after the Conquest is based on Old English usages, and a review of the monuments of English written law will help us to understand from where the Normans derived their knowledge of these practices.

The Anglo-Saxon Legal Heritage

That Anglo-Saxon law was being written down almost five centuries before the Conquest is illustrated by the dooms of King Aethelberht of Kent, which date from c. 600. We have evidence of continuous legal activity from this time on through the eleventh century: to demonstrate this one need only mention Ine's code from the end of the seventh century, Offa's from the end of the eighth, Alfred's from the end of the ninth, greater or lesser amounts of legislation from Edward the Elder, Athelstan, Edmund, Edgar, and Ethelred from the tenth, and finally Cnut's codification from the eleventh. One of the landmarks in this series is Alfred's compilation, in which the king tried to produce a work of a more general character by selecting for inclusion the best laws from the various local codes. It is only from this work that we know of Offa's code, and Ine's work is included as an appendix to it.²

Although Alfred's code is important, Cnut's compilation of Old

²F. L. Attenborough, ed. and trans., The Laws of the Earliest English Kings (Cambridge: Cambridge University Press, 1922), pp. 62-93.

English law is the one most often encountered in a variety of forms in the law books written under the Norman kings. In 1016 Cnut, a Dane, succeeded in capturing the English crown, and one of the conditions under which he was accepted by his new subjects was that he allow them to continue to live under their customary law. To the English people this body of legislation was represented not by the copious enactments of the unsuccessful and unloved Ethelred (987-1016), but rather by the legal state of affairs that had obtained under good king Edgar (959-75). Thus the Danes and the English are described in the D version of the Anglo-Saxon Chronicle for the year 1018 as having "reached an agreement at Oxford according to Edgar's law,"³ and Cnut himself says in his proclamation of 1020 that he will "steadfastly keep the law of Edgar to which all have given their adherence under oath at Oxford."⁴ But although four series of laws, totaling thirty-eight chapters, are attributed to Edgar,⁵ he was probably not remembered as a great legislator and codifier. Rather by the laws of Edgar that were granted to them Cnut's English subjects "meant the whole body of English law in force in his [Edgar's] time, including in especial perhaps Alfred's domboc, which Edgar himself mentions in his laws as the great authority."⁶

³Dorothy Whitelock, ed., The Anglo-Saxon Chronicle (New Brunswick: Rutgers University Press, 1961), p. 97.

⁴A. J. Robertson, ed. and trans., The Laws of the Kings of England from Edmund to Henry I (Cambridge: Cambridge University Press, 1925), p. 143.

⁵Liebermann, Gesetze, I, 195-215; Robertson, Laws, pp. 16-39.

⁶H. G. Richardson and G. O. Sayles, Law and Legislation from Aethelberht to Magna Carta (Edinburgh: Edinburgh University Press, 1966), p. 23.

Presumably it was exactly because the reference to Edgar's laws was so vague that Cnut himself issued a law code in which he specified in detail the content of the legislation by which he had agreed in principle to rule. The work, which comprises 110 chapters, is divided into two parts, I Cnut and II Cnut, which deal with ecclesiastical and secular law respectively.⁷ The second part is by far the larger, containing eighty-four of the chapters. There is no doubt about its authenticity. It was issued at Winchester at Christmas of a year that cannot be precisely specified, although it was certainly not before 1020 and might possibly be 1027 or sometime between 1029 and 1034. In the work Cnut shows himself to be a transmitter of Old English law rather than a creator and originator of new legislation. Richardson and Sayles find that there is "little, if anything, that is new in it, though some of the articles are not to be found in any earlier legislation that has come down to us."⁸ Liebermann notes that the code utilizes about one third of the Anglo-Saxon legal sources that we possess, although it is characterized by a greater fullness in the treatment of the subject matter. In his opinion some of the usages contained in it are only being written down for the first time and may reflect practices that were in force at the time of compilation. He says it is a mistake to regard it as founded on Alfred's code, since most of the material included seems to have come from the two generations just prior to Cnut's reign. The code as a whole shows no bias in favor of Danes over Englishmen. In its organization it is as weak as the first Anglo-Saxon code that was

⁷Liebermann, Gesetze, I, 278-371; Robertson, Laws, pp. 154-219.

⁸Richardson and Sayles, Law and Legislation, p. 27.

written over 400 years earlier.⁹

The importance of Cnut's code for the Norman period lies in the fact that it was the last compilation of Old English law made before the Conquest. Cnut's successors added nothing to it, perhaps because this law book was considered a definitive statement of Anglo-Saxon usages. Therefore when the writers of the next century invoke the laws that were observed before the Conquest, which they often erroneously call the laws of Edward, they frequently have Cnut's work in mind or on the page in front of them. It summarizes the whole of Old English law and consequently served as an important reference work for the authors of legal treatises which restated and adapted the old usages.

There is, by contrast, no analogous history of written law in Normandy prior to the twelfth century. Between the settlement of Rolf and his northmen in the lands around the mouth of the Seine and the conquest of England by Duke William about 150 years later there are, to our knowledge, "no written laws, no books on law and very few charters...";¹⁰ and although the Normans took up the French language and customs, there was no up-to-date written legislation in neighboring regions that could be easily borrowed. We must therefore conclude that the Normans brought little written law and perhaps none at all with them when they came to settle in England, and that William's decision to permit the English to continue to live under their

⁹Liebermann, Gesetze, III, 194-95.

¹⁰Frederick Pollock and Frederic William Maitland, The History of English Law Before the Time of Edward I, 2nd ed., 2 vols. (1898; reprinted Cambridge: Cambridge University Press, 1968), I, 64.

traditional dooms was a necessity because he had no rival system to set up in their place. This is not to say that the Normans lacked men in the ruling class who were educated in jurisprudence. William's administrator and eventual Archbishop of Canterbury, Lanfranc, came to Normandy in c. 1039 from Italy, where he had been a noted master of Lombard law. But Norman ideas became incorporated into and changed the system of law in England not in a sudden flood of innovation following the Conquest, but rather through a slow alteration of practice by writ and assize that continued for generations.

We should note briefly here and save for detailed discussion later the observation that the language of official English legal documents during the two centuries following William's victory is generally Latin, not French. Some of the Conqueror's charters are written in both Latin and English, but the former dominates twelfth-century legal texts. Only about the middle of the thirteenth century do documents in French begin to be common, and the practice of using this language finally becomes prevalent in the fourteenth century.

William I's Legislation

Having reviewed the status of written law among both English and Normans prior to the Conquest, we are now prepared to consider the legislation that has survived from the reigns of the first three Norman kings, starting with the three writs generally attributed to William I. In the discussion that follows the abbreviations introduced by Liebermann to denote each work will be used on occasion as convenient and standard shorthand devices. The first document to be considered is called by Liebermann Willelmi Episcopales Leges

(abbreviated Wl ep).¹² This writ decrees that cases which fall under episcopal jurisdiction shall no longer be tried in the hundred courts but rather in the bishop's court, following Canon law and the laws legitimately ordained by the bishop. We possess two Latin copies of the text, which, as the conclusion of the writ indicates, was also published in English. Its date falls, in Liebermann's opinion, between 1072 and 1076, with the earlier part of this period and particularly the royal convocation at Winchester at Easter 1072 being favored.¹³ Besides forbidding lay interference with episcopal jurisdiction, it prescribes a fine and excommunication for those who fail to answer a proper summons and gives to the bishop alone the responsibility of overseeing trials by ordeal. This document therefore introduces a genuine innovation into English legal procedure, that of the separation of ecclesiastical and secular courts.

A second writ is called Wilhelmes Lad. (abbreviated Wl lad) by Liebermann and "Regulations Regarding Exculpation" by Robertson.¹⁴ It specifies in detail the relationship between Englishmen and Frenchmen in cases involving theft, homicide, outlawry, and other crimes that require a legal suit or trial by combat. The procedures by which a defendant of either group may exculpate himself are set out according to the crime that is alleged. Richardson and Sayles summarize the contents thus: "An Englishman is permitted to decline combat in criminal actions except in causes leading to outlawry, but even there

¹²Liebermann, Gesetze, I, 485; Robertson, Laws, pp. 234-37.

¹³Liebermann, Gesetze, III, 274-75.

¹⁴Liebermann, Gesetze, I, 483-84; Robertson, Laws, pp. 232-33.

the Frenchman may be forced to defend himself by compurgation."¹⁵

The document as we have it is a copy of the Anglo-Saxon text, the language of which seems, to Liebermann, not at all modernized and suitable for the time c. 1070. He presumes that an authentic Latin original, as opposed to a private translation of the Anglo-Saxon text, at one time existed but is now lost. It is not probable that the work ever had a French form, since, as mentioned above, French is established as a language for written law only at a much later date.¹⁶

Liebermann is convinced that the writ is genuine. He finds nothing unusual in its form, language, and contents, while the private works that appear in the generations immediately following the Conquest often betray their spurious nature at first glance. William's objective was to reconcile the conflicting exculpation laws followed by his English and French subjects, since the former generally appealed to God's judgment through the ordeals of either water or iron while the latter customarily demanded trial by battle. By the time of the Leges Henrici Primi, c. 1114, this distinction is no longer being made, and a century after the Conquest such an idea is hardly imaginable. Liebermann assigns the document's origin to the decade 1068-1077, perhaps at Gloucester.¹⁷

The third of William's authentic writs, called Willelmi Londoniense Breve (abbreviated Wl Lond) by Liebermann, is a short charter to the bishop, mayor, and burgesses of London assuring them that the new king

¹⁵ Richardson and Sayles, Law and Legislation, p. 30.

¹⁶ Liebermann, Gesetze, III, 271-72.

¹⁷ Ibid.

will respect the rights that they enjoyed under king Edward.¹⁸

Liebermann considers the manuscript copy of the work to be either the original or an exact copy from it, dating from the beginning of William's reign, perhaps 1067.¹⁹ Its importance as legislation is minimal, but it provides us with one authentic indication that William allowed the English to retain the customs they observed under Edward the Confessor. This idea is encountered often in the twelfth century, for example in Henry I's coronation charter and the prologue to the Leis Willelme, in which the Conqueror is said to have granted the laws of Edward to his new subjects.

Besides these three writs, we possess another longer document in ten chapters which purports to summarize William's legislation. Unlike the writs, its authenticity is in question. It is called Willelmi Articuli (abbreviated Wl art) by Liebermann, and the Ten Articles by Robertson and Richardson and Sayles.²⁰ Much doubt is cast on this work by the demonstrable fact that it draws its contents, and even its phraseology, from at least one and perhaps two works that date from the beginning of Henry I's reign.

Parts of five of the articles and the prologue are derived from the Instituta Cnuti, which is mainly a translation of selections from Cnut's code that was made between 1095 and 1118. Liebermann presents a list of similarities found in the prologue and articles one, five, eight, nine, and ten of the Ten Articles which demonstrate a close agreement with

¹⁸Liebermann, Gesetze, I, 486; Robertson, Laws, pp. 230-31.

¹⁹Liebermann, Gesetze, III, 276.

²⁰Liebermann, Gesetze, I, 486-88; Robertson, Laws, pp. 238-43.

parts of the Instituta Cnuti.²¹ Chapter six is a corrupt copy of William's authentic writ concerning exculpation, Wl lad, discussed above, and is so unfaithful to its original that to Liebermann it hardly looks like anything the Conqueror could have issued.²² The seventh article, concerning the observance of King Edward's laws as amended by William, sounds to Richardson and Sayles like a paraphrase of chapter thirteen of Henry I's authentic coronation charter.²³ Thus three sources, the Instituta Cnuti, Wl lad, and Henry's coronation charter seem to constitute the basis for seven of the articles. Concerning the genuineness of the remaining three chapters, numbers two, three, and four, opinion is divided. Richardson and Sayles say that article two, which commands loyalty to the king, was created by the author, while Liebermann, although not considering it authentic in form, believes it to preserve the substance of a genuine decree dating from 1086. Chapter three, concerning the protection of Frenchmen from murder, seems unusual to Richardson and Sayles, but, although corrupt, perhaps based on some authentic law to Liebermann. Finally, Liebermann considers article four to be archaic and seemingly authentic, while Richardson and Sayles label it "entirely apocryphal;" it places Frenchmen-naturalized before 1066 under English law.²⁴

This analysis of the provenance of the contents of the Ten Articles, coupled with the composition date that it implies, demonstrates the work's spurious nature. Liebermann dates the document to c. 1110, but Richardson

²¹Liebermann, Gesetze, III, 278.

²²Ibid.

²³Richardson and Sayles, Law and Legislation, p. 46.

²⁴Richardson and Sayles, Law and Legislation, pp. 46-48, 52; Liebermann, Gesetze, III, 277-79.

and Sayles suggest that it might have appeared as much as a decade later, although not after 1122 since the earliest manuscript version comes from that year. They consider the work to be completely apocryphal. Liebermann believes that while the contents are not authentic as a whole the work is based in part on genuine laws of the Conqueror. He conjectures that although in several cases the form of the article comes from the Instituta Cnuti the particular passage was chosen because it corresponded in content to one of William's lost decrees. Presumably he has in mind that a middle-aged clerk who remembered the state of affairs in the latter part of William I's reign wrote down his recollections in phrases that he found in the Instituta Cnuti. Working on this assumption Liebermann infers what authentic enactments might underlie the articles as we have them. But the totally corrupt rendering of William's exculpation decree shows that the compiler was incompetent; and Liebermann's conjectures, although perceptive, are inconclusive. It is difficult to disagree with Richardson's and Sayles' conclusion that the Ten Articles is a spurious document, for too much of its subject matter is derivative or corrupt.²⁵

This judgment has not, however, been common, and the Ten Articles have been popular both in medieval and in modern times. They were expanded with material from other twelfth-century works sometime during Henry II's reign and translated into French at the end of the century. Their success even within the past hundred years is sufficiently demonstrated by the importance that Pollock and Maitland attribute to them²⁶

²⁵Richardson and Sayles, Law and Legislation, pp. 46-47; Liebermann, Gesetze, III, 278-79.

²⁶Pollock and Maitland, History of English Law, I, 97-98.

and their inclusion in Stubbs' Select Charters.²⁷

Having completed this review of the legislation generally credited to William, with the exception of the Leis Willelme itself which will be taken up in detail in the succeeding chapters, we may now proceed to describe the written legislation that has come down to us from the reigns of the Conqueror's two sons, William II "Rufus" and Henry I. In the case of Rufus this is an easy task: no laws or books on law are attributed to his reign. Pollock and Maitland find it "probable that Rufus set the example of granting charters of liberties to people at large,"²⁸ but otherwise little can be said about English legislation during this period.

Henry I's reign is, by contrast, very productive of charters and books on law. We possess this king's coronation charter, a charter to the city of London, and two decrees, one concerning the courts and the other regulating coinage.²⁹ Besides these enactments we have five substantial law books, all apparently of private authorship, which attempt either to reproduce elements of Old English law in Latin translation or to record the usages that the writer thinks are or should be in effect in England. In the remainder of this chapter we shall discuss the important characteristics of the coronation charter and the five law books; the Quadripartitus, Leges Henrici Primi, Instituta Cnuti,

²⁷William Stubbs, ed., Select Charters and Other Illustrations of English Constitutional History, 9th ed., rev. by H. W. C. Davis (London: Macmillan and Co., 1913), pp. 98-99.

²⁸Pollock and Maitland, History of English Law, I, 95.

²⁹Liebermann, Gesetze, I, 521-26; Robertson, Laws, pp. 276-93.

Consiliatio Cnuti, and Leges Edwardi Confessoris, so that they may be compared to the Leis Willelme in later sections of this thesis.

Henry I's Coronation Charter

The coronation charter of Henry I (Charta Henrici I. Coronati, abbreviated CHn cor, to Liebermann) is an apparently authentic record of the regulations which the new king claimed he would observe, and was probably taken to be a legislative pronouncement. The text states that the charter was enacted at Henry's coronation, which occurred on 5 August 1100, three days after the death of his brother, William II, while on a hunting expedition. That so important a work was written so quickly has made scholars uneasy, and since no one wishes to conclude that it was drawn up before the previous king's violent death, it has been suggested that the date of the coronation was only the effective date, and that the charter was actually drawn up in detail after this ceremony.³⁰ But at least one contemporary source, Eadmer, confirms that the charter was issued on the day of the coronation.³¹ Stubbs supports this version of the events and observes that the charter shows signs of being a hurried work. Liebermann sees no reason to doubt the story.³²

The general importance of the document lies in the fact that it is the earliest English constitutional charter that we possess and is the

³⁰Richardson and Sayles, Law and Legislation, p. 32. Stubbs mentions the theory in Lectures on Early English History (London: Longmans, Green, and Co., 1906), pp. 117-18.

³¹Eadmer's History of Recent Events in England, trans. by G. Bosanquet (London: The Cresset Press, 1964), p. 124.

³²Stubbs, Lectures on Early English History, p. 118; Liebermann, Gesetze, III, 293-94.

model on which Stephen and Henry II base their coronation charters. This kind of work only becomes obsolete with the issuance of Magna Carta, which sought to define the limits of royal power for John and all his successors. Of most importance to this study, however, is the way in which Henry looks back on Anglo-Saxon law and his father's confirmation of it. The clearest statement of his position comes in article thirteen, which reads, "Lagam regis Edwardi vobis reddo cum illis emandationibus quibus pater meus eam emandavit consilio baronum suorum."³³ It seems odd to Liebermann that this important general statement should come almost at the end of the work rather than at the beginning. But the intent is clear: Henry is granting to the English people their pre-Conquest customs as modified by his father in consultation with the barons. This marks the first reference to the idea of the lagam regis Edwardi or to a practice followed in Edward's reign. But, as indicated earlier, Edward was not a lawgiver, and the laws of his time were not collected into a comprehensive codex. The last great compilation of Anglo-Saxon law was made by Cnut, whose work in turn meant only to reproduce the laws of Edgar's time, that themselves were based on the first great codification made by Alfred at the end of the ninth century. This state of affairs seems to have led a number of private authors to set themselves during Henry's reign to the task of discovering, translating, and recording what they considered to be Edward's laws. The concept of lagam Edwardi caused these writers, including perhaps the composer of the Leis Willelmi, to undertake a search for a consistent corpus of legal practice which had never existed.

³³Liebermann, Gesetze, I, 522; Robertson, Laws, p. 282.

Furthermore, one wonders to what Henry is referring when he speaks of the emendationes that his father made to the lagam Edwardi. This could simply mean the two writs, Wl ep and Wl lad, which were discussed above. But it could also be taken to denote some more far-reaching changes in English law of which we do not have record. Stubbs, in his Select Charters, concludes that the Ten Articles "are probably the alterations or emendations referred to by Henry in his charter,"³⁴ but as we have seen, the composition date for the articles falls at least a decade after the coronation charter itself, and the generally spurious character of the articles seems to run counter to Stubbs' assessment of their importance. Whether we can recover a trace of any of these emendations from underneath the surface of the Leis Willelme will be an important topic of consideration further on in this thesis.

One can thus hypothesize that it was this coronation charter that gave impetus to the desire to know of what Edward's laws might consist. When Henry I came to the throne, thirty-four years had already passed since the Conquest, and men could be expected to have forgotten or to remember incorrectly the substance of many of the Old English laws. As we shall see in our consideration of the law books that attempt to translate and restate this legal corpus, the authors, who are usually of French lineage, repeatedly misunderstand the material which they mean to clarify. The old laws are becoming obsolete; in spite of his references to Edward's laws, Henry has effected in his coronation charter an essentially feudal document which is not grounded in the

³⁴Stubbs, Charters, pp. 97-98.

Anglo-Saxon constitutional practices of the previous century.³⁵

But although Henry was looking forward to a new legal synthesis, the words of his coronation charter caused some men to look backward to the Old English usages that they considered to be still valid. It is to this latter group that we must turn our attention, in order to find out how successfully they realized their goals.

The Quadripartitus and Leges Henrici Primi

We discuss first the most comprehensive of the unofficial works which proposed to record Old English law, the Quadripartitus.³⁶ Its name derives from its intended plan of presenting English law in four books. The first book attempts to record in Latin translation all of Anglo-Saxon legislation; the existing text is perhaps complete as the author fashioned it. The second book endeavors to record the laws contemporary with the author and as we have it is probably incomplete. The third and fourth books, concerning legal procedure and theft, have not come down to us and were most likely never even written. The next work to be discussed, the Leges Henrici Primi, may have been compiled to take the place of the last two books of the Quadripartitus. The work as a whole was composed during the second decade of the twelfth century, and is assigned to 1114 by Liebermann.

The first book is the best collection of the period of Anglo-Saxon law in Latin form by virtue of its completeness and generally careful

³⁵Liebermann, Gesetze, III, 294.

³⁶F. Liebermann, Quadripartitus, ein Englisches Rechtsbuch von 1114 (Halle: Max Niemeyer, 1892), pp. 76-166; and idem, Gesetze, I, 529-46.

translation. It lacks hardly any enactments that we know of from other sources and preserves material that is otherwise unknown. The theme of the book is the presentation of the laga Edwardi, which for the author were expressed in their most up-to-date form in Cnut's code. The translation begins with this work and then proceeds to reproduce in anachronistic order Alfred's code, his appendix of Ine's laws, and the legislation of Athelstan, Edgar, Edward the Elder, Edmund, and Ethelred. William's decree on exculpation procedure, *Wl lad*, appears near the end of the book, perhaps as an example of one emendation that he made to Edward's laws. The translation is for the most part carefully done and shows no signs of conscious misrepresentation of any laws, although the author, whose native language was French, betrays difficulties in understanding the meaning of the original Anglo-Saxon text in places. He does not comment on the works he is reproducing and there is nothing original in the book.

The second book purports to be a collection of contemporary legislation, and begins with Henry I's coronation charter and one of his decrees concerning shire and hundred courts. Thereafter it presents various acts from church and secular law of the period 1100-1108, but "degenerates into a defence of Archbishop Gerard,"³⁷ with whom the author seems to have been closely connected. Richardson and Sayles conclude that this second book does not "fulfill the author's promise: it goes wonderfully awry and was perhaps never finished....," and that the author on the whole "shows no trace of legal learning or understanding

³⁷Pollock and Maitland, History of English Law, I, 99.

of the requirements of the most humble of lawyers."³⁸

It appears unlikely that the third and fourth books were ever written, and the Quadripartitus' author may have turned instead to compiling the Leges Henrici Primi. We do not know his name, but he was, in Liebermann's reconstruction, most likely born in northern France, although he seems to have considered himself as politically English. He received a clerical education, but not one of the best since his Latin is turgid and uneven in comparison with the most polished of his age. He sometimes uses French syntax, intersperses English and French vernacular words in the text, and makes up new words or gives old ones new meanings. The style strives toward eloquence but achieves only bombast. As an organizer the author fails miserably, for the work lacks any clear principle of systematic construction. Liebermann nevertheless suggests that the compiler was at one time a justitia regis who may have been writing directly for the royal court in hopes of being rewarded by the king for his efforts.³⁹ Pollock and Maitland surmise that he was "a secular clerk living at Winchester and employed in the king's court or exchequer."⁴⁰ On the other hand, Richardson and Sayles, as quoted above, see in the author a man uneducated in law. In any case the work itself seems never to have gained official standing.

Another code from the same decade, the Leges Henrici Primi, is a treatise that attempts to expound the law of the author's day.⁴¹

³⁸ Richardson and Sayles, Law and Legislation, pp. 41, 43.

³⁹ Liebermann, Gesetze, III, 308-10.

⁴⁰ Pollock and Maitland, History of English Law, I, 98.

⁴¹ L. J. Downer, ed. and trans., Leges Henrici Primi (Oxford: Oxford University Press, 1972); Liebermann, Gesetze, I, 547-611.

In spite of its name, the work is not a collection of the legislative decrees of Henry I. It is instead a diligent attempt to systematize and record the law in force during the king's reign, a work of broad scope and comprehensive intention. Unfortunately such an undertaking was far too difficult for the author to complete successfully, and as a result the work fails to impose a basic sense of organization on the material, which appears jumbled and confused. Repetitions are frequent and many discrepancies are to be found in the work. The author's failing lies in having chosen an overly ambitious task; his desire was honest and commendable, but his intellect was not up to the demands of the project. For its period, the book is a remarkable endeavor: "In size, ambition, and range it stands well above any other contemporary or near contemporary document."⁴²

The contents are arranged under ninety-four chapters. The work begins with two brief prologues praising Henry and praying that he might rule well, followed by a text of Henry's coronation charter, and, in some manuscripts, his charter to the city of London, although this was apparently only interpolated into these texts by supporters of the city's rights.⁴³ After two brief chapters of a general nature, on judicial ideals and the varieties of rhetorical argument, there follows a longer chapter dealing mostly with ecclesiastical matters, and then the body of the work, which expounds secular law. Although the author wished to reproduce the law as it was constituted during Henry's reign, much of the book's contents derives from Anglo-Saxon legislation. The

⁴² Downer, Leges Henrici Primi, p. 6.

⁴³ Ibid., pp. 305-06.

author depended for the most part on the Quadripartitus for his knowledge of the earlier customs, which relationship is to be expected if these two works were indeed written by the same person. The code is thus an important collection of the old and the new in the English legal system and demonstrates that although law was being changed under the rule of the Norman kings, the Anglo-Saxon usages, which constituted the country's written legislative heritage, were still the most important source for the writers of legal treatises. In Downer's opinion

the work is something of a mixture, made up of the old traditional law, the developing feudal principles, and provisions based on royal supremacy, as a result of which government and the administration of justice are more and more centralized. The picture accords well with the evidence available from other sources, and it shows a continuing progress of the law in an age when the common law can at best be described as only formative.⁴⁴

The Leges Henrici Primi and the Quadripartitus demonstrate sufficient similarity in language, style, sources, and point of view that it was suggested, first by Pollock and Maitland,⁴⁵ that the two books may have had the same author. Liebermann judges that this was indeed the case.⁴⁶ Downer concludes after another detailed examination of the evidence that Liebermann's examples "should be enough to establish a persuasive case" for joint authorship, and that Richardson's and Sayles' arguments against this conclusion⁴⁷ are not sufficient to support their refutation of Liebermann's position.⁴⁸ With this in mind

⁴⁴ Downer, Leges Henrici Primi, p. 7.

⁴⁵ Pollock and Maitland, History of English Law, I, 100.

⁴⁶ Liebermann, Gesetze, III, 313.

⁴⁷ Richardson and Sayles, Law and Legislation, p. 43.

⁴⁸ Downer, Leges Henrici Primi, pp. 24, 27-28.

we might ask what relationship, if any, exists between the two works. The third and fourth books of the Quadripartitus were apparently never completed, and this situation has given rise to the hypothesis that the Leges Henrici Primi form some part of the lost sections of the author's other work. The Leges are dated by Liebermann to the period April 1113 - July 1114, and Downer finds no reason to reject his reasoning. The two documents are thus closely contemporaneous, and in Liebermann's opinion the Leges followed the Quadripartitus, functioning as book three of the other work. Downer summarizes the various arguments and positions taken by other authorities and decides that not only do the Leges form a continuation of the Quadripartitus, but should be regarded "as constituting Books ii, iii, and iv of the Quadripartitus as originally planned."⁴⁹ In this theory the Leges replaced the Quadripartitus as the author's project after he found that the latter had become an unmanageable task.

We have seen that the Leges Henrici Primi presents us with a mixture of laws inherited from Anglo-Saxon custom and new practices from Henry I's time. Their value as a result lies in what they can tell us about the changing legal climate of early twelfth-century England. By viewing this document not as a corruption of Old English usages but an adaption of them to new constitutional demands, Downer concludes that the Leges "emerge as a genuine document of their times still, like the Norman kings, claiming their Anglo-Saxon heritage."⁵⁰

⁴⁹ Ibid., pp. 21-22.

⁵⁰ Ibid., p. 78.

The Instituta Cnuti and Consiliatio Cnuti

We now discuss two works, which are mainly translations of Cnut's code alone and thus shorter than either the Quadripartitus or the Leges Henrici Primi, called the Instituta Cnuti and the Consiliatio Cnuti (abbreviated In Cn and Cos Cn).⁵¹ The first of these, although based for the most part on Cnut's work, also contains some excerpts from Alfred-Ine, Edgar, and minor works. Most of this additional material is contained in a third book that was added to Cnut's two, apparently by the original translator since the language and details of translation remain the same. Compared to other collections of Anglo-Saxon law it is less comprehensive than the Quadripartitus but more so than the Consiliatio Cnuti, Leges Edwardi Confessoris, or Leis Willelme. The work's author was a cleric whose native language was French and who, Liebermann surmises, wrote in or near Kent or southeast Mercia, although like the author of the Leis Willelme he shows a particular familiarity with Mercian customs. The translation is not complete, since the author apparently chose to omit many of Cnut's chapters, and although he makes some mistakes on account of ignorance or carelessness, the translation is generally honest and carefully done. The author avoids pomposity and writes Latin with ease and simplicity. The work was certainly composed before 1118, probably, Liebermann judges, between 1103 and 1110.⁵²

The Consiliatio Cnuti is a similar work which reproduces Cnut's code more completely and without adding other laws. Again the composer

⁵¹Liebermann, Gesetze, I, 612-16, 618-19.

⁵²Liebermann, Gesetze, III, 330-32; Richardson and Sayles, Law and Legislation, pp. 45-46.

spoke French, but he shows no hostility towards England and was probably brought up on the island. He writes a good variety of Norman Latin, clearer than that of the authors of either the Quadripartitus or Instituta Cnuti. He was undoubtedly a cleric, perhaps in some church or state position. Liebermann dates the work to c. 1110-1130.⁵³

Both of these documents refrain from mentioning the laga Edwardi and correctly trace the history of Anglo-Saxon law back to Cnut. A later scribe added to one of the texts of Cos Cn the rubric, "leges que vocantur Edwardi," showing that the erroneous notion that Edward rather than Cnut was a great lawgiver was a popular one.⁵⁴ Both works, too, have the same function, that of making Cnut's laws available to those people, especially Frenchmen, who could not read them in the original language. We can again surmise that one impetus for the writing of these compilations was Henry I's promise in his coronation charter to rule by the traditional laws, although he thought they were to be found in the laga Edwardi rather than in the laga Cnuti.

The Leges Edwardi Confessoris

The last compilation to be considered is called the Leges Edwardi Confessoris (abbreviated ECf) today,⁵⁵ but was titled Leges Edwardi Regis in some of its medieval forms, and originally carried an inscription, according to Liebermann, attributing the contents to William I. It claims

⁵³Liebermann, Gesetze, III, 333-35; Richardson and Sayles, Law and Legislation, p. 46.

⁵⁴Richardson and Sayles, Law and Legislation, p. 46.

⁵⁵Liebermann, Gesetze, I, 627-72.

to reproduce Edward's laws as they were reported to William's representatives by delegations from all sections of England in 1070. The author, probably a cleric, spoke French and was perhaps born in France, for he is unfriendly towards things Danish or Anglo-Danish and speaks ill of Cnut. He has a strong pro-church and pro-Norman bias, factors that may have been important in the work's success. As a result he scorns the Anglo-Saxon law codes in both their original and translated forms, and the contents seem to comprise the customary usages of the generation prior to the work's composition. Liebermann dates it to the last years of Henry's reign or the first years of Stephen's. It is somewhat better organized than the other works we have considered, but stands below the Leges Henrici Primi in fullness of detail, and suffers from repetitions and contradictions. Liebermann characterizes it as a confused mixture of English practice with outdated, foreign, and invented elements.⁵⁶

Critical evaluation of its worth has been varied. During the middle ages it was probably the most popular of the compilations of English customary usages. Liebermann points out that it includes in its compass many legal maxims and practices from early post-Conquest society that are found only or for the first time within its covers.⁵⁷ But Pollock and Maitland distrust it as a source unless its claims can be substantiated by other testimony: "It should only be used with extreme caution, for its statements, when not supported by other evidence, will hardly tell us more than that some man of the twelfth

⁵⁶ Liebermann, Gesetze, III, 340-41.

⁵⁷ Ibid., III, 342.

century...would have liked those statements to be true."⁵⁸ Richardson and Sayles have recently sought to reverse this judgment and rescue the author's reputation: "But though we may need to regard...his statements with caution, all in all he seems to be a guide of some worth to the local administration of justice under Henry I."⁵⁹

With this we come to the end of the summary of written law under the Norman kings. No legislative act has survived that can be credited to Stephen, and his nineteen-year reign was not one that encouraged centralized royal justice and the growth of law and order, but rather the opposite. Under Henry II the writing of law recommenced, but apparently no new compilations of Old English law were attempted, if we can except Richardson's and Sayles' claim that the Leis Willelme was composed under this king, a hypothesis that will be dealt with in some detail later.

Summary

We may summarize the main themes of this chapter as follows:

1. In the century following the Conquest, Anglo-Saxon law continued to be the theoretical basis on which law books were founded because, unlike Norman law, it existed in written form. The period of the Norman kings does, however, see the beginning of the transformation of English customary law into a new legal synthesis.

2. Three writs, only two of them legislative in nature, are attributed to William I, and they demonstrate that some innovations

⁵⁸ Pollock and Maitland, History of English Law, I, 104.

⁵⁹ Richardson and Sayles, Law and Legislation, p. 48.

in procedure were introduced by the Conqueror. Furthermore, his writ to the city of London shows that he did, at least in one case, confirm existing prerogatives. But the Ten Articles, which purports to summarize William's legislative enactments, is probably spurious.

3. Henry I's reign is more productive of charters and books on law. In his coronation charter Henry granted to his subjects the laga Edwardi, the corpus of Anglo-Saxon law in force during Edward the Confessor's reign, and thereby caused some writers to try to discover what these laws might comprise. But Edward was not a law-giver, and the last codification of Old English law by Cnut was the main source of knowledge for pre-Conquest usages. Two works from Henry's reign, the Instituta Cnuti and the Consiliatio Cnuti, are basically translations from this code.

4. Other law books from the early twelfth century are a mixture of Anglo-Saxon law and contemporary practices. Their authors usually intended to restate and adapt the old legislation and make it available to those people, especially Frenchmen, who could not read the original texts. The Quadripartitus separates the old law from the new, but the Leges Henrici Primi, probably by the same author, mixes them together. The Leges Edwardi Confessoris, while claiming to reproduce the practices that William found in force at the Conquest, is a collection of English customs from the early twelfth century together with outdated, foreign, and invented elements. The French-speaking authors of these works often had difficulty in understanding the Anglo-Saxon texts that they had read.

5. Judging by the law books, the century following the Conquest

was one of confusion in which the Old English usages were still considered to be valid although they were no longer fully understood and probably did not embody the administrative goals of the Norman kings. On the whole the attempts that were made to harmonize the discordant elements of contemporary law were private works that neither achieved official status nor succeeded in clarifying the existing state of legal affairs.

CHAPTER II

THE MANUSCRIPT TRANSMISSION AND CHARACTERISTICS
OF THE TEXTS OF THE LEIS WILLELME

At the beginning of chapter one we noted that the Leis Willelme is preserved in two versions, French and Latin, and that the determination of the language used in the original composition is the key issue to be resolved. Since it is obvious from a cursory examination of the surviving texts that neither version is merely a translation of the other, the solution to the problem can only come from a detailed study of the language and sense of the laws themselves. The purpose of this chapter is to introduce the materials upon which any analysis of the code's value must be based: the manuscripts and printings of the Leis Willelme. To this end we shall describe the sources upon which the texts are founded, the relationships between them, their organization, and the style of their writing. The critical examination and evaluation of the texts will be reserved to later chapters.

The French version of the laws rests on two texts which Liebermann calls Hk and I.¹ The first of these, Hk, is found in the oldest section of Holkham manuscript 228 between folios 141-144 which Liebermann dates to c. 1230; it is followed without interval by a copy of the

¹F. Liebermann, "Über die Leis Willelme," Archiv für das Studium der Neueren Sprachen und Litteraturen, 106(1901), 113-18; idem, Gesetze, III, 283-84. The texts themselves are printed in Gesetze, I, 492-500.

Leges Edwardi Confessoris in the same hand.² The manuscript itself once belonged to Archbishop Matthew Parker (1504-1575), then to chief justice Sir Edward Coke (1552-1634), and was for many years in the possession of the Earl of Leicester. It was kept at Holkham Hall in Norfolk until 1957, when it was acquired by the British Museum and catalogued as Additional MS. 49366.³ The text of Hk contains only the first twenty-eight chapters of the Leis Willelme and is therefore incomplete.

The other French text of the laws is that which was contained in the manuscripts of the Historia Croylandensis by the pseudo-Ingulf and is accordingly called I. This chronicle is described by Liebermann as a forgery compiled c. 1330 and ascribed to the historical abbot Ingulf (d. 1109) of Croyland abbey. In the work the abbot claims to have brought the copy of the law book included in the text with him to the monastery from London.⁴ Liebermann judges, however, that Ingulf probably had nothing to do with the code and that the text of the laws found in the chronicle in all likelihood derives from an authentic document which predated the fabrication and was only incorporated into it in the fourteenth century. Since no manuscript of this version of the Leis Willelme survives today, its text must be reconstructed from three, and mainly from two, old printings of the law book.

²Liebermann, Quadripartitus, pp. 67-70. Liebermann provides a thorough description of the manuscript and its contents.

³The British Museum Quarterly, 21(1958), 65. A microfilm positive of the manuscript may be consulted at the Library of Congress; a microfilm negative can be obtained from University Microfilms of Ann Arbor, Michigan.

⁴Ingulph's Chronicle of the Abbey of Croyland, trans. by Henry T. Riley (London: Henry G. Bohn, 1854), p. 175.

The first of these printings was published by John Selden in his 1623 edition of Eadmer's Historia Novorum.⁵ Selden based his text on Cotton MS. Otho B XIII, which he estimated to be 200 years old, that is to say, from the fifteenth century. Unfortunately this manuscript was largely destroyed in the fire of 1731; Liebermann estimates that the few pages saved from the flames were written c. 1470, but they contain nothing from the Leis. Liebermann designates the text of the laws once contained in MS. Otho B XIII by the symbol Io.

Henry Spelman printed only five chapters of the law book in 1639, although he claims to have copied them from the autograph of the pseudo-Ingulf chronicle, which he says was preserved after the suppression of Croyland abbey "under three keys by the superstitious keepers of the church there."⁶ This manuscript was already mentioned by Selden in the notes to his edition of Eadmer, but, unlike Spelman, he was unsuccessful in his attempts to obtain access to it.⁷ Spelman calls the manuscript that he thought to be the archetype veterrimus; Liebermann is of the opinion that this means only that it was written at least four generations before Spelman's time. Based on a mistaken transcription in which Spelman prints euestres for euesqes, Francis Palgrave surmises that he was reading a hand written during the reign of either Edward I or Edward II,

⁵Eadmer, Historia Novorum, ed. by John Selden(London, 1623), pp. 172-89. A microfilm copy of this work is available from University Microfilms of Ann Arbor; Michigan.

⁶Henry Spelman, ed. Concilia, decreta, leges, constitutiones in re ecclesiarum orbis Britannici, 3 vols.(London, 1639-1664), I, 632. The original passage reads "ab aedituis superstitis illic ecclesiae sub tertia clave conservata." The prologue and chapters 1, 2, 15, 16, and 17 are printed on I, 624-25. A microfilm copy of this work is available from University Microfilms of Ann Arbor, Michigan.

⁷Selden, Eadmer, pp. 172-73.

when the form of the letters and the ligatures between them made the commission of such an error extremely easy.⁸ The same mistake could not have been made, says Palgrave, if Spelman were reading the autograph of the chronicle written in the hand in use at the beginning of the twelfth century. He thus dates this manuscript to the period 1272-1327. Liebermann designates the text of the manuscript from which Spelman copied his five chapters of the Leis by the symbol Isp.

The third printing from which the Ingulf version of the law book is reconstructed was published by William Fulman in 1684 from a manuscript owned by John Marsham.⁹ Fulman too searched for the reputed autograph of the Ingulf chronicle that Spelman consulted in Croyland but was unable to find it;¹⁰ no one has since located it. The Marsham manuscript is described as vetus by Fulman, which Liebermann takes to mean written before 1500. Unfortunately, since at least 1694 the manuscript has been lost, as a letter of that year from Bishop Gibson to Dr. Arthur Charlett, Master of University College, as quoted by Palgrave, testifies:

Sir John Marsham's collection must be considerable. There is a curious Ingulphus in your library, which, as his family says, Obadiah Walker stole from him. I told him of what they lay to his charge: his answer was, that Sir John gave it to him; and that as an acknowledgement he presented him with some copies of the Ingulphus printed at Oxford. It is very probable, though Sir John did not design to part with the books--nay, he used to be complaining of Mr. Walker for using him so unkindly. But the old gentleman has too much of the spirit of an antiquarie and a great scholar to think stealing a manuscript any sin. He has ordered me not to discover where it is lodged.¹¹

⁸ Francis Palgrave, "Anglo-Saxon History," Quarterly Review, 34(1826), 295-96.

⁹ William Fulman, ed., Rerum Anglicarum Scriptorum Veterum (London, 1684), I, 88.

¹⁰ Ibid., I, "Lectori."

¹¹ Palgrave, Quarterly Review, 34(1826), p. 295.

Palgrave reports "that the most diligent search has been made in the library of University College for the manuscript, but without success." Liebermann designates the text of the laws contained in the lost Marsham manuscript by the symbol Im.

None of the other manuscripts or printings which purportedly contribute to the establishment of the Leis Willelme's text does in fact add to our knowledge of the subject. Hardy, in his Descriptive Catalogue, list fifteen manuscripts which are said to contain the "Leges Willelmi Conquaestoris."¹² The first entry in this enumeration is MS. Hk. John Matzke discusses the others in the introduction to his edition of the laws and concludes that "de ces quinze manuscrits pas un seul, a l'exception du ms. Hk, qui en est le premier, n'a le moindre rapport avec nos lois....Dans les autres mss. il ne se trouve meme pas une allusion a nos lois."¹³ By nos lois Matzke must mean the French text of the code exclusively, since he himself prints the Latin text of the work in his edition from the last manuscript on the list, Harley 746, and Liebermann describes another of the entries, MS. Cotton Vitellius E V, as an early sixteenth-century copy of the Harley text.¹⁴ Matzke also asserts that three other manuscripts of the laws in French once existed. From Twysden's preface to the text of the code printed in the second edition of Lambarde's Archaionomia (edited by Whelock) he determines that Twysden knew of three manuscripts of the work: Io, which Selden had used; one closely related to Io which he himself possessed;

¹²Thomas D. Hardy, Descriptive Catalogue of Materials Relating to the History of Great Britain and Ireland, Rolls Series, 3 vols.(1865; reprinted Vaduz: Kraus Reprint Limited, 1964), II, 45-46.

¹³John E. Matzke, ed., Lois de Guillaume le Conquerant(Paris: Alphonse Picard et Fils, 1899), p. xvi.

¹⁴Liebermann, "Über die Leis Willelme," p. 118.

and a third which came from the archives of the Exchequer.¹⁵ Matzke also deduces from Wilkins' preface to his 1721 reprinting of the text and preface of Twysden that Wilkins added corrections which he drew from a manuscript in the Canterbury library which belonged to Somers.¹⁶ Matzke thus concludes that the laws were once to be found in manuscripts owned by Twysden and Somers, and in the archives of the Exchequer.¹⁷ Yet in his classification of the manuscripts of the code, he notes that the text supposedly corrected by reference to the Exchequer manuscript hardly differs at all from that given by Io, the Cotton manuscript; the twenty-nine points of difference are mostly orthographic and could, except for Twysden's statement to the contrary, have resulted from the carelessness of the text's editor. Matzke likewise encounters difficulties in classifying Wilkins' text based on Somers' codex since it seems to draw from both of the independent traditions represented by Io and Im, but in a haphazard fashion; he suggests but does not accept the possibility that Wilkins made use of his predecessors' editions of the laws to prepare his own.¹⁸ This confusing situation has, however, been clarified by Liebermann, who demonstrates that it is only as the result of certain misunderstandings that the existence of these other manuscripts has been postulated.¹⁹ He asserts that when Twysden said

¹⁵Whelock, ed., Archaionomia, sive de Priscis Anglorum Legibus libri, Gulielmo Lambardo Interprete (London, 1644), pp. 153-58.

¹⁶Wilkins, ed., Leges Anglo-Saxonicae Ecclesiasticae et Civilis (London, 1721), "Praefatio," p. 2.

¹⁷Matzke, Lois, pp. xvii-xix.

¹⁸Ibid., pp. xxiii-xxv.

¹⁹Liebermann, "Über die Leis Willelme," pp. 116-17.

that he used three manuscripts, his own, that of Selden, and the Exchequer, his statement only referred to his edition of the Leges Henrici Primi and not to the Leis Willelme, which he printed from Selden's edition alone, that is, from Io. The twenty-nine variations, says Liebermann, are printing errors and improvements in spelling, e.g. chattel for chatel. There appear to be no variations that might have come from Twysden's own manuscript, and none which might be medieval in origin. Regarding Wilkin's text, Liebermann explains that, although this editor claims to have based his version on Io, he occasionally used Fulman's edition, Im, as well; in response to Matzke's question as to why Wilkins did not use Im consistently, Liebermann maintains it was because Wilkins generally worked "inexactly, incompletely, and uncritically." All the variant readings that Wilkins drew from Somers' papers were merely "the attempts at improvement made by a clever antiquary who was, however, only familiar with the Anglo-French of the late middle ages." Liebermann thus concludes that none of the three additional manuscripts described by Matzke offers us the least improvement in our knowledge of the French version of the Leis Willelme which is based, in the Ingulfine tradition, on only three texts, Io, Im, and Isp, from which all printings derive.

The reconstruction of the text of I, the Ingulf Urtext, from these three sources requires an understanding of how they are related to each other. Through the study of the corruptions in each text it can be determined if any source derives from another, or if they instead belong to independent traditions. Matzke and Liebermann have demonstrated by employing this method that although the two complete copies of the code, Im and Io, are very much alike, each nevertheless preserves phrases

and passages necessary for the comprehension of the text that are lacking in the other. Matzke lists these differences and notes that for each omission in Io or Im occurring in the first twenty-eight chapters of the work, Hk gives the same reading as the uncorrupted Ingulf text.²⁰ These observations prove that Io and Im are independent and derive from a common ancestor, I. Liebermann seems to regard Im as the better of the two texts, although he admits that they are very similar: "Im preserves more archaic language generally and for the most part more original contents than Io, but not so overwhelmingly that one might base the text of I on Im alone; on the other hand, Im and Io vary so seldom except in orthography and reading errors that it does not pay to print the two side by side."²¹

The determination of the relationship of Isp to the other sources is hampered by the brevity of Spelman's text, which includes only five chapters of the code. Twice Isp agrees with Im against Io, once with the better reading u evesque (ch. 1.1), and once with the poorer reading per XII leals homes (ch. 15). Based on this information Matzke classifies Isp as a copy of the same manuscript from which Im derived.²² Liebermann likewise considers Im and Isp as belonging to one tradition independent of that represented by Io: "If one can credit Spelman with a few modernizations and writing errors, Isp ought to be considered a model or true sister copy to Im...."²³ Yet in a footnote to this statement Liebermann notes three exceptions in which

²⁰Matzke, Lois, pp. xxii-xxiii.

²¹Liebermann, "Über die Leis Willelme," p. 116.

²²Matzke, Lois, p. xxv.

²³Liebermann, "Über die Leis Willelme," p. 116.

Isp agrees with Io and surmises that these occur because Spelman consulted the latter text as well as his own. Without explaining his reasons for doing so, Liebermann leaves Isp out of his stemma. It would appear that the evidence concerning the relationship of this source to the others is inconclusive. If, however, Isp's position cannot be determined with any precision it is of little significance, since the extract itself is so short that it contributes hardly at all to the establishment of the text. The important conclusion to be drawn from the study of these texts is that I, the Ingulf Urtext, should be reconstructed from the two independent traditions represented by Io and Im.

To complete this preliminary classification of the French sources we need now to compare Hk and I in order to discover whether or not their texts belong to different manuscript traditions. The evidence presented below proves that the versions are in fact independent of each other. First, it is obvious that Hk as we have it is not the source for I since it lacks all the chapters after twenty-eight. Furthermore, it omits articles 17a, 17b, 17.2, 17.3, 19, and 19.1 which are found in I. Finally, a close examination reveals that in a few cases Hk corrupts or leaves out readings that are intact in I's text. The most important omissions are given below:²⁴

<u>Ch.</u>	<u>Hk</u>	<u>I</u>
2.1	as humes... devant justise le...	as homes de sa baillie de la justice lu roi
2.3	afert....a l'os le vescunte	afiert al forfait a oes le vescunte
2.4	ou...a l'os le vescunte	ou...a l'os le vescunte

²⁴Matzke, Lois, p. xxvi; Liebermann, "Uber die Leis Willelme," p. 114. Note three on page 114 gives a list of instances of corruption in Hk's text. I have not reproduced all the examples cited by these authors, only those which seem most convincing. The numbering and texts follow Liebermann's edition in Gesteze, I, 492-520.

<u>Ch.</u>	<u>Hk</u>	<u>I</u>
2.4	De cez XXXII...averad le vescunte	De ces XXXII ores avrat li vescunte
5	durrad...pur la rescussiun	durrad al gros. s. al provost aveir pur l'escussiun
20	enfrenez e enseelez...	selez e enfrenes les IIII
21.1	sun heimelborch...	soun heimelborh e ses testimonies

But it is likewise obvious that I cannot be the source for Hk since it often skips over words or lines that the Holkham manuscript preserves, as the following examples demonstrate:²⁵

<u>Ch.</u>	<u>Hk</u>	<u>I</u>
3	e s'il le pot truver dedenz le terme, sil merra a la justise; e s'il nel pot truver, si jurra	e si il le pot truver....., si jurad
3.1	le chatel, dunt il est retez	le chatel.....
3.2	E en Westsexenelahe C sol., XX sol. al clamif	En Westsexenelae cent solz,al clamur
10.1	al pouz tuteveies VIII den.; u en la teste u en auter liu, u ele seit cuverte: al pouz tuteveies, IIII den.	al polz toteveie.....IIII den.
10.2	avant honors e jurra, que	avant honours..., que
14.1	E ki blasme unt este, se escundirunt par serment nume	E altre qui blasmed ait estedper serment nomed
14.3	par VII humes numez sei siste main	per set homes nomes.....
20	e IIII haubercshalbers
20.1	les II enfrenez e enseelez E les autres II chevauxenselez e enfrenez E les alters II.....
21.1	sun heimelborch, le quel qu'il averad (21.1a) E s'il n'ad guarant ne haimelborch, e	soun heelborch.....(21.1a)....., et
21.3	guarant, devant iceo	warrant,.....iceo
21.4	mettrad l'om l'aveir en uele main, de ici	mettre.....en uele....., d'issi

²⁵Matzke, Lois, pp. xvi-xvii; Liebermann "Über die Leis Willelme," p. 118.

These illustrations prove conclusively that neither Hk nor I is a copy of the other, and we must therefore infer that, for the first twenty-eight chapters at least, they both derive from a lost French text.

Although I appears to be the more corrupt of the two texts, the pair complement one another, each preserving what the other lacks, so that their common ancestor can be reconstructed with reasonable certainty for the parts of the code given by both.

While Hk and I reproduce the laws in generally the same order, there are some differences in arrangement between them which should be noted. The anomalies concern the positioning of the various subsections of chapter twenty. In I's text articles 20 to 20.2a follow chapter 19 as they should, while sections 20.3 and 20.3a appear after chapter 24, and article 20.4 is found after chapter 38. In Hk almost all of the related paragraphs, sections 20 through 20.3a, are placed together, but at the end of the manuscript, following chapter 28. This disorder presumably arose during the transmission of the text of the archetype by intermediate copies and translations to the documents we now possess.

The French texts of Hk and I are written in similar but not identical forms of Anglo-Norman dialect which can both be dated to the twelfth century by philological methods. Matzke judges the language of Hk's text to be much older than that of I's and estimates, following a detailed analysis of the phonetic structure of Hk's language, the period of its composition to be 1150-1170.²⁶ Liebermann, on the other hand, asserts that I's language generally exhibits older traits which

²⁶Matzke, Lois, pp. xxv, lii.

indicate that I's text is linguistically more archaic than Hk's text.²⁷ He contends that the source copied by both Hk and I must have originated before 1140 but not prior to the beginning of the twelfth century. While reserving a rigorous examination of these arguments to later chapters, we may characterize the antiquity of the language used in the French texts sufficiently by assigning it to the early or middle part of the twelfth century.

The sole Latin text of the Leis Willelme is found in MS. Harley 746, between folios 55v-58v, which dates from c. 1330; Liebermann designates this manuscript by the letter S.²⁸ It is not, on account of a number of writing errors, an autograph, and Liebermann denotes the lost original from which S derives by the letter L. A copy of S made around 1530 existed in Cotton MS. Vitellius E V, which is, however, now severely burned and confusedly bound; it is of no importance in the establishment of the Latin text.

The relationship of the Latin text to the French texts presents a complex problem which will be investigated thoroughly in a later chapter. However, a presentation here of some fundamental comparisons made between the various sources will serve to introduce the question and provide a framework for further analysis. If we limit the discussion to the manuscript texts of Hk and S and the composite text of I made up of the best readings from Io, Im, and Isp, and disregard considerations involving the putative original sources for these documents, we may draw the following conclusions. First, S could not have

²⁷Liebermann, "Über die Leis Willelme," pp. 126-27.

²⁸Ibid., pp. 118-19. It is printed in Gesetze, I, 493-520.

been translated from Hk since the latter lacks almost half the chapters of the code. But S could not be a translation of I either since it contains several passages in which the language of the Latin text is manifestly closer to the wording of the source of the law than is the language of I's text. Furthermore, S often supplies words missing from I in agreement with Hk's reading and avoids I's textual corruptions and arbitrary additions. It should also be noted here that the arrangement of the chapters in S is superior to that of either French version. It has sections 17.2 and 17.3 following 17.1, whereas these articles are omitted from Hk and come after section 18.2 in I; and it groups the relevant subsections of chapter 20 together following chapter 19 instead of scattering them throughout the code as I does or putting them after chapter 28 as Hk does. This evidence suffices to demonstrate that the text of S does not derive from the text of either Hk or I.

On the other hand, neither of the French versions could have been translated from S. In support of this assertion Liebermann cites a number of passages from the latter part of the code in which the wording of the French text is closer than the wording of the Latin text to the law's Anglo-Saxon source. If S were the source for I's text such instances would not occur. Furthermore, S could not be the model for Hk since it lacks article 2a, certain Anglo-Saxon technical terms, and a portion of section 10.1; the first two of these examples apply to I's text as well. Based on this evidence, then, we may conclude that none of the surviving manuscript or printed sources, I, Hk, or S, is a copy or translation of one of the others.

A further distinction can be made between the French and Latin versions of the Leis Willelme on stylistic grounds. In both cases the author remains the same throughout the text as it has come down to us, but the composers differ noticeably in their abilities to write clearly and effectively. Liebermann characterizes the mode of expression on the French version as awkward, often ambiguous, discordant, repetitious, and contradictory.²⁹ The Latin text, by comparison, is better ordered, reads more clearly and smoothly, avoids redundancies and ambiguities, and frequently presents a fuller, more specific rendering.³⁰ In spite of the marked differences in style between the two versions, little can be inferred about the order of their composition based on this information alone. Some scholars view the Latin text as a translation of the French made by a more accomplished scribe who was able to correct and expand on the original composition. Other scholars, however, regard the French text as the imperfect and unskilled work of an incompetent translator who was the intellectual inferior of the composer of the Latin version. Each of these interpretations is plausible and can be supported by examples from the texts. But in so far as each of them relies on implicit assumptions about what capabilities may be attributed to a translator, their conclusions are dependent on considerations external to the phenomena exhibited by the work itself. Stylistic analysis alone cannot prove that one text is the original and another the adaptation; only correspondence in textual corruptions can demonstrate conclusively

²⁹ Liebermann, "Über die Leis Willelme," p. 133; idem, Gesetze, III, 284.

³⁰ Liebermann, "Über die Leis Willelme," pp. 124-25; idem, Gesetze, III, 285-86.

the relationship of the manuscripts.

This summary of the traits that distinguish the derivative texts of the Leis Willelme leaves unanswered the crucial question of the code's original language of composition. To solve the problem would seem to require that we reconstruct the exemplars of the French and Latin texts from the surviving versions and, by comparing their characteristics, establish a convincing case for the priority of one over the other. But this formulation of the issue distorts the investigation from the start since it assumes that the code existed in its entirety in one language and was afterward merely translated into the other. In reality the relationship of the French and Latin versions of the code is more complex than such a simplified model indicates, for the law book appears to have been assembled from sources composed in different languages and perhaps at different times. Furthermore, the Ingulf version of the French text shares with the Latin text numerous singularities, both additions and omissions, which are not found in Hk. The existence of these resemblances implies that to understand the filiation of the texts we must investigate not only the nature of the French and Latin exemplars but also the interrelation of the copies made from them. These matters will be examined further in chapter four.

This chapter has concerned itself so far only with the external aspects of the Leis Willelme, i.e. the printed and manuscript sources for the law book's texts. In the remaining pages the work's internal characteristics, namely the subject matter of the laws themselves, will be described and briefly discussed. The code's prologue claims that the work contains "the laws and customs which King William granted to

the people of England after the conquest of the land, the very same ones which his cousin Edward held before him." Although this description appears intended to apply to the whole document, the law book is not homogeneous and lends itself to division into four sections, based on contents, which show marked differences in character.³¹ The first section comprises the first twenty-eight chapters and coincides with the part of the work included in Hk's text. Its contents consist of a collection of rules which are presumably meant to represent the laws of Edward the Confessor as they were understood and confirmed by the Conqueror. Although a few passages resemble isolated laws from Cnut's compilation or, occasionally, from Alfred's code, neither of these works is followed so consistently or accurately that we could call it a source for the text of the Leis. On the contrary, the majority of the chapters in the first section are not based on any known collection of Anglo-Saxon legislation.³² Here, as in the work as a whole, the regulations are not ordered in conformity with any logical principles nor are they selected for inclusion according to any discernable criteria.

The second section consists of four short articles (chs. 29-32) concerning the treatment of coloni and nativi. Although the source of these laws is unknown, the terminology employed in the Latin version of the text indicates that the author may have been familiar with Roman legal language. This supposition is corroborated by the fact that five of the six chapters which make up the third section of

³¹Richardson and Sayles, Law and Legislation, pp. 123-24.

³²Liebermann, "Über die Leis Willelme," p. 132; see also his marginal notations to the laws in Gesetze, I, 492-520.

the code (chs. 33-38) are based on passages from Justinian's Corpus Juris Civilis, four from the Digest and one from the Code. These chapters also provide the majority of the instances in which the Latin text is closer than the French text to the wording of the law's source. There is, however, no unity to the subject material of this section, which treats such diverse topics as pregnant women sentenced to death, adultery, poisoning, disposal of a ship's cargo, and inheritance.

The fourth and final section of the Leis Willelme, chapters thirty-nine through fifty-two, consists of a translation of articles selected from the second book of Cnut's code, and mainly from chapters fifteen to thirty-one of that book. Although the excerpts appear in the same order as in the source, many of the original provisions are omitted in the adaptation. In this section of the work examples may be found in which the wording of the French text is closer than that of the Latin text to the wording of Cnut's law.

CHAPTER III

A HISTORY OF SCHOLARLY COMMENTARY

ON THE LEIS WILLELME

Having described the important characteristics of the texts of the Leis Willelme in the last chapter, we may now review the conclusions drawn by the scholars who have investigated the problem of their interpretation. The questions of the original language of composition, the work's date of origin, and the importance of the laws themselves for English legal history have all been treated in detail, but unfortunately no consensus has yet been reached regarding the answers to them. An account of the development of learned opinion on these issues will serve as an introduction to the thorough reexamination of the whole matter that is the goal of this paper.

Prior to the nineteenth century no problems of interpretation plagued the Leis Willelme: it was assumed that the document, in its French form as found in Ingulf's Chronicle of Croyland Abbey, genuinely represented the laws that William I granted to his new subjects after the Conquest. The reason for this acceptance was twofold. First, the reliability of Ingulf's chronicle as a contemporary account of the events of William's reign had not yet been seriously questioned. The work, which purports to be a history of Croyland abbey from its foundation through the lifetime of its supposed author, the historical abbot

Ingulf (d. 1109), was first printed about the middle of the sixteenth century and was formerly much employed as a primary source for early English history. Ingulf himself was not only an abbot, but also at one time William the Conqueror's secretary, and he says that he himself brought the copy of the laws contained in the chronicle with him to the monastery from London.¹ This direct attestation in a work which had been widely distributed and was commonly used earned for the Leis Willelme its reputation as an authoritative source. We may gauge the code's influence by noting that it was printed in its entirety from the Ingulf text at least ten times during the seventeenth and eighteenth centuries alone.² The second reason for the general acceptance of the Ingulf version of the Leis Willelme was that until 1832 neither the French text of MS. Holkham 228 nor the Latin text of MS. Harley 746 had been printed. Only when these texts came into print was the question of priority raised.

Although suspicions about the authenticity of the Ingulf chronicle had been entertained as early as the end of the seventeenth century, and most of the charters had been shown to be spurious, the work was still respected and utilized through the beginning of the nineteenth century. But in 1826 Francis Palgrave took the occasion of his review of a new edition of Hume's History of England in the Quarterly Review to publish a detailed attack on the Ingulf chronicle in which he pointed out its inconsistencies and concluded that it was "a mere monkish

¹Riley, Ingulf's Chronicle, p. 175.

²A complete account of the names and filiation of the printed editions can be derived from the following two sources: Liebermann, Gesetze, I, lix-lx; and Matzke, Lois, pp. xxvii-xxix.

invention."³ This judgment, while not generally accepted at the time, sowed the seeds of doubt in the minds of many historians, and the critical commentaries of Riley and Liebermann which appeared in the latter half of the century confirmed Palgrave's dictum.⁴ Although their grounds for impugning the authenticity of the entire chronicle can be questioned today on account of the dogmatic one-sidedness that characterized their inquiries, it remains true that since the beginning of this century the Ingulf chronicle has been totally discredited.

While this condemnation did not automatically extend to the Leis Willeme since it could have been an authentic document that the supposed Ingulf forger included in his work to lend it an air of genuineness, the code nevertheless received renewed scrutiny by Palgrave and other scholars after him. In the same Quarterly Review article which contains his dissection of the chronicle, Palgrave raised the question of which language was used in the original text of the Leis, and he concluded that it was Latin, not French. The problem was formulated in his discussion of the non-Ingulfine sources for the laws in which he observed that the Leis Willelme

has been preserved in Romance and in Latin. Both texts agree so closely as to show that the one is a translation from the other. The Latin text is yet in manuscript. The Romance, or French text, which was published...from the history ascribed to Ingulphus, has long enjoyed the repu-

³Palgrave, Quarterly Review, 34 (1826), p. 294.

⁴H. T. Riley, "The History and Charters of Ingulfus Considered," Archeological Journal, 19(1862), 32-49 and 114-133; F. Liebermann, "Ueber Ostenglische Geschichtsquellen des 12., 13., 14. Jahrhunderts, besonders den falschen Ingulf," Neues Archiv der Gesellschaft für ältere Geschichtskunde, 18(1893), 228-67.

tation of being the original....It fortunately happens that a manuscript formerly belonging to Archbishop Parker, and afterwards to Coke, and which preserves the greater part of the text of the laws repeated in Ingulphus, has recently been discovered amongst the literary remains of Holkham...⁵

Palgrave then judged that the Latin version was probably the older since French only became the language of lawgiving at a comparatively late date:

But the employment of the French language in this solemn instrument is so utterly contrary to the usage and practice of the eleventh century, as at least to awaken some suspicion. At that period no law in France was ever written in the rustic and colloquial Romance language. Whether the dialect can be referred to that age, must be ascertained by comparison with documents, if there be any, whose dates can be fixed by positive proof, and not by conjecture. The forms, it is true, have an archaic cast, but the idiomatic peculiarities, and the orthography of the French language as spoken in England during the reign of Edward I., exhibit them nearly to the same extent, and if we are to found our opinions upon the language alone, we cannot place the French text of the laws in any higher period than the early part of the reign of Henry III., which also appears to be the era of the Holkham manuscript...^[B]efore the reign of Henry III. we cannot discover a deed or law drawn or composed in French. Instead of prohibiting the English language, it was employed by the Conqueror and his successors in their charters, until the reign of Henry II.; when it was superseded, not by the French, but by the Latin language, which had been gradually gaining, or rather regaining, ground. All these circumstances taken together will induce a strong suspicion, that the French text, together with the introductory statement, must be numbered amongst the passages which place the work of Ingulphus amongst the apocrypha of English history.⁶

In favoring the Latin version of the code and dating the French text to the reign of Henry III, Palgrave drew the battle lines for the scholarly controversy over the original language and age of the Leis Willelme which is to our day unresolved. He reaffirmed this

⁵Palgrave, Quarterly Review, 34(1826), 260-61.

⁶Ibid., pp. 261-62.

position in almost exactly the same words six years later in Rise and Progress of the English Commonwealth, in which he also printed for the first time the Latin text of MS Harley 746 and the French text of MS Holkham 228.⁷ For the chapters of the French version beyond number twenty-eight, which are missing from the text of Hk, he used those of the Ingulf text. Palgrave considered the code in its Latin form to be authentic; he never entertained the notion that it might be apocryphal or forged.⁸ In retrospect, Palgrave's formulation of the problems to be solved and his printing of the two little-known manuscripts must earn for him the distinction of having been the founder of modern scholarship on the Leis Willelme.

The next learned commentary on the law book appeared in the introduction to the second edition (1858) of Schmid's Gesetze der Angelsachsen.⁹ In it Schmid reviews Palgrave's arguments against the priority of the French text and, agreeing with their conclusion, adds that it is difficult to believe that the Conqueror would have published his acceptance of Edward's laws in the French tongue, thereby risking a grave insult to his rebellious subjects. Schmid demonstrates once again that French became the dominant language for legal instruments only at the beginning of the fourteenth century. But he rejects Palgrave's conclusion that the Latin text is the original version. He

⁷ Francis Palgrave, The Rise and Progress of the English Commonwealth, parts I and II (London: John Murray, 1832), pp. 55-57. The texts appear in part II, Proofs and Illustrations, pp. lxxxix-civ.

⁸ Palgrave, Quarterly Review, 34(1826), p. 261; idem, English Commonwealth, p. 55.

⁹ Reinhold Schmid, ed., Die Gesetze der Angelsachsen, 2nd ed. (Leipzig: F. Brockhaus, 1858), pp. lvi-lx.

argues that the French text cannot be a translation of the Latin text since it shows differences in arrangement and in the interpretation of particular laws; moreover he asserts that the Latin text itself has the character of a translation from some other language. He reminds the reader that Anglo-Saxon as well as Latin documents survive from the Conqueror's reign and finally concludes that the code must have originally been composed in Anglo-Saxon since it was the language that was understood by the judges and the people. By adducing arguments against the originality of both the French and Latin texts, Schmid supports the view that each of them in fact derives from a lost Anglo-Saxon exemplar.

Hans Heim, in an 1882 dissertation on the problems associated with the Leis Willelme, rejected the views of both Palgrave and Schmid and initiated a scholarly trend back to the opinion that the French text should be regarded as the original version of the code.¹⁰ The main goal of Heim's work is to show by means of an analysis of the language of the extracts from Cnut's code in the Leis that the French version is closer than the Latin to the original source and therefore the authentic text of William's laws.

First, however, he presents a refutation of Schmid's arguments for the existence of a complete version of the work in Anglo-Saxon, a theory which he says still dominated scholarly opinion in his day. The fundamental and strongest objection that Heim raises is that we have no copy of or fragment from such an Anglo-Saxon original nor any

¹⁰ Hans Heim, Ueber die Echtheit des französischen Textes der Gesetze Wilhelms des Eroberers (Giessen: Wilhelm Keller, 1882).

positive indication that one ever existed. He correctly points out that Schmid transferred the problem from one of determining which of the two texts was composed first, for which the proposed solutions rest on conflicting interpretations of the historical and linguistic evidence, to one of accepting the existence of a text for which there is no direct evidence whatsoever. This logical weakness thoroughly undermines Schmid's position.

Heim then attempts to refute Palgrave's contention that the Latin text is the original version of the document by presenting what he claims to be an exhaustive comparison of the two texts. He first notes two instances, in chapters two and fourteen, where the Latin text omits details that are contained in the French version, remarking that many similar examples could be cited. He then proceeds to the heart of the investigation, in which he compares the language of five passages from the last section of the code,¹¹ the one based directly on Cnut's compilation, as found in the original Anglo-Saxon source and both the French and Latin texts. In all cases, he concludes, the French version adheres closely to the Anglo-Saxon model while the Latin text departs from it. This analysis, coupled with the two examples given where the Latin text is inferior in content to the French text, convinces Heim that the French version of the Leis Willelme is authentic. He also appends to his dissertation a summary of his philological study of the code in which he dates the language of the French text to the period 1100-1120.

¹¹The passages are found in chapters 39, 44, 45, 46, and 52.

Although he brings important new techniques to the study of the Leis Willelme's text, Heim nevertheless commits a number of errors which seriously weaken his conclusions. First, he regards the entire document as a translation of Anglo-Saxon laws and in doing so fails to notice what later researchers do, that the middle section of the work derives in part from Roman legal sources and often reads better in the Latin version than in the French. Second, he bases his linguistic analysis of the French and Latin texts solely on the final section of the code, that deriving directly from Cnut, which Hk lacks entirely, and generalizes his conclusions to the work as a whole. Finally, he fails to make any distinction between the Ingulf and Holkham texts for purposes of dating, whereas later scholars observe that they seem to have been written at different stages in the development of the French language. In spite of these flaws Heim's work represents an important step in the application of linguistic and philological methods to the Leis Willelme, and his observations, while not conclusive, deserve to be either refuted or explained by any other theory that seeks to solve the problem of the law book's origin.

In 1899 John Matzke published in his introduction to a new edition of the Leis Willelme the most thorough examination of the manuscripts and texts of the document that had yet been attempted.¹² Based on his detailed philological analysis he concluded that the French version is older than the Latin version, and that the archetype for the French text originated in the period 1150-1170.

Matzke's essay begins with a catalogue of the manuscripts and printed editions based on lost manuscripts that contain the Leis, a

¹²Matzke, Lois, pp. xv-liv.

classification of these manuscripts which includes the derivation of a stemma, and a list of later printed editions. The stemma, which agrees essentially with the one later published by Liebermann, has the following main features: Hk and the Urtext of the Ingulf manuscripts derive independently from a lost archetype, and the three Ingulf printings discussed in Chapter II descend independently from the Ingulf Urtext.¹³ Matzke then endeavors to demonstrate that the Latin text is derived from the French version by 1) citing twelve chapters in which the Latin shows signs of textual variations due to translation, 2) comparing the more logical ordering of the Latin text to that of the French text, and 3) reviewing the characteristics of the titles which the Latin version prefixes to the chapters and which are hardly ever found in the French text. He further asserts that the Latin text was translated from the Urtext of the Ingulf manuscripts since thirty-eight cases can be found in which the Latin reading agrees with that of the Ingulf Urtext but is at variance with Hk's reading.

Matzke then undertakes a philological examination of the French text of Hk in which he considers nineteen categories of phonetic traits and compares Hk's characteristics in each of these divisions to a series of manuscripts which can all be precisely dated within the twelfth and thirteenth centuries. As a result of this comparison he concludes that the work's archetype was composed between 1150 and 1170, more likely at the earlier date.¹⁴

¹³ A drawing of the stemma appears on p. xxvii of Lois.

¹⁴ Matzke, Lois, p. lii.

We must note that Matzke estimates the age of the common ancestor of Hk and the Ingulf Urtext from an analysis of the age of Hk alone. In doing so he explicitly assumes that Hk is the older, primitive version of the code, of which the longer Ingulf texts represent the final, authoritative composition. He also assumes that no lost manuscripts intervened between Hk and the original work. These assumptions were later questioned when, as we shall see, it was asserted that the language of the Ingulf text exhibits characteristics that are more archaic than the corresponding traits of Hk. If this is a valid contention then Matzke's date of 1150-1170 can only be applied to Hk itself and function merely as an upper boundary for the date of the composition of the archetype.

Although Matzke agrees with Heim concerning the priority of the French text, he does not concur in regarding the Leis Willelme as an authentic expression of the Conqueror's adaptation of Anglo-Saxon law. The date he derives for the archetype of the work, roughly a century after the Conquest, suffices to prove to Matzke that the law book is spurious in nature.

Matzke's essay is a landmark in the development of scholarly commentary on the Leis on account of its detailed treatment of the textual problems, and because it offered the first compelling refutation of Palgrave's thesis that the Latin version preceded the French. Although Liebermann's study of the question published a few years after Matzke's was broader in scope and became recognized as the standard interpretation of the code, it verified many of Matzke's conclusions and tacitly recognized his dating of Hk as a bench mark

for the establishment of the law book's date of origin. A substantial share of the credit for improving our knowledge about the Leis Willelme and for presenting the theory of the primacy of the French text must go to Matzke; the evaluation of his researches will constitute a fundamental obligation for all future studies of the law book, especially those which aim to prove that the Latin text is the original version of the work.

Matzke's ideas did not however escape criticism. Hermann Suchier, in a 1901 review of Matzke's introduction, denounced the entire undertaking as misguided.¹⁵ He calls Matzke's assertions concerning the linguistic patterns of twelfth-century French unreliable, citing a handful of apparently erroneous statements made by Matzke to support his contention. Suchier also questions the method used to date the archetype, maintaining that the characteristics of a manuscript's language only determine the upper boundary of its composition date since its oldest forms could have been effaced through copying. Suchier adduces several examples from the Ingulf text which exhibit linguistic traits that in his estimation date before 1150 and finally concludes that the text as a whole should certainly be assigned to Henry I's time. In addition, Liebermann reports that Suchier in a letter to him in 1892 estimated that the archetype originated in the period 1120-1170 and most likely around 1130.¹⁶ These criticisms of Matzke's study merit consideration in any discussion of the date of the original text of the Leis Willelme,

¹⁵Hermann Suchier, in Literaturblatt für germanische und romanische Philologie, 22(1901), 119-21.

¹⁶Liebermann, "Über die Leis Willelme," p. 126.

although it is regrettable that Suchier never published a detailed defense of his arguments in favor of the earlier period.

By far the most comprehensive study of the law book ever undertaken was published by Felix Liebermann in 1901 in his article "Über die Leis Willelme."¹⁷ In it Liebermann presents an analysis of the work which utilizes both philological and historical methodologies and which has been generally regarded as the definitive treatment of the subject. His introduction to the code published in volume three of Die Gesetze der Angelsachsen is essentially a summary of this earlier essay.¹⁸ We shall review here Liebermann's main conclusions and save the consideration of his specific arguments for succeeding chapters.

Liebermann devotes over half of the study to a detailed linguistic analysis of the document's printed and manuscript sources in order to discover the relationships between them and their composition dates. He derives a stemma similar to Matzke's based on the conclusions that 1) the archetype of the code was composed in French; 2) the texts of Hk and the Ingulf Urtext derive independently from the archetype; 3) the Ingulf printings are not based on each other; and 4) the Latin text was translated from the Ingulf Urtext.¹⁹ In constructing this stemma Liebermann is forced to assume that the Ingulf Urtext was bilingual, carrying the French and Latin versions of

¹⁷ Ibid., pp. 113-38.

¹⁸ Liebermann, Gesetze, III, 283-86. It does contain additional conjectures about the code's composer.

¹⁹ A drawing of the stemma appears in "Über die Leis Willelme," p. 123; and Gesetze, III, 284.

certain chapters side by side, in order to explain why in these articles the Latin text is closer to the source of the law than the French text. He asserts that there was no version of the law book in Latin or Anglo-Saxon from which the French archetype was only translated. He dates the genesis of this archetype, based on his philological studies and those of Matzke and Suchier, to the period before 1140, and assigns the Latin translation to c. 1200.

In the latter part of the essay Liebermann reviews the sources used by the composer and discusses the place that the various practices included in the code seem to occupy in the development of English law. This historical study leads him to date the law book generally to 1090-1140 and precisely to 1100-1120. He also argues that the work is not a forgery since the author wanted only to reproduce the laws that he genuinely believed Edward to have held before the Conquest and William to have granted to the English after it. He finally maintains that although the code does not derive in form and expression from William's reign, it nevertheless preserves traces of the Conqueror's actual legislation: "Wherever the Leis agree in theme and tendency with the historians of the period or with the Ten Articles we may assume, even in spite of variations in the details, that a true law of William's lies underneath."²⁰ In his introduction to the document in Die Gesetze der Angelsachsen he reaffirms that "many genuine laws or at least laws indeed in force during 1070-1100" are imbedded in the law book's disorderly text.²¹

²⁰Liebermann, "Über die Leis Willelme," p. 137; my translation.

²¹Liebermann, Gesetze, III, 285; my translation.

Following this assumption, Liebermann derives a list of the practices which we might attribute to the Conqueror's legislative initiative.

We will have much more to say farther on in this thesis about the specifics of Liebermann's theories, but two short comments are worth making here. First, Liebermann's construct of a bilingual Ingulf Urtext to account for the existence of passages where the Latin text reads better than the French text rests on a highly inferential chain of reasoning and can probably be replaced by a simpler, less conjectural explanation of the manuscript filiation. Second, his reliance on the Ten Articles to confirm usages in the Leis Willelme as vestiges of William's legislation is fallible since, as we observed in the preceding chapter, it is very likely a spurious compilation from the early part of Henry I's reign.

Before pursuing the development of scholarly opinion concerning the Leis Willelme beyond Liebermann's synthesis, we must turn back briefly to review the contributions that English historians of the latter part of the nineteenth century made to the elucidation of the document's origin and significance. Freeman did not mention the code at all in Norman Conquest, although he cited the Ten Articles, calling them "seemingly genuine."²² Stubbs, while not including the Leis in Select Charters, did comment on the work at some length in the lectures he delivered at Oxford and decided "to recognise its authenticity only with some distinct reservations and with some

²²Freeman, E. A., The History of the Norman Conquest of England, revised American edition, 5 vols. (New York: Macmillan and Co., 1873), IV, 216, note 3.

misgivings."²³ The fact that the oldest manuscript of the text comes from the thirteenth century and that the code is contained in the questionable Ingulf chronicle made him uneasy. In the lectures he argues that the French text is only a translation made during the reign of Henry III or of Edward I because the Conqueror would not have written a law book in French for the English and because legal documents in French only became common under these two kings. Schmid's suggestion that an Anglo-Saxon original once existed seems plausible to Stubbs, but since we possess no document to support this hypothesis he concludes that the Leis is "a collection, made by some Latin-writing collector or historian, of the laws of the elder kings which William was said to have confirmed...."²⁴ He further judges that there is nothing in the code's contents which might not have come from William's time. However, in his analysis of the chapters whose provisions find no precedent in the laws of the Anglo-Saxon kings, he notes that there are two articles based on Roman legal principles. Although he admits that this is an unusual feature, and doubts "whether any more ancient regulation than this of William can be found in black and white in any of the Western codes," he nevertheless holds that its appearance does not fatally

²³ Stubbs, Lectures on Early English History, pp. 46-57; the quotation appears on p. 57. There are no indications in this posthumous collection as to when the individual lectures were given, but the contents of the chapter entitled "The Laws and Legislation of the Norman Kings" must have been presented after the publication of Select Charters (1870) and presumably before the appearance of volume I of Constitutional History (1873).

²⁴ Ibid., p. 47.

impeach the code's authenticity.²⁵

Stubbs' remarks are interesting for two reasons: first, they embody the first doubts spoken (although not the first published) concerning the genuineness of the Leis Willelme, and second, they demonstrate an early application of the techniques of legal analysis to the work's contents. His determination of the relationship between the texts and their ages is still based on external factors, especially on the history of the use of the French language in English legal documents, rather than on the principles of textual criticism employed at the end of the century by Heim, Matzke, and Liebermann. In this respect Stubbs' arguments offer little improvement over those of Palgrave. But his discussion of the contents based on the history of law, something found neither in Heim nor in Matzke, is a fundamentally new contribution to the document's explication. Besides noting the influence of Roman law, Stubbs distinguishes the laws based on earlier English usages from those which appear to be new, comments on each of the latter, points out novelties which are so unprecedented as to raise our suspicions about their genuineness, and indicates words in the code which are in common use only under Henry I. In making this analysis, which finally caused him to be skeptical of the law book's authenticity, Stubbs was the first to exploit a method of studying the document which Liebermann later brought to a high level of sophistication in his examination of the work.

In the second edition of The History of English Law, Pollock and Maitland present a discussion of the law book that agrees in its

²⁵Ibid., p. 55.

major conclusions with the researches published a few years later by Liebermann, to whom they were "deeply indebted...for a valuable letter dealing with these Leis."²⁶ Their account, consisting of one page and a long footnote, asserts that 1) the Latin version is a translation from the French; 2) the archetype was composed at the beginning of the twelfth century; and 3) the code, although generally unauthoritative, is not without value. The first of these assertions is, they say, "plain from several passages," and they cite two examples. They note that the Latin text is not a direct translation from any French text that we have and surmise that the French version may have had an English or Latin source. They divide the code into three parts: a collection of some Old English usages with Norman additions, a section based on Roman law, and a translation of articles from Cnut's code. The first section is, in their opinion, "an intelligent and to all seeming a trustworthy statement," while the second "shows us how men were helplessly looking about for some general principles of jurisprudence which would deliver them from their practical and intellectual difficulties." They cite the particular ancient laws to which five of the chapters from the second part refer, surmising that these articles were included as the result of the author "remembering some half-dozen large maxims which had caught his eye in some Roman book...." Their date of "the early years of the twelfth century" for the work's origin is based, it seems, solely on the judgment that the author was too familiar with Anglo-Saxon law to have compiled the law book later. They conclude that the code as a whole is

²⁶ Pollock and Maitland, History of English Law, I, 102-103. All quotations in this paragraph come from these two pages.

"unauthoritative" and "a mere private work" which could not have derived from William.

The strength of this analysis lies in the recognition that the Leis Willelme is made up of three rather different sections and can not be treated as a homogeneous document. The catalogue of Roman statutes that underlie chapters thirty-three through thirty-eight is particularly important to the establishment of the character of the code's second section. Their brief discussion of the text and the work's composition date is less than satisfying since it offers only a minimal amount of evidence in support of the conclusions rather than a detailed justification of them. While Pollock and Maitland describe the first section as an intelligent and trustworthy summary of Old English law as the Norman kings knew it, their conclusion that the code is on the whole unauthoritative and not at all from William's reign anticipated in essence the judgments of Matzke and Liebermann which appeared a few years later. Their examination, which also corroborated the doubts that Stubbs felt about the work's genuineness, was the first to describe the Leis Willelme as a basically unauthoritative document.

During the twentieth century Liebermann's analysis of the origin, age, and importance of the Leis Willelme has become the standard interpretation. Recently, however, Richardson and Sayles have challenged this point of view, rejecting Liebermann's arguments completely.²⁷ Their basic contention is a reassertion of the priority of the Latin text over the French text. They are thus resurrecting

²⁷Richardson and Sayles, Law and Legislation, pp. 121-25, 170-79.

the interpretation first introduced by Palgrave and later advocated by Stubbs, although their justification for it is far more sophisticated than that of either of the earlier scholars. In their opinion there are numerous passages in the code where the Latin wording could not possibly derive from the French. In appendix II of Law and Legislation they offer a detailed explanation of the evidence on which they base their conclusions, meeting directly many of Liebermann's and Matzke's arguments and providing rebuttals to them. One of their primary proofs consists of a demonstration that the articles in the section of the code based on Roman statutes are closer in the Latin version to the wording of their exemplars than in the French text, a relationship that Liebermann observed and attempted to explain by surmising that the Ingulf Urtext was bilingual. Furthermore, in the addendum to the book Richardson and Sayles endeavor to show that the last part of the code, which was taken over from Cnut, derives not from the Anglo-Saxon original of that law book but rather represents a free adaptation of the Latin renderings of Cnut's chapters found in the Quadripartitus and Instituta Cnuti. In asserting this Richardson and Sayles directly contradict Heim's conclusions regarding the last section since they cite among their proofs all but three of the passages used by Heim in his demonstration that the French text is a translation of Cnut's original work.

Richardson and Sayles retain in essence the division of the code made by Pollock and Maitland but arrive at a fourfold categorization by subdividing the middle section into two parts, one showing influences of the author's Roman learning, the other based more demonstrably on

the Corpus Juris Civilis. They argue that no one could have written these sections in England before 1150 since we possess no satisfactory evidence that any Roman learning, particularly of Justinian's Digest, existed on the island before then. Furthermore, they maintain that the mention of the king's justices in the first section of the code (chapters 17.3 and 22) can only refer to the justiciarii totius Anglie, the traveling royal judges who were first employed by Henry I from the early years of his reign and, having disappeared under Stephen, were used again by Henry II beginning about a decade after his accession. Richardson and Sayles conclude that the Leis Willelme was originally written in Latin in four independent sections; the first section was most likely the first to be translated into French, although a later translator added the three remaining sections to the code and revised the French text of the first one. Although the initial section could have been composed in the second half of Henry I's reign, the code as a whole was only assembled under Henry II since the Roman chapters must have originated after 1150. While Matzke's date of 1150-1170 for the work's archetype is seen as lending support to this interpretation, Richardson and Sayles assign the completed translation to the reign of Henry II or even of Richard I without feeling constrained to accept 1170 as an upper boundary. They vigorously and explicitly reject Liebermann's entire explanation of the relationships between the manuscripts:

The stemma constructed by Liebermann to show the affiliation of the texts is a figment of the imagination. Most of the items in the stemma are, on his own showing, hypothetical: they are, in truth, purely imaginary. The Latin text was, as we have said, composed of four disparate sections. Why and

how they came to be put together, there is no telling. Guessing would not be helpful. They do not form an organic whole.²⁸

Richardson and Sayles complete their evaluation of the Leis Willelme by relegating the code to the category of "apocrypha of the law," judging it to be of little value as a source for English legal history, particularly for the reign of the Conqueror:

Its interest today lies in the fact that it adds to the examples we possess of the continued refurbishing of Old English laws in their twelfth-century Latin form and of their subsequent translation into the vernacular. Its distinguishing mark is a small, and not altogether relevant, admixture of Roman legal learning....But, like the Pseudo-Ingulf, the Leis Willelme has been over-rated. To suggest that it contains otherwise unknown enactments of the Conqueror seems to us mere fantasy, made credible perhaps by the acceptance of the Ten Articles as a similar repository of lost legal texts.²⁹

Richardson's and Sayles' analysis has enlivened the otherwise dormant question of the character of the Leis Willelme by presenting several plausible arguments that, if sound, would overturn the currently accepted interpretation of the document. But the presentation as it stands in Law and Legislation is not conclusive; there are points that require clarification, verification, or comparison with rival assertions. The conflicting claims about the relationship between the texts need to be collated and evaluated in detail before any judgment can be made concerning the code's language of composition. The question of when Roman law books were first introduced into England must be investigated further in order to discover if the romanesque sections of the code might have been written earlier than 1150. Two of Liebermann's conclusions which conflict with the dating of the

²⁸Richardson and Sayles, Law and Legislation, p. 174.

²⁹Ibid., p. 125.

texts by Richardson and Sayles demand careful examination: the archaic features of the French language of the Ingulf text indicate that it was composed during Henry I's reign, while the use of the majestic plural in the Latin text (concessimus, ch. 1) is a trait that originates in the reign of Richard I. In short, the observations and assertions of the various scholars who have written about the Leis Willelme need to be sorted out, scrutinized, and evaluated with a view to formulating a theory of the origin and age of the law book that will conform to the most important facts to the greatest extent possible. The remaining chapters of this thesis have this synthesis as their goal.

CHAPTER IV

THE DERIVATION OF THE TEXTS

OF THE LEIS WILLELME

In the first chapter we arrived at two main conclusions concerning the manuscripts of the Leis Willelme and their contents. These were, first, that all the existing texts, Hk, I, and S, represent independent traditions; and, second, that the law book can be divided, based on its contents, into four rather different sections. Many questions about the relationships between the manuscript traditions were, however, left unanswered. The purpose of the present chapter is to revive these questions and, by conducting a thorough analysis of the texts of the Leis Willelme, to put forward an account of how these texts might have derived from the archetypes of the code's four sections. This investigation will consist of an examination of the French and Latin versions of each section of the code to determine in each case the language of composition, and a discussion of several important relationships between pairs of texts that must be accounted for by any proposed solution of the textual problem. Finally, these observations and evaluations will be used as the bases for the construction of a stemma which will elucidate the process whereby the preserved texts were derived from the archetypes of the code's sections.

We begin with an examination of the third section of the Leis, in which the laws are manifestly closer to their original sources in

the Latin version of the code than in the French version. That at least five of the six articles (chapters 33-38) are based on material from Justinian's Corpus Juris Civilis was confirmed by the researches of professors Liebermann, Maitland, and Fitting.¹ The examples in the following paragraphs will demonstrate the priority of the Latin version of this section.

Chapter thirty-three forbids the execution of a pregnant woman sentenced to death until she has given birth; the pertinent clauses from Justinian's Digest and the Leis Willelme are as follows:²

Digest 48.19.3

Praegnatis mulieris consumendae
damnatae poena differtur quoad
pariat.

Leis Willelme 33

Si femina pregnans adiudicata sit
morti vel membrorum mutilacioni,
differatur executio sententie
usque quo pariat.

It is evident that the text of the Leis reproduces the sense of the original law and moreover makes use of certain terms found in the Digest version which have been underlined here. The French version of the rule reads, "Si femme est jugee a mort u a defaciun des membres, ki seit enceintee, ne faced l'um justice desqu'ele seit delivere." Liebermann judges that no translator could have hit upon differatur from the French ne faced; the use of pariat is equally striking. These resemblances clearly demonstrate that the Latin text is the original version.

¹Pollock and Maitland, History of English Law, I, 103. Liebermann discusses this section in "Über die Leis Willelme," pp. 121-123, where he notes that in 1892 Maitland and Fitting wrote to him independently about their discoveries concerning the sources of the laws given by these chapters.

²Corpus Iuris Civilis, 3 vols., vol. I, Institutiones, ed. by P. Krueger, and Digesta, ed. by T. Mommsen and P. Krueger, 18th edition (Berlin: Weidmannsche Verlagsbuchhandlung, 1965), I, 864. All excerpts from the Leis Willelme follow Liebermann's edition in Gesetze, I, 492-520.

Disregarding for the moment chapter thirty-four, for which the source is unknown, let us juxtapose three passages from the same book of the Digest and the text of chapter thirty-five of the Leis Willelme:³

Digest 48.5.22

.2 Ius occidendi patri conceditur domi suae, licet ibi filia non habitat, vel in domo generi....

.3 Sed qui occidere potest adulterum....

Digest 48.5.23

Quod ait lex "in filia adulterum deprehenderit"....

Leis Willelme 35

Si pater filiam maritatum in adulterio deprehendit in domo propria sive in domo generi sui, licet ei adulterium occidere.

Similiter si filius matrem in adulterio deprehendit, patre vivente, licet adulterium occidere.

A comparison of the underlined words in the Leis text and the Digest text reveals that the composer of the former selected his vocabulary from phrases in the Roman text.⁴ The Roman stipulation is not copied word for word but its sense is accurately summarized. The French version reads, "Si la pere truvet sa file en avulterie en sa maison u en la maison soun gendre, ben laist ocire l'avultere." Liebermann observes that a Latin translator could hardly have chanced upon deprehendit for the French truvet. The text of Im specifies that it is the adulteress who is to be killed, whereas S and perhaps Io as well designate, as does the Roman source, the adulterer in addition to the adulteress or possibly alone.⁵ It is nevertheless clear that the Latin text of the Leis is

³Corpus Iuris Civilis, I, 848.

⁴Both texts employ the word licet, but differently; in the Digest text it is a conjunction meaning 'even if', whereas in the Leis text it appears as the impersonal verb 'it is allowed.' The word adulterium in the Leis version should probably read adulterum; Matzke prints the latter variant in Lois, p. 25.

⁵Liebermann, Gesetze, I, 514, col. 1, note a.

the original version. The second half of the law, beginning with Similiter, is somewhat peculiar. Liebermann says that the provision does not have a parallel in Roman law or in any other legal system;⁶ furthermore, the paragraph is not found in the French version. The regulation possibly derives from article 42.7 of Alfred's code which reads, in translation, "A man may fight, without becoming liable to vendetta, if he finds another [man] with...his mother, if she has been given in lawful wedlock to his father."⁷ This law is repeated in the Leges Henrici Primi, article 82.8. Nowhere else in this section is Alfred used as a precedent, and it seems likely either that this provision was added by the Latin composer, who remembered it because its subject matter is similar to the Digest text, and was overlooked or rejected by the French translator, or that it was interpolated in some later copy of the Latin text after the French version had been made.

The next article, number thirty-six, concerning poisoning, abstracts the substance of a law from chapter VIII of the same Digest book, entitled "Ad Legem Corneliam De Sicariis et Veneficis:"⁸

Digest 48.8.3.5

Legis Corneliae de sicariis ut veneficis poena insulae deportatio est et omnium bonorum ademptio. sed solent hodie capite puniri, nisi honestiore loco positi fuerint, ut poenam legis sustineant: humiliores enim solent vel bestiis subici, altiores vero deportantur in insulam.

Leis Willelme 36

De veneficio. Si quis alterum veneno occiderit aut occidatur aut in exilium perpetuum agatur.

⁶Liebermann, "Über die Leis Willelme," p. 125.

⁷Attenborough, Laws of the Earliest English Kings, p. 85.

⁸Corpus Iuris Civilis, I, 853.

The Leis text is plainly a precis of the Digest commentary. The only word that the two have in common, though, is veneficium; the composer of the Leis seems to have been satisfied to utilize once more the verb occidere which he employed twice in the previous chapter. Although the phrase in exilium perpetuum does not appear in the Roman passage quoted, it is found elsewhere in the same chapter of the Digest (48.8.1.5) in a regulation which deals, like Leis Willelme 35, with adultery:

Sed et in eum, qui uxorem deprehensam in adulterio occidit, divus Pius levioerem poenam irrogandam esse scripsit, et humiliore loco positum in exilium perpetuum dari iussit, in aliqua dignitate positum ad tempus religari.⁹

We may conjecture that the author of the Leis, having recently read the above passage, perhaps because of its similarity in subject matter to his chapter thirty-five, borrowed the passage in exilium perpetuum for use in his summary of the statute on poisoning.

Chapter thirty-seven of the Leis concerns maritime law, specifically the disburdenment of a ship in danger of sinking. The same subject is treated in Digest section 14.2, entitled "De Legē Rhodia De Iactu." Richardson and Sayles cite Digest 14.2.2.2 as a possible source for the law:¹⁰

Cum in eadem nave varia mercium genera complures mercatores coegissent praetereaque multi vectores servi liberique in ea navigarent, tempestate gravi orta necessario iactura facta erat....¹¹

The paragraph addresses the question of who must share in the loss occasioned by the jettison of cargo from a ship during a storm and gives the following directive:

⁹Corpus Iuris Civilis, I, 852.

¹⁰Richardson and Sayles, Law and Legislation, pp. 121-22.

¹¹Corpus Iuris Civilis, I, 220.

It was resolved that all those in whose interest it was that the jettison be made ought to contribute, because the goods remaining were preserved owing to that expense; therefore the ship's owner too was liable for a portion. And the loss by jettison ought to be distributed among all according to the value of their goods.¹²

The version of the law in the Leis deals with the exculpation of a person who has performed the jettison of goods and stipulates that the merchandise which remains rather than the value of the loss be divided among the travelers according to their share of the original cargo:

De jactura metu mortis facta. Si quis in periculo maris ad navem exonerandam, metu mortis, alterius res in mare proiecerit, si suspectum eum habuerit, iuramento se absolvet, quod nulla alia causa nisi metu mortis hoc fecerit. Res autem que remanent ex quo inter omnes dividuntur secundum catalla singulorum. Quodsi aliter actum fuerit, reddet dampnum qui intulit.

That this regulation was inspired by the Digest text of which it retains a vestige of the original language in iactura...facta is hardly to be doubted. We may, furthermore, be certain that the Latin text of the Leis Willelme is the original version after only a cursory inspection of the French version:

Jo jettai voz choses de la nef pur pour de mort; et de ço ne me poez enplaider, kar leist a faire damage a altre pur pour de mort, quant per el ne pot eschaper. E si de ço me mescreez, que pur pour de mort nel feisse, de ço m'espurjerai.

The law is cast in a first person singular form rather than in the third person of the Latin version and the Digest. Oddly enough, the latter sentences of the chapter follow the Latin in using the third person singular:

E les choses qui sunt remises en la nef, seient departis en comune sulun les chatels. E si alcun jethed les chatels for de la nef senz busun, sil rendet.

There is nothing to commend the French version as a better adaptation

¹²Ibid.; my translation.

of the Digest text, and we must conclude that the Latin version antedates the French.

The final chapter of this section, thirty-eight, is the only one which has Justinian's Code rather than the Digest as its source. Here again the Latin text of the Leis preserves verbatim a phrase from the earlier law:¹³

Code 7.56.2

Leis Willelme 38

Res inter alios iudicatae neque emolumentum adferre his, qui iudicio non interfuerunt, neque praeiudicium solent inrogare. ideoque nepti tuae praeiudicare non potest, quod adversus coheredem eius iudicatum est, si nihil adversus ipsam statutum est.

Ne quis ex iudicio alterius preiudicium paciatur. Si duo aut plures hereditatem parciantur, et unus sine altero vel aliis in ius vocatus ex insipientia vel alio casu amiserit, non debent partiarum inde dampnum sentire; quia res inter alios iudicata allis non praeiudicat, presertim si presentes non fuerunt.

The French version's reading jose juge entre eus must be a translation of the Latin res inter alios iudicata which was presumably copied from the beginning of the Code's text.

As we mentioned earlier, the source for chapter thirty-four is unknown. The law itself provides for the equal division of the inheritance of a father who dies intestate:

De sine testamento morientibus. Si quis pater familias casu aliquo sine testamento obierit, pueri inter se hereditatem paternam equaliter dividant.

Liebermann maintains that pueri here means 'offspring', i.e. both sons and daughters, and remarks that the equal treatment of both sexes in regard to inheritance did not obtain in English property law in the eleventh and twelfth centuries. Pater familias he takes to be Roman phraseology, although he notes that the term is also found in

¹³Corpus Iuris Civilis, vol. II, Codex Iustinianus, ed. by P. Krueger, 13th edition (Berlin: Weidmannsche Verlagsbuchhandlung, 1963), II, 319.

Consiliatio Cnuti II, 20 and Leges Henrici Primi 66.7, where there is no question of Roman influence. Our ignorance of the law's source, says Liebermann, prevents us from discovering whether the Latin version is the original.¹⁴ The Latin rendering is fuller and more specific than the French version, having pater familias rather than home, and includes the words casu aliquo and paternam which are not found in the French. These examples do not, however, suffice to demonstrate that the Latin presents the original version. We can, at best, only infer from the fact that the law stands between two others manifestly derived from Roman sources that, like them, its Latin text was composed prior to the French.

The conclusion to be drawn from this review of the chapters of section three is by now obvious: the laws show the influence of the Corpus Juris Civilis and exhibit it more clearly in the Latin version. Liebermann agrees, although he doubts that the composer of the Leis actually saw a copy of Justinian's monument:

No one would consider it probable that the compiler of the Leis, who nowhere else betrays any legal schooling or other Roman knowledge, had read the Corpus Juris Civilis....But it appears undeniable to me that there was an influence from the Corpus, perhaps through intermediate sources, since the occurrences, which might not perhaps be convincing by themselves, all occur at one point of the work and because three of them go back to the same book of the Digest. Furthermore, I do not doubt that L stands nearer to the source here than does I.¹⁵

Liebermann wishes to avoid the inference that this section of the code once existed in an independent Latin form. He concludes instead that the Latin chapters of this section were incorporated into a French

¹⁴Liebermann, "Über die Leis Willelme," pp. 123-24; idem, Gesetze, I, 514.

¹⁵Liebermann, "Über die Leis Willelme," p. 123; my translation.

archetype of the law book at the time of its composition where they stood side by side with French translations supplied by the author. He thus believes that the text of this section was transmitted in a bilingual form. It is, however, simpler to assume that the Latin version, whether composed from the Corpus Juris Civilis itself or from some intermediate sources based on the Corpus, was first written down in its entirety and later translated for inclusion in the French version of the Leis Willelme. Whether it is improbable that a composer of the Leis could have seen a copy of Justinian's work is a question that will be considered in the next chapter when arguments concerning the date of the law book's origination will be discussed.

The code's second section, say Richardson and Sayles, was "written by a man with some romanesque learning," possibly by the same person who composed the third section, which, as we have just seen, is clearly based on Roman legal writings.¹⁶ But the source of the four short chapters (29-32) that make up the second section is unknown, and we are unable to compare the French and Latin versions with the laws which inspired them. These articles form the only part of the Leis where the same subject matter, the rights and duties of coloni and nativi, is treated by successive chapters. Richardson and Sayles appear to regard the use of these seemingly technical terms as an indication that the Latin version is the original composition: "Not unnaturally they gave the French translator trouble: he had no notion of what a colonus might be as opposed to a nativus, though we fancy that colonus is just a learned

¹⁶ Richardson and Sayles, Law and Legislation, p. 123.

term for socman."¹⁷ Pollock and Maitland concur in seeing Roman influences in this section: "Perhaps we ought to place the beginning of the middle section [i.e. that section prior to the translations from Cnut] as far back as the very important c. 29; for c. 29-32 seems destined to define the position of the English peasants as being similar to that of the Roman coloni."¹⁸

Comparison of the French and Latin versions of chapter twenty-nine would seem to demonstrate that the Latin text was written first:

I (Ch. 29)	S. (Ch. 29)
Cil qui cultivent la terre ne deit l'um travailler, se de lour droite cense noun;	Coloni et terrarum exercitores non vexentur ultra debitum et statutum;
(29.1) ne leist a seignurage departir les cultivurs de lur terre, pur tant cum il pussent le dreit servise faire.	nec licet dominis remove colonos a terris, dummodo debita servitia persolvant.

Liebermann suggests that the word colonus is Roman terminology.¹⁹ The subject of the law in the Latin version, coloni et terrarum exercitores, is more specific than the French version's cil qui cultivent la terre. Indeed, the French phrase appears to give only a translation of terrarum exercitores and to omit any mention of the coloni at all. In 29.1 the French composer puts cultivurs for the Latin colonos, using a noun he could easily have derived from the verb of the first clause. The French version also seems to lack any

¹⁷ Ibid.

¹⁸ Pollock and Maitland, History of English Law, I, 103.

¹⁹ Liebermann, Gesetze, I, 512.

equivalent for the Latin expression et statutum in the first paragraph. It is less probable that a Latin translator expanded the initial subject by adding the term colonus and furthermore used the same word as a translation for cultivurs later on than that a French translator shortened the law while doing the best he could to make sense of the Latin text. In addition, we might have expected a Latin translator to put cultores rather than colonos for the French cultivurs. The evidence thus favors the conclusion that the Latin text is the original composition.

Chapter thirty concerns the duties of nativi:

I (Ch. 30)

Les naifs ki departent de la terre, ne deivent cartre faire n'avurie quere, que il ne facent lur dreit service, que apend a lour terre.

(30.1) Li naifs qui departet de sa terre, dunt il est nez, e vent a autri terre: nuls nel retenget, ne li ne ses chatels, enz le facet venir arere a faire soun servise, tel cum a li apend.

S (Ch. 30)

Nativi non recedant a terris suis nec querant ingenium, unde dominum suum debito servitio suo defraudent.

Si autem aliquis discesserit, nullus eum receptet vel catella sua, nec retineat, sed faciat ad dominum proprium cum omnibus suis redire.

The French version repeats, needlessly it would seem, the subject of the statute, which is rendered as a noun and a relative clause.

The Latin text has the substantive nativi and, in place of the French relative clause ki departent de la terre, an independent clause stipulating that they non recedant a terris. The subject is not repeated at the beginning of the second paragraph. The first clause of French article 30.1 is redundant and almost has the force of a rubric. The clumsiness of the composition of the law in the French version is

accompanied, for the modern reader at least, by some difficulties in the explication of the text's meaning, particularly of the words cartre and nauverie (Im) or naiuirie (Io). Liebermann is unable to find a suitable translation for either term.²⁰ Whether the Latin version is superior in its use of nativi is questionable; the term is not identified by Liebermann as characteristically Roman and in English law it becomes a synonym for villanus.²¹ The French version has a seemingly equivalent term, naifs, and does not omit any provisions found in the Latin version. Therefore, any judgment of the priority of the Latin version rests solely on its superior style.

The Latin version of chapter thirty-one, as transmitted by S, appears to contain a corrupt text which is less comprehensible than the French version of the statute:

I (Ch. 31)

Si les seignurages ne facent
altri gainurs venir a lour
terre, la justise le facet.

(If the landlords do not
make the workers of another
return to their land, the
justice should do it.)

S (Ch. 31)

Si domini terrarum non
procurent idoneos cultores
ad terras suas colendas,
iusticiarii hoc faciant.

(If the landlords do not
procure suitable farmers for
the tilling of their lands,
the justices should do it.)

Liebermann calls the Latin version of the law incorrect; the French version does indeed seem to present a statute more in keeping with the sense of chapter thirty. Matzke, Liebermann, and Maitland all consider this chapter to constitute an obvious proof that the Latin text is a translation made by a scribe who misunderstood the intention

²⁰ Liebermann, Gesetze, I, 512-13.

²¹ Pollock and Maitland, History of English Law, I, 422.

of the original French text.²² Richardson and Sayles, on the other hand, assert that the Latin version suffers only from a later scribe's mistakes, and that the true Latin text can be reconstructed by reading alienos for idoneos to correspond to the French altri and adding revenire following colendas to account for the French venir:²³

Si domini terrarum non procurent alienos cultores ad terras suas colendas revenire, justiciarii hos faciant.

This is a plausible conjectural reading which shows that, in spite of the corruption in the text transmitted to us, the Latin version could possibly have been the original from which the French was translated. Moreover, Richardson and Sayles regard the word colendas found in the Latin version but not in the French as a further indication that the Latin text was composed first.

The last chapter of this section, number thirty-two, contains no additional evidence for the priority of either the French or Latin version. Therefore, the claim that this section was written in Latin by a composer "with some romanesque learning" rests on the use of the term coloni in chapter twenty-nine and the inferior expression of the French version of chapter thirty. The corruption of the Latin text of chapter thirty-one weakens the argument for the existence of a Latin archetype of the section, although Richardson's and Sayles' reconstruction of a possible Urtext for the law does much to answer this objection. Liebermann considers these four chapters to be an expression not of Roman agrarian policy but rather of Norman land law.

²²Matzke, Lois, p. xxxi; Pollock and Maitland, History of English Law, I 103: "The Latin version is sometimes exceedingly stupid..."; Liebermann, "Über die Leis Willelme," p. 125.

²³Richardson and Sayles, Law and Legislation, p. 171.

He ascribes to William a program of protection for the individual farmer.²⁴ We nevertheless conclude that the evidence can be construed to support the priority of the Latin version over the French. This judgment depends primarily on the inference that the French text of chapter twenty-nine is more likely a translation of the Latin text than the source for it. While the evidence for the author's "romanesque learning" is meager, the fact that this section is followed by one clearly of Roman origin perhaps justifies Pollock's and Maitland's conclusion that our sections two and three may be related, although we believe that they were composed in Latin rather than in French. This evaluation assumes too that Richardson's and Sayles' explanation of the corruption in the Latin text of chapter thirty-one is a reasonable one. For these reasons we place section two in the category of elements of the Leis Willelme composed in Latin along with section three.

The fourth section of the Leis Willelme is, like the third section, based upon sources which are known to us. This final portion of the work, chapters thirty-nine through fifty-two, is made up entirely of translated excerpts from the second book of Cnut's code and mainly from articles fifteen to thirty-one of that book. The order of the chapters in the source is followed but not every article of the original work is translated.²⁵ We may thus compare the French and Latin versions

²⁴Liebermann, "Über die Leis Willelme," pp. 132, 138.

²⁵The articles translated are II Cnut 2a, 2.1, 3, 15.1-15.3, 17, 19-19.2, 24-24.3, 25-25.2, 26, 28-28.1, 29-29.1, 30, 31-31.2.

of the laws in this section with their sources as a means of determining the language in which the Leis adaptation was composed. Our analysis of the texts leads to two conclusions: 1) the French text could not have been translated from the Latin text; and 2) the Latin text may have been made from the French text, but by a scribe who was familiar with the terminology of two other twelfth-century Latin translations of Cnut's code.

The first of these assertions is inferred from the existence of passages in the French version that closely resemble those of Cnut's text and that are not present in the Latin version. This would not be the case if the French rendering were a direct translation of the Latin. As mentioned earlier, some of these instances were brought to light by Heim in his dissertation. The following passages illustrate this claim:²⁶

II Cnut 15.1	I (Ch. 39.1)	S (Ch. 39.1)
<p>7 ðolie áá his pegenscipes, butan he hine aet ðam cyng gebycge, swa he him geðafian wylle.</p>	<p>si perde sa franchise, si al rei nel pot reachater a soun pleisir.</p>	<p>et insuper liber- tatem, si habuit, amittat illam nisi a rege eam rede- erit....</p>
II Cnut 15.1a	I (Ch. 39.2)	S (Ch. 39.2)
<p>7 on Dena laga lahs- lites, scyldig, buton he hine geladige paet he na bet ne cuðe.</p>	<p>E s'il est en Dene- lae, seit forfait de sa laxlite, s'il alaier ne se pot, que il melz faire ne sout.</p>	<p>In Denelahe erit in forisfactura de suo laslite....</p>

²⁶The numbering and texts of the Anglo-Saxon laws follow Robertson, Laws of the Kings of England.

II Cnut 24.2	I (Ch. 45.2)	S (Ch. 45.2)
7 gyf he witnysse habbe, swa we aer cwaedon, ðonne tymba hit man ðriwa;	E si testimonie ad, si cum nous einz desimes, voest les treis feiz;	Si vero testes habet,....., videant rem tercio;
II Cnut 31.1a	I (Ch. 52.2)	S (Ch. 52.2)
7 gyf hi ðone laford teon,	E si l'un chalange le seignour,	Et si calumpnietur,

In the first three of these examples the Latin text has plainly omitted a phrase which is part of the original law and which the French text faithfully reproduces. In the fourth example the Latin text not only omits the word dominus, which is found in the Quadripartitus and the Instituta Cnuti and which should correspond to the Anglo-Saxon laford, but also expresses the idea with a passive construction. Taken together, these illustrations are sufficiently striking to suggest that the French version of this section was composed first.

Furthermore, there is other evidence to corroborate this hypothesis of French priority in the fourth section. There exist passages where although both versions present the same information the French version reads syntactically more like the Anglo-Saxon text than does the Latin. It is improbable that a French translator fortuitously hit upon the same constructions as those found in the Anglo-Saxon while translating the Latin text:

II Cnut 15.1	I (Ch. 39.1)	S (Ch. 39.1)
7 se ðe unlage, ra'ere oððe undóm gedeme	Ki tort eslevera u faus jugement fra	Qui vero falsum iudicium fecerit vel iniustitiam foverit
II Cnut 24.3	I (Ch. 46)	S (Ch. 46)
And us ne ðincð na riht	Nus ne semble pas raison	Absonum videtur et iuri contrarium

II Cnut 24.3	I (Ch. 46)	S (Ch. 46)
aer syx mon ²⁷ _{dum} aefter ²⁷ ðam þe hit forstolen waes.	devant le terme de VI meis, après iço que l'aveir fu emblé.	ante terminum sta- tutum, scilicet VI. mensem, ex quo furatum quod calum- pniatur.
II Cnut 31	I (Ch. 52)	S (Ch. 52)
7 haebbe aelc laford his hiredmen on his agenum borhge.	E chascun seniour eit soun serjant en sun plege,	Omnes qui servien- tes habent, eorum sint francplegii;

The first of these examples involves only the transposition of two phrases. In the third example the French preposition après and the construction fu emblé are much closer to the Anglo-Saxon syntax than are the ex quo and furatum quod calumpniatur of the Latin text. But the most convincing illustrations are the second and fourth, in which the French texts follow the Anglo-Saxon wording while the Latin texts utilize entirely different constructions to express the same ideas. No French translator would have written Nus ne semble pas raison as a translation of Absonum videtur et iuri contrarium and in doing so have by chance reproduced the Anglo-Saxon syntax. Similarly, the excerpt from the French version of chapter fifty-two translates the Anglo-Saxon text almost literally, whereas the Latin rendering exhibits a completely original structure. These examples provide further convincing proof that the French version could not have been translated from the Latin version.

²⁷The variant aefter ðam þe appears in MSS. G, A, and Ld of Cnut's code. The other MSS. have only ðe. See Robertson, Laws of the Kings of England, p. 186.

It is also asserted by Heim and following him by Liebermann and Pollock and Maitland that Leis article 45.2 provides an example where the Latin translator misunderstood the French text and therefore produced a corrupt version of the law in his own composition.²⁸ In this statute (text p. 83) the Anglo-Saxon verb tyme is translated in the French version by voest, a form derived from vocare through the disappearance of the c. Heim conjectures that the Latin translator thought it to be a form of the verb veeir, from videre, perhaps veist, and accordingly set down videant. Richardson and Sayles deny that this constitutes a proof that the Latin text is a translation of the French.²⁹ They maintain that videant is merely a scribal error for vocant or advocant, the normal Latin equivalents of the Anglo-Saxon verb, that crept into the MS. during the 150 years of the text's transmission from the exemplar to MS. Harley 746. Whether this explanation constitutes a cogent refutation of Heim's assertion is a question which, in our opinion, does not demand resolution. The examples already adduced are sufficient to show that the French text was not translated from the Latin. Furthermore, numerous other cases exist where individual words in the French text show a closer affinity than the Latin to the Anglo-Saxon words.³⁰ Heim's observation is

²⁸ Heim, Echtheit des französischen Textes, pp. 40-41; Liebermann, "Über die Leis Willelme," p. 119; Pollock and Maitland, History of English Law, I, 103.

²⁹ Richardson and Sayles, Law and Legislation, pp. 171-72.

³⁰ Ch. 41.1: French perde better than Latin in dampnacionem vendantur; Ch. 42: French dreit for Anglo-Saxon riht twice; Ch. 44.1: French asete perhaps chosen for Anglo-Saxon sette, Heim, p. 40; Ch. 47: French eschuit from Anglo-Saxon forbuge, Heim p. 41; Ch. 47.1: French la meite for the Anglo-Saxon healfum; Ch. 47.2: French nul parent n'ami better than Latin amicorum aliquis; Ch. 48: French hom for Anglo-Saxon man.

consistent with this interpretation, and there is no reason to abandon it on account of Richardson's and Sayles' conjecture, which does nothing to weaken the arguments for the priority of the French version of section four.

To affirm that the French version of the laws was not translated from the Latin version does not necessarily prove that the Latin derives from the French. In fact, the Latin text exhibits linguistic characteristics which might be considered surprising in a document translated from the French text. Richardson and Sayles maintain that "this section is an adaptation of selected paragraphs from two Latin renderings of Cnut's Laws, the Instituta Cnuti and a section of the Quadripartitus: we fully demonstrate this fact with a representative selection of passages subjoined to this appendix."³¹ Their demonstration consists of a parallel listing of passages from six chapters in which the wording of the Latin text of the Leis appears to coincide with the wording of one or the other of these two adaptations of Cnut's code. The copyist, they say, did not use either work consistently but rather both of them in a haphazard fashion and did not attempt to "cling to the language of his exemplars; but nevertheless he adopts sufficient of their vocabulary to show that they were, in truth, his sources."³² Luckily their representative examples include the same chapters cited earlier, on pp. 82 and 83, to prove that the French text does not derive from the Latin text, and we may usefully reproduce here their evidence and compare their conclusions with those already drawn.³³

³¹ Richardson and Sayles, Law and Legislation, p. 173

³² Ibid.

³³ Richardson and Sayles, Law and Legislation, pp. 176-79. They cite chapters 39, 40, 41, 42, 45, and 52. The italics are theirs.

Leis Willelme

39.1 Qui vero falsum iudicium fecerit vel iniusticiam foverit odio vel amore vel pecunia sit in regis forisfacto de XL solidis, nisi purgare se possit quod melius iudicare nescivit, et insuper libertatem, si habuit, amittat illam, nisi a rege eam redemerit.

39.2 In Danelaha erit in forisfactura de la laslite.

45.2 Si vero testes habet vocant³⁴ rem tercio, et quarta vice aut rem diracionet aut amittet.

52.2 Et si calumpnietur quod per eum fugerit, aut purget se manu sexta aut erga regem emendet. Et is qui fugerit uthlagetur.

Instituta Cnuti

15.1 Si quis iniustas leges adinverit aut iudicaverit, aut causa odii aut acquisitionis pecunie, sit reus regi XL solidis in lege Anglorum, nisi iuramento affirmaverit se rectius iudicare necisse, et postea careat libertate sua nisi eam a rege redimat ad velle regis.

15.1a In lege Danorum erit reus forisfacture quam Dani vocant lahslit.

24.2 Quodsi tales testes habuerit quales supra diximus, warentem vocet, et ille vocatus vocet alium, si potest, et tertius adhuc tertium vocet, si potest, et tertius suum faciet, si valet: quodsi non valet reddatur ei qui iuste habere debet.

31.1a Et si ipse dominus calumniatus fuerit quod eum sponte fugere permiserit, si ille est liberalis, id est thegn, acceptis quinque similibus purget se. Si non poterit purgare se persolvat regi were suum. Et homo est exul ab omnibus.

Quadripartitus

Si quis ammodo unlagam erigat vel iniustum iudicium iudicet pro lesione vel aliqua pecunie susceptione, sit erga regem CXX solidis reus in Anglorum laga, nisi cum iuramento audeat inveritare quod hoc rectius nescivit, et dignitatem suam legalitatis semper amiserit, nisi eam redimat erga regem sicut ei permittet.

In Denalaga lahslictet reus sit nisi se allegiet quod melius nescivit.

Si testimonium habeat sicut prediximus, tunc liceat inde ter advocari, et quarta vice proprietur aut redatur ei cuius erit.

Et si dominus accusetur quod eius consilio fugerit, adlegiet se cum V tainis et ipse sit sextus. Si purgatio frangat ei, solvet regi weram suam. Et qui fugit extra legem habeatur.

³⁴ Richardson and Sayles amend the MS. reading videant with the conjectural reading vocant or advocant.

If we examine the words which Richardson and Sayles italicize to indicate that the composer of the Leis must have used them in his adaptation, we see that, presumably to present the fullest case possible, they have included some words which could just as easily have come from the original Anglo-Saxon or French versions. For instance, regi (Ch. 39.1, 52.2) or rege (Ch. 39.1) could easily have been surmised from the Anglo-Saxon cyng or the French rei; similarly In Denelahe might have been written for on Dena laga or en Denelae. and likewise laslite for lahslites or laxite, habet for habbe or ad, tercio for ðriwa or treis, and Et si for 7 gyf or E si. Furthermore, sometimes the connection between the Latin text of the Leis and the other two Latin translations is tenuous at best, such as at the beginning of the example from chapter 39.1. Nevertheless, after we eliminate these cases there remain instances in which the correspondence between the Latin texts is striking, such as the words pecunia, melius iudicare nescivit, libertatem, amittat, and redimat in chapter 39.1. The French version has aveir, plus dreit faire nel sout, franchise, and reachater. In particular, the phrase melius iudicare nescivit might easily be viewed as a combination of iudicare nescisse (Quadripartitus) and melius nescivit (Instituta Cnuti, 39.2). Other examples in the passages just cited are testes (Ch. 45.2), fugerit (Ch. 52.2), and purget (Ch. 52.2).

The evaluation of the significance of these resemblances is a difficult task since it is impossible to estimate the extent to which they arise not from the paraphrasing of other texts but merely from the use of the normal legal vocabulary of the twelfth century. Authors with similar educations might be expected to use common terminology to express

certain ideas even if neither has influenced the other. We can note in Richardson's and Sayles' examples how often the Quadripartitus and Instituta Cnuti, although certainly by different authors, themselves agree; yet no one would argue that one of these works is derived from the other. Some resemblances might therefore be only learned coincidences. Second, these examples in no way prove, as Richardson and Sayles claim, that the Latin version of the Leis was composed first. It still remains true that certain passages read closer in the French version not only to the original text of Cnut's code, but also to the Quadripartitus and Instituta Cnuti. For instance, Leis 45.2 lacks in the Latin version any equivalent for the quales supra diximus of Quadripartitus or the sicut prediximus of the Instituta Cnuti, while the French version has si cum nous einz desimes. Since this phrase is found in the Anglo-Saxon text of the law, it is difficult to believe that the two Latin adaptations were the sources for the Latin version of the Leis which was then translated into French, for the Latin text is the only one without the words in question. Thus, while resemblances exist in other chapters as well as in the ones cited,³⁵ they do not constitute evidence sufficient to establish the priority of the Latin text of section four.

To demonstrate how one chapter of the Latin version can share similarities of expression with the other Latin translations and still be closely tied to the French version, let us examine chapter 52.2 cited above, p. 87. Richardson and Sayles note that in the phrases Et si and

³⁵ Other examples: prohibemus, pro parvo, precio redemit (40); emat, sine illi testibus (45).

calumpnietur the Latin version resembles the wording of the Instituta Cnuti; but the first of these is also found in both the Anglo-Saxon and French texts, and the second word is cognate with the equivalent word in the French text, chalance. The use of fugerit and purget se does seem, however, to indicate a close relationship between the Latin texts since the French version employs the unrelated verbs alé and s'escundie. On the other hand, for "persolvat regi vere suum" and "solvat regi weram suam" in the Instituta Cnuti and the Quadripartitus respectively, the Leis avoids the common verb solvat and gives "erga regem emendet" which closely resembles the French phrase "envers le rei l'ament." More importantly, the final verb, uthlagetur, uses the same root as the French noun uthlage to render the term utlah in the Anglo-Saxon law, II Cnut 31.2. Thus, in the final sentence the Latin version of the Leis shares "Et...qui fugerit" with the Quadripartitus and uthlagetur with the French version and Cnut. Since the evidence is so ambiguous it is impossible to assert that the similarities in vocabulary prove that the Latin version was composed first.

Richardson and Sayles supplement their linguistic demonstration with an argument based on the composer's reckoning of monetary values.

They maintain

that the compiler of the Leges Willelmi was thoroughly confused by the different ways of reckoning a shilling. There were twelve pence in the pre-Conquest English shilling, but five pence in the West Saxon and four pence in the Mercian shilling. The compiler of the Instituta Cnuti consistently reckons Cnut's shillings as four pence and converts them into current shillings of twelve pence, so that, with the Old English Cnut before him, he converts 120 s. into 40 s., 60 s. into 20 s. 30 s. into 10 s. The compiler of the Quadripartitus

on the other hand, always preserves the Old English reckonings. With the Instituta and the Quadripartitus before him, the author of the Leges Willelme chooses now the former, now the latter. In chapter 39 he chooses the 40 s. of the Instituta. In chapter 42 his choice falls on the Quadripartitus, but he falls into error: reckoning twelve pence to the shilling and twenty shillings to the pound, he writes £6 for 120 s., but he transcribes 30 s. without change; where, however, he should write lx. s., he writes xl. s., and this error is faithfully copied in the French. This confirms if confirmation were necessary, that the French text is not derived from the Old English.³⁶

Liebermann shows that the author of the French version of the Leis generally considered a Norman shilling to be 1/20£ or 12 pence and an Old English shilling to be four pence.³⁷ It thus appears that the composer of the Leis used the same erroneous method for converting Old English shillings into Norman shillings as the author of the Instituta Cnuti, that is multiplying the old figure by four and then dividing by twelve. For instance, in article 17.3, apparently following I Cnut 9.1, he retains the XXX pennies of the original law but converts the CXX shillings to XL sol. since $(120 \times 4) \div 12 = 40$. He repeats this erroneous calculation in chapter 39.3, as Richardson and Sayles point out. The weakness in their argument becomes manifest when we recognize that the compiler of the Leis, using the same conversion system as the writer of the Instituta, could have gotten his figures with equal ease from the Anglo-Saxon original as from the two Latin adaptations. In article 42.1 the French composer of the section could have changed the 120 shillings of II Cnut 15.2 into VI livres, reckoning at 20 shillings to the pound, but have kept the 60 and 30 shilling figures of the original, qualifying his text with ço est as solz Engleis; however, he wrote the first

³⁶ Richardson and Sayles, Law and Legislation, pp. 173-74.

³⁷ Liebermann, "Über die Leis Willelme," pp. 130-32.

of these figures incorrectly, as Richardson and Sayles note, putting down XL instead of LX. This explanation is no more complicated than that of Richardson and Sayles, explains the observed anomalies just as well, is consistent with the author's practice in the first section of the work, and supports the thesis that section four was composed in French. In no way does the argument outlined by the authors of Law and Legislation confirm "that the French text is not derived from the Old English." We have shown by using their own assumptions and methods that this derivation is at least as possible as any other.

To complete this examination of section four we must consider and account for several other instances where the Latin version appears to give better readings than the French version. In article 41.1 the Latin text reads Christus in agreement with the Anglo-Saxon Crist (II Cnut 3) while the French version has Deu. Moreover, the Latin version twice preserves an adverb used in the Anglo-Saxon text, giving valde (Ch. 41.1) for georne (II Cnut 3) and postmodum (Ch. 45.1) for ðonne (II Cnut 24.1). Finally, the French version lacks entirely chapter 40, which is based on II Cnut 3.1.

Let us examine the texts of II Cnut 3 and Leis Willelme 41.1 in detail:

II Cnut 3	I (Ch. 41.1)	S (Ch. 41.1)
and one should zealously take care that one does not forfeit those souls that Christ bought ³⁸ with his own life.	Wart l'um, que l'um l'anme ne perde, que Deu rechatat de sa vie. (Let one take care	Cavendum enim valde est, ni anime in dampnacionem vendantur, pro quibus Christus vitam impendit.

³⁸ My translation. The original reads, "ac beorgan man georne, paet man ða sawla ne forfare ðe Crist mid his agenum life gebohte." Robertson's translation (Laws of the Kings of England, p. 177) follows the passive constructions of the Latin.

that one does not
 destroy the soul
 which God bought with
 his life.)

While the Latin version reads better than the French version in valde and Christus, it is also clear that the French version is much closer in its phrasing to the Anglo-Saxon text. The Latin rendering uses passive constructions, elaborates the sense with "lest souls be sold into damnation," and concludes the statute with the phrase "spent his life" rather than with the expression "bought with his life" found in the Anglo-Saxon and French texts. It is difficult to believe that a clerk translating the Latin text into French could have reproduced the phrasing of Cnut's statute so strikingly by accident; the French version must have come first and have originally read Christ for Deu and have contained a word equivalent to the Anglo-Saxon georne. These two corruptions probably crept into the text during its transmission from the exemplar to the Ingulf Urtext. The same theory of scribal error serves to explain the existence of postmodum in the Latin text of article 45.1, which must have corresponded to a word, perhaps puis says Liebermann,³⁹ which was once part of the French text.

As we mentioned earlier, the French version of the law code lacks entirely chapter forty. If the exemplar of the French text in fact never contained the article, it would be impossible for the Latin text to have been translated from the French. Richardson and Sayles claim that chapter forty, like the others in this section, was composed in Latin by an author who had the Instituta Cnuti and the Quadripartitus

³⁹Liebermann, Gesetze, I, 518.

before him. The texts are as follows:⁴⁰

Leis Willelme

(40) Prohibemus ne pro parvo forisfacto adiudicetur aliquis homo morti sed ad plebis castigationem alia pena secundum qualitatem et quantitatem delecti plectatur. Non enim debet pro re parva deleri factura quam ad ymaginem suam Deus condidit et sanguinis sui precio redemit.

Instituta Cnuti

(2.1) Interdicimus etiam ne pro parva re Christiani morti traduntur, scilicet pro latrocinio aut pro talibus rebus, sed alio modo corrigantur propter alias ne culpe inulte remanent.

Quadripartitus

Prohibemus ne Christianus aliquis pro penitus parva re saltem ad mortem seducatur sed exquiratur pro necessitate populi iusticie pacificans pro levi re dispereat opus manum Dei et suum ipsius pretium quod profundi redemit.

The Leis text exhibits some resemblances to the Quadripartitus text, especially in the phrases Prohibemus, pro parvo, pro re parva, and precio redemit. In content, however, it diverges markedly from both the other versions, giving a longer and more elaborate rendering, for instance in the phrase secundum qualitatem et quantitatem. In spite of its similarities to the Quadripartitus text, the Leis version is not dependent on the other work in any substantial way that would indicate that it probably derives from the Quadripartitus. As with the chapters discussed earlier, the resemblances in expression to the other Latin adaptations do not necessarily demonstrate that the Latin rendering of the law was the first composed. Since the priority of the French version is supported by otherwise convincing evidence, it does not

⁴⁰ Richardson and Sayles, Law and Legislation, p. 177; their italics.

seem unreasonable to conclude that the French archetype did contain a version of chapter forty which was lost during the transmission of the text.

The evidence presented in the examination just completed on the whole supports the conclusion that the French version antedates the Latin version. Although there are some striking similarities in wording between the Latin text and the two Latin adaptations of Cnut's laws, nowhere is the Latin of the Leis Willelme an obvious transcription of an extended segment of either of the other translations. Nowhere do the texts coincide for more than three words and often the similarities noted by Richardson and Sayles are single words. Perhaps the observed resemblances can be attributed to the use of legal terms and phrases common to Latin jurists of the twelfth century.

The evidence for the originality of the French version is, on the other hand, more convincing. The correspondences in phrasing to statutes from Cnut's code sometimes extend for clauses of five or seven words for which the Latin version uses totally different constructions. Furthermore, the French version includes several passages which the Latin version lacks and which are also found in the Quadripartitus and the Instituta Cnuti. We cannot therefore readily believe that the French version was translated from the Latin version. The hypothesis that the Latin version was translated from the French version can, however, be accepted with some qualifications. The first of these is that the Latin translator either shared with the composers of the other two Latin adaptations of Cnut's code a common legal education and vocabulary, or was familiar with these two works, or indeed had these compilations at his disposal when he made the translation.

Second, we have to assume that chapter forty was originally included in the French text and was neglected by a later copyist, and that the French version originally read Christ instead of Deu in chapter 41.1. With these reservations we conclude that the fourth section of the Leis Willelme was composed in French from the Anglo-Saxon of Cnut's code and later translated into Latin.

We complete this analysis of the language of the four sections of the Leis Willelme with an examination of the first section, which comprises the prologue and chapters one through twenty-eight. As this division contains more than half of the chapters of the code and forms the beginning of the law book, and furthermore is given by three texts, Hk, I, and S, the determination of its original language is crucial to the construction of a stemma for the work as a whole. Because we do not generally know the source of the laws found in this section, the elucidation of the relationships between the texts must rely predominately on a direct comparison of the form and substance of the regulations themselves rather than on an evaluation of their relative fidelity to an acknowledged model.

Several important arguments can be adduced to demonstrate that the Latin text of the first section was the first to be composed. Liebermann notes that some of his "Rudimenta Latina", that is passages in which the Latin text reads more originally than the French text, are found in this section.⁴¹ Chapter twenty-five of the Latin version provides the best example of such an instance. This statute is missing from the French texts, which offer instead an article not found in the Latin, 20.3a:

⁴¹Liebermann, "Über die Leis Willelme," p. 121.

S (Ch. 25)

French (Ch. 20.3a)⁴²

De francplegio. Omnis qui sibi
vult iusticiam exhiberi vel se
pro legali et iusticiabili haberi,
sit in francplegio.

E puis seient tuz les vilains
en franc plege.

The French text reads as if it were a brief summary of the longer Latin text. Furthermore, the Latin version itself seems to be a synopsis of a law given by II Cnut 20, to which it bears a much closer resemblance than does the brief notice of the French version.

Several other passages in which the Latin version reads better than the French version can be cited. First, the order of the subsections of chapter two is better in the Latin text, since the penalty for breaking the king's peace in the Danelaw follows that specified in Mercian custom. The French version inserts a clause between these two articles which should follow them.⁴³ Second, Richardson and Sayles point out that the French version of the end of chapter three is shorter than the Latin version since it leaves out two phrases:⁴⁴

S (Ch. 3)

French (Ch. 3)

quod consilio aut ope sua non
fugerit, et quod eum habere
non potest ad iusticiam.

ne par lui s'en est fuid, ne
aver nel pot.

For consilio aut ope the French has only par lui, and ad iusticiam is lacking entirely. Third, Richardson and Sayles also cite chapter five

⁴²The French versions of the laws cited in this part of the thesis will generally be based on Hk's text, which is less corrupt.

⁴³Liebermann numbers the articles according to the French order, 2, 2.1, 2.2, 2.2a. The Latin sequence is 2, 2.2, 2.2a, 2.1, which presents the contents in their logical order.

⁴⁴Richardson and Sayles, Law and Legislation, p. 170.

as an illustration of the superiority of the Latin version; the texts are as follows:

S (Ch. 5)

Si prepositus hundredi equos aut boves aut oves aut porcos vel cuiuscumque generis averia vagantia restare fecerit, is qui veniens sua clamaverit dabit preposito pro ove denarium, pro porco II den., pro bove vel equo IIII d.; ita tamen ut ultra VIII denar. non tribuat, quotquot averia sibi restitui pecierit.

French (Ch. 5)

Cil ki avoir rescut, u chevaux u bos u vaches u berbiz u porcs, que est forfeng apele' en Engleis, cil kis claimed, durrad pur la recussiun VIII den., ja tant n'i ait, mes qu'il i oust cent almaille, ne durrad que VIII den.; e pur un porc I den. e pur I berbiz I den. e issi tresque a VIII pur chascune I den.; ne ja tant n'i averad, ne durrad que VIII den.

Compared to the Latin version, the French version is poorly organized and awkwardly expressed and omits details such as the amount to be paid for a bull or a horse. Richardson and Sayles call the French version "a clumsy, defective, repetitive version of the Latin" and consider it unlikely "that a highly gifted translator took this very imperfect piece of vernacular prose and transformed it into Latin which is at least intelligible."⁴⁵ Finally, these same authors also note that the French text of chapter seven lacks an equivalent phrase for the Latin were suum, which belongs in the law.⁴⁶

Furthermore, the Latin version is generally better ordered than the French version, a circumstance which corroborates the evidence just given. Table I on the next page lists the order of the articles of the code according to Liebermann's edition⁴⁷ for the three texts,

⁴⁵ Richardson and Sayles, Law and Legislation, p. 170.

⁴⁶ Ibid., p. 171.

⁴⁷ Liebermann, Gesetze, I, 492-520.

Table I: The Order of the Chapters in the Texts of the Leis Wileleme

<u>S</u>	<u>I</u>	<u>Hk</u>	<u>S</u>	<u>I</u>	<u>Hk</u>
Prologue	Prologue	Prologue	28	28	28
.	.	.	28.1	28.1	28.1
.	.	.	28.2	28.2	28.2
2	2	2	-	-	20
-	2a	2a	-	-	20.1
2.2	2.1	2.1	-	-	20.2
2.2a	2.2	2.2	-	-	20.2a
2.1	2.2a	2.2a	-	-	20.3
2.3	2.3	2.3	-	-	20.3a
2.4	2.4	2.4	29	29	(ends)
.	
.	
9.1	9	9	35	35	
9	9.1	9.1	35.1	-	
.	.	.	36	36	
.	.	.	37	37	
.	.	.	38	38	
17	17	17	-	[20.4]	
17a	17a	-	39	39	
17b	17b	-	39.1	41	
17.1	17.1	17.1	39.2	41.1	
17.2	-	-	40	-	
17.3	-	-	41	39.1	
18	18	18	41.1	39.2	
18.1	18.1	18.1	42	42	
-	18.2	-	.	.	
-	[17.2]	-	.	.	
-	[17.3]	-	51	52	
19	19	-	52	51	
19.1	19.1	-	52.1	52.1	
20	20	-	52.2	52.2	
20.1	20.1	-	(ends)	(ends)	
20.2	20.2	-			
20.2a	20.2a	-			
20.3	-	-			
20.4	-	-			
21	21	21			
.	.	.			
.	.	.			
.	.	.			
24	24	24			
-	[20.3]	-			
-	[20.3a]	-			
25	-	-			
26	26	26			
27	27	27			

S, I, and Hk.⁴⁸ A segment of the code for which the order is the same in all three texts is indicated by elipsis. It is readily apparent that both the French texts are to a certain extent disordered compared to the Latin text. Hk omits articles 17a, 17b, 17.2, 17.3, 19, 19.1, and 20.4, and places articles 20 through 20.3a at the end of its text, following chapter 28. The Ingulf text places articles 17.2 and 17.3 after chapter 18, articles 20.3 and 20.3a after chapter 24, and article 20.4 after chapter 38. The misplaced chapters are enclosed in brackets in the Table for clearer reference.

The article that Liebermann numbers 20.3a is the shortened version of Latin chapter 25 concerning frankpledge. It is so labeled because it follows article 20.3 in the French texts, in I just before chapter 26, and in Hk at the end of the code. But it could just as easily be numbered 25 since it concerns itself with the subject material of that chapter. The order of S and I would then be as follows:

<u>S</u>	<u>I</u>
24	24
-	20.3
25	25 (shortened)
26	26
(etc.)	(etc.)

This simple alteration in the numbering given to the articles by the code's modern editors reveals an important fact: the location of the frankpledge regulation in the Ingulf text, just before chapter 26, is in accordance with the ordering of the Latin text. The shortened and

⁴⁸The idea of such a list derives from Matzke, Lois, p. xxxii, but here incorporates Liebermann's more detailed division of the work into chapters. The numbering of the chapters given here is based solely on the modern edited editions of the code.

translated form of the Latin statute has been associated with chapter 20 only because it is preceded in I and Hk by the misplaced article 20.3. Based on this observation and the evidence already presented, we theorize that the archetype of section one was composed in Latin and later translated into French, at which time corruptions crept into the manuscripts.

The characteristic marks of corruption in the French texts are omissions, especially in Hk, shortening, and awkwardness. The omissions from Hk's text have already been mentioned. We have also noted two instances where the French texts give a shortened form of the Latin version of the law: at the end of chapter 3, and in the substitution of so-called article 20.3a for chapter 25. Moreover, the French version of the first section commonly exhibits signs of being an abridgement of the Latin version made by eliminating easily understood elements of the Latin rendering, particularly verbs. The following examples illustrate this assertion:

Latin	French
(Ch. 2) Qui pacem regiam infregerit, secundam Merchenalahe C solid. pene <u>succumbet</u> . Similis de hamfare et insidiis precogitatis <u>pena delinquentem manet</u> .	E ki enfreint pais le rei, en Merchenelahe cent souz les amendes. Autresi de hemfare et de agwait purpense.
(Ch. 2.4) de quibus vicecomes ad opus regium X ores accipiet, et ei qui in causa optinet, XII ores <u>restituentur</u> ; <u>residium autem, id est X ores</u> , ad dominum, in cuius feudo manet, <u>deveniet</u> secundum Danelahe.	De cez XXXII averad le vescuente a l'os le rei X ores, e cil ki le plait averad deredne vers lui XII ores, e le seinur, en ki fiu il meindra, les X ores. Ceo est in Denelahe.
(Ch. 3.3) At vero in Danelahe <u>in tali casu forisfactum est VIII librarum quarum VII regis erunt</u> , octava autem pro capite <u>calumpnianti dabitur</u> .	En Danelahe VIII lib. le forfeit, les XX sol. pur la teste, les VII lib. al rei.

(Ch. 6) Si quis averium errans recollegerit vel rem quamcunque invenerit.

Autersi de aveir adiré e autersi de truveure:

(Ch. 7) Si quis convictus vel confessus fuerit in iure, alium occidisse, dat pere suum et insuper domino occisi manbote.

Si hom ocist auter, e il seit cunuissant e il deive faire les amendes, durrad de sa manbote al seinur.

(Ch. 11.1) Si pollicem, reddat dimidium illius quod pro manu redderet.

Del poucer lui rendra la meité de la main.

(Ch. 14.2) Quodsi defecerit et iurare cum eo noluerint, defendet se per iudicium aque vel ignis.

E si il aver nes pot, si s'en defende par juise.

(Ch. 15.3) Si furtum aliquando calumpniatus emendavit, eat ad iudicium aque.

E s'il ad en arere larcin amended, alt a l'ewe.

(Ch. 17.2) Qui vero denarium Sancti Petri detinet, cogetur censura ecclesiastica illum solve,

Ki retient le dener Seint Pere, le dener rendra per la justice de seinte eglise,

(Ch. 28) De viarum custodibus. De qualibet hida in hundredo IIII homines ad stretwarde invenientur a festo sancti Michaelis usque ad festum sancti Martini.

De stretwarde: De chascuns X hides del hundred un hume dedenz la feste seint Michal e la seint Martin.

The words and phrases underlined in the Latin text are all either omitted from the French version or rendered in an abbreviated form. Finally, the French version occasionally corrupts the sense of the Latin text of a statute so that its meaning is expressed awkwardly or unclearly. We have already noted that this is the case in chapter five. In chapter three the pronoun reference of the French texts is less clear than that of the Latin version, and the Latin wording of article 17a is less awkward than the French of I's text. These examples of omissions, shortening, and awkwardness in the texts of the French version lead us to believe that the Latin version is the original composition and that translation and subsequent copying introduced impairments into the French version.

With this thesis in mind, let us return to the table that gives the order of the chapters and attempt to explain the disorder of the French texts. The Latin archetype of section one must have been translated twice with the result that the French version of the code is extant in the two manuscript traditions represented by Hk and I. In making the first of these translations, the author of Hk apparently undertook voluntary omissions from the text of his exemplar. These omissions included parts of chapter 17 (articles 17a, 17b, 17.2, 17.3) and the entire text of chapters 19, 20, and 25. The paragraphs of chapter 20 and article 20.3a which are found at the end of Hk's text, after chapter 28, are most easily explained as additions to the original translation made, as we shall see, by a later scribe.

The second transcription of this section was produced by the author of the Ingulf Urtext who, having both the Latin archetype and the earlier translation of it in front of him, generally followed the existing French text, adding, however, translations of those chapters which his predecessor left out. In doing so he himself committed some errors. After putting articles 17a and 17b in their proper places he started chapter 18 and neglected articles 17.2 and 17.3, which he added into his text after chapter 18. He likewise filled in most of chapter 20 but jumped over articles 20.3 and 20.4, which he had to introduce later in the work where he had the space. Article 20.3 was inserted after chapter 24 and was followed by the composer's translation of chapter 25, which, for some unknown reason, he only paraphrased; since this sentence follows article 20.3, Liebermann numbers it 20.3a although it should be called chapter 25 of the French version. Article 20.4 was only subjoined

to the work much farther on, after chapter 38, the last chapter of the third section of the code. We may also conjecture that article 18.2, which is only found in the Ingulf text and which is merely a repetition of article 18, was added by the author of this text or interpolated by a later copyist. Finally, we surmise that the second composer appended his translations of some of the articles missing from Hk's exemplar to the end of its text. Why he neglected to add all the articles that Hk lacks cannot be guessed. In this way it is possible to account for the disorder in the French texts and for some of the differences between the two French manuscript traditions.

This analysis of the original language of the first section of the Leis Willelme completely contradicts the conclusions of both Matzke and Liebermann. Both these scholars maintain that the Latin text shows marks of being a translation and that the first section (and indeed the code as a whole) was composed in French. It is, therefore, necessary before we proceed to construct a stemma for the manuscripts to summarize the arguments that Matzke and Liebermann offer and to show how they are less convincing than those just presented.

1) The Latin text omits article 2a, which reads Icel plait afert a la curune le rei. Liebermann cites as the source for chapter two articles II Cnut 12 and 14, and Matzke refers his readers to Heim's argument that this clause is a part of the original law that the Latin translator omitted.⁴⁹ This chapter does not, however, follow Cnut's text at all but merely gives a statute on the same general subject, the breaking

⁴⁹Liebermann, Gesetze, I, 493; Matzke, Lois, p. xxx; Heim, Echtheit des französischen Textes, p. 32.

of the king's peace. Furthermore, article 2a is redundant since the clause that it follows begins E ki enfreint pais le rei; it hardly seems necessary to add that breaking the king's peace is an offense against the king. This article is probably best described as a gloss added by the French translator of the section.

2) The French version of chapter three begins La custume en Merchenelahe est:, while the Latin version includes this information in the body of the statute, reading, "Si quis appellatus de latrocinio vel roberia plegiatur...et interim fugerit, in Merchenelahe dabitur plegio" Matzke assumes without reason that the French form is the better one, but the Latin is not obviously inferior. Moreover, we noted earlier that the French text of this chapter omits phrases found in the Latin.

3) Matzke notes that chapter five begins with an anacoluthon which he says a Latin translator corrected; he also believes that the phrase que est forfeng apelé en Engleis was in the original law and was omitted by a Latin translator. We have already shown that the text of this chapter is wholly corrupt and even omits important information that the Latin version preserves; one would with difficulty believe that such a clever translator, who was able to fill in the missing parts of a damaged text, existed. The phrase that the Latin text lacks had the flavor of a gloss and was probably added to the French version at some stage in the text's transmission.

4) Matzke maintains that the passage "sol. Anglicos (solidum Anglicum IIII denari constituunt)" in chapter 11.1 of the Latin version was employed by a translator who did not want to use the French form, "sol. Engleis, que est apelé quaer denier." The passages themselves are, however, alike in content and there are no grounds for believing that the French wording is original.

5) Matzke asserts that the poor arrangement of the French text of chapter fourteen was improved by a Latin translator to clarify the sense of the law. We have already argued that this is equally good evidence of an inept French translator who bungled the task of rendering the intelligible Latin version.

6) In chapter 28.1 Matzke notes that the Latin version has the gloss id est prepositus custodum for the term gwardereve and attributes it to a translator. But a gloss need not be added by a translator; it can be introduced at any stage of the manuscript transmission. Furthermore, Matzke's method here is exactly the opposite of that employed in (3) above, where a gloss in the French text is taken to be a sign of that version's originality.

7) Both Matzke and Liebermann note that there are a number of French words and Gallo-Latinisms in the Latin text which, they maintain, are due to a translator who had a French text in front of him. Their examples include en gaige (Ch. 21.3), chascuri (Chs. 20, 20.1), murdre (Ch. 22), ores (Ch. 2.3), and, for the ideas 'time', 'neglect', 'inhabit', and 'official', the words hora, sursisa, manere, and ballia, for which an educated Latin writer would have used, says Liebermann, more classical words.⁵⁰ Richardson and Sayles rebut this argument with the assertion that these French words occur because the translators of the Latin text and later scribes on occasion wrote down French words either inadvertently or through ignorance of the proper term:

⁵⁰Liebermann, "Über die Leis Willelme," p. 119.

But the scribes responsible for the pipe rolls also wrote chascurs, chascuris, and a good many other French words, intermixed with their Latin. So our author wrote ores, for which there was no convenient Latin equivalent. And one of his copyists wrote murdre instead of murdrum and likewise en gaige for in gagio or some other of the many variants of vadium: but such lapses, and much worse, are common on the part of scribes. Doubtless the author wrote hora and manet, where we should not expect a stylist to use these words--two other examples of Liebermann's which hardly help his argument. It is noteworthy that outside the first section Liebermann could support his thesis with only two examples: one, the common mediaeval Latin word sursisa, and the other, a scribal error of videant for advocant.⁵¹....

They observe elsewhere that "the Latin vocabulary, even of royal clerks, might be very limited and might need to be eked out, on occasion, with French."⁵² This is a reasonable explanation for the existence of the French words that Liebermann cites and one which is consistent with our knowledge that in general the authors of the early twelfth-century law books spoke French. If Liebermann finds that there are also Gallo-Latinisms in the Latin version of the Leis, this is something we might expect from authors and scribes who spoke French long before they wrote Latin.

8) Liebermann cites four instances where the Latin text lacks an Anglo-Saxon term that is found in the French texts: forfeng (Ch. 5), halsfanc (Ch. 9), sarbote (Ch. 10.1), and munte (Ch. 18.1). Although the first of these, as noted in (3) above, is part of what could be a gloss, and the third is contained in the rubric "De sarbote, ceo est de

⁵¹Richardson and Sayles, Law and Legislation, pp. 172-73.

⁵²idem, The Governance of Mediaeval England from the Conquest to Magna Carta (Edinburgh: Edinburgh University, Press, 1963), p. 278.

la dulur," it does appear that at least two Anglo-Saxon words, halsfanc and munte, were omitted from the Latin version; the intelligibility of the laws does not, however, suffer for the lack of them. In one further case the Latin text contains an Anglo-Saxon word but with a gloss appended: "lichfe, quantum scilicet in curam vulneris impendit" (Ch. 10). Yet these omissions or glosses are by no means the general rule in the Latin version, for in a greater number of cases Anglo-Saxon terms are used without comment: hamfare (Ch. 2), soche et sache et tol et them et infangenetheof (Ch. 2,3), henwite (Ch. 4), manbote (Ch. 7), hemoldborh (Chs. 21.1, 21.1a), soch et sac (Ch. 27.1), and stretwarde (Ch. 28). These examples indicate that there is no systematic attempt in the Latin version to eliminate or explain all Anglo-Saxon terms. Rather than viewing Lieberman's four instances of omission as evidence of a translator's hand, we might instead consider them four isolated cases where a copyist working sometime in the 150-year history of the Latin text's transmission eliminated outmoded terminology that he did not understand. The same explanation might also apply to the gloss in chapter ten.

9) All the chapters in the Latin version are prefaced with short rubrics describing the contents of the statute, whereas only a few of the French chapters have such titles: de la were (Ch. 9), de sarbote, ceo est de la dulur (Ch. 10.1), de murdre (Ch. 22, I only), and de stretwarde (Ch. 28). Both Matzke and Liebermann take this fact as an indication that the rubrics were added by a Latin translator. They cite examples where the wording of a rubric is closer to the wording of the French text of the law than to the Latin text to which it is affixed. Many of their examples come from the final section of the code where,

as we have already shown, the French version was indeed composed first. But the weakness of this method as a means of establishing the priority of the French version is demonstrated by one of Matzke's examples which purportedly involves the Latin rubric of a law in the third section of the code that was translated from a passage in the French version: the title "Si pater filiam adulterantem reperit vel filius uxorem patris" is supposed to derive from "Si le pere truvet sa file en avulterie" (Ch. 35). But as we proved earlier this section of the code was surely written in Latin first, and we might therefore conclude that the phrase quoted from the French version is a translation of the Latin rubric. The mistaken assumption which underlies Matzke's and Liebermann's contention is that the rubrics had to be added by one author who translated the entire work. We shall argue farther on that the Latin text originally did not have rubrics, or only very few, and that the titles were only added at a later date when the four sections of the code were brought together.

10) Matzke offers an argument based on the order of the chapters which, he claims, shows that the Latin version was written after the French version. His discussion rests on a fundamental assumption about the behavior of the translators who made the texts of the Leis:

A translator is able to commit faults of omission if he does not understand his task well, or he is able to rearrange his text in a more logical order and, as a result, improve it; but he would hardly corrupt a good original in this senseless manner, something which one must suppose if the French text is a translation of the Latin text.⁵³

This conviction that a translator would not corrupt a good text underlies

⁵³ Matzke, Lois, p. xxxv; my translation.

Matzke's conclusion that a Latin translator corrected and improved the order of the chapters in a disorganized French archetype: "If, on the other hand, we admit the existence of a French translator, it will be impossible to explain the scattering of the paragraphs which are found together in the Latin text."⁵⁴ But one possible way in which this scattering could have occurred was already discussed in this chapter.

Matzke's explanation is as follows. Originally the Leis Willelme was written in French in a form similar to that found today in Hk but containing most of the fifty-two chapters; Matzke designates the archetype by the letter O. He conjectures that articles 17a, 17b, 17.2, and 17.3, which are missing from Hk, were not originally in O but were rather later elaborations added in the margin of the archetype. The copyist of the Ingulf Urtext, he says, added these marginal notes into his text, but, in the case of 17.2 and 17.3, at the wrong place, after chapter 18. He explains the origin of chapter twenty similarly. The chapter did not exist at all in O, but was written in the margin, although Matzke does not surmise where. The copyist of Hk left his work unfinished at chapter 28 and added all the parts of chapter 20 except 20.4 at the end of his text. Matzke suggests that article 20.4 might actually have been an addition of I's scribe. The copyist of the Ingulf Urtext, says Matzke, first ignored the marginal text of chapter 20, and, later, when he realized his mistake, inserted its paragraphs where he had room for them in his manuscript, following chapters nineteen, twenty-four, and thirty-eight.

Matzke then conjectures that a Latin translator who was aware of the not very logical position of the misplaced articles of chapters

⁵⁴Ibid., p. xxxiv; my translation

seventeen and twenty restored these paragraphs to their proper positions. He further supposes, in order to explain the superiority of Latin chapter 25 over French article 20.3a, that after putting article 20.3 in its proper place after 20.2 the Latin translator added an expanded version of the law given by 20.3a, which became chapter 25 in the Latin text. "It is necessary to add, however," he observes, "that the Latin of chapter 25 is not an evident amplification of this last phrase of the French chapter 20.3."⁵⁵

This is an ingenious explanation but one which contains some serious flaws. The most obvious objection is that no adequate reason is given for the Latin translator having augmented article 20.3a into Latin chapter 25; it is much easier to assume that a French translator shortened the already existing Latin text. Furthermore, it leaves unanswered the question of why article 20.3a was originally added to the end of article 20.3 when it deals with an entirely different subject; chapter 20 concerns reliefs and article 20.3 specifies the relief of a villain, while 20.3a is about frankpledge. Our own explanation given earlier demonstrated that chapter 25 was the next paragraph translated after the French translator inserted article 20.3 into his text following chapter 24. Second, Matzke's scheme requires that a later scribe add articles 17a, 17b, 17.2, 17.3, 20-20.3a, and perhaps 20.4 to the original version, whereas in our interpretation these paragraphs are found in the original work. Finally, Matzke's assumption that the order of the code's chapters was imperfect in the French archetype and was only corrected in the Latin version entails that we postulate a Latin translator who took the trouble not merely to read through his text beforehand but also to note

⁵⁵ Matzke, Lois, p. xxxiv; my translation.

down the material that appeared to him out of place and to rearrange the improperly ordered chapters into a more logical sequence. This seems to be an unnecessarily sophisticated supposition which can be avoided if we hypothesize that the Latin version of the first section came first and was translated into French. For this theory we need only to assume that the French translators omitted chapters which existed in the archetype and skipped over articles which they had to incorporate into their texts at other locations.

We have concluded as a result of our examination of the language of the four sections of the Leis Willelme that the first three were composed in Latin and the fourth in French. One obvious judgment supported by these findings is that the law book was never linguistically homogeneous, either in a French form, as Liebermann and Matzke suppose, or in a Latin form, as Richardson and Sayles suppose. We might further infer that in fundamental character the Leis is a conglomeration of four distinct and independent legal writings. That section four is not consistent with section one is demonstrated, aside from the differences in original language, by the contradictory provisions of chapters 13 and 39.1, and chapters 21.1 and 45.⁵⁶ Section three is unique in its references to Roman law, which are found nowhere else in the Leis. It is certainly not necessary to assume that these diverse legal jottings all came from one author's pen; we should rather infer that section one formed the original core of the work to which the other three sections were added.

Before a stemma that incorporates these conclusions can be constructed, one other important relationship which characterizes the texts

⁵⁶Liebermann, "Über die Leis Willelme," p. 133.

must be brought to light. Numerous instances occur in the first section of the code in which I and S share singular readings not found in Hk. These readings include additions, omissions, and alterations in syntax and wording. Matzke lists thirty-eight examples;⁵⁷ we adduce here only the most striking, including two not cited by Matzke:

S	I	Hk
(Prol.) omni populo	a tut le puple	al pople
(2.2a) XL solid. in Merchenelahe et L solid. in Westsaxenelahe.	XL solz en Merchenelahe e L solz en Westsexelae.	L souz en Merchenelahe e XL souz en Westsexenelahe.
(3.2) Iuxta Westsaxenelahe in tali casu dabit C solid,... pro capite illi qui clamium prosecutus est, et regi IIII libr.	En Westsexenelahe cent solz,...al clamur pur la teste e IIII livres al rei.	E en Westsexenelahe C sol., XX sol. al clamif pur la teste e IIII lib al rei.
(10.1) Deinde si plaga in discooperto faciei fuerit semper ad unciam.....IIII den. persolvat.	Si la plaie lui vient a vis en descubert, al polz toteveie.....IIII den.	Si la plaie lui vient el vis en descubert, al pouz tuteveies VIII den,; u en la teste u en auter liu, u ele seit cuverte: al pouz tuteveies IIII den.
(13) nisi probare possit	si il ne pot prover sor saint	s'il ne pot jurer sur seinz
(15.1) XLVIII legales homines	XLVIII homes leals	XLII leals humes
(16) villanus XL denar.	e li vilain XL den.	e li socheman XL den.
(17) Liber homo qui	Franc home qui	Cil ki
(22) De murdre. Si quis Francum hominem occiderit	De murdre. Ki Frenceis occist	Ki Franceis ocist
reddent pro murdre XLVII m.	si'n rendunt le murdre: XLVII mars.	si renderunt le murdre: XLVI mars.
(24) per duos intelligibiles homines	per II entendable home	par un entendable hume
(26) In tribus stratis regiis, id est Watelingestrete, Erningestrete, et Fosse,	De III chemins, ço est a saveir Wetlingestrete et Ermingestrete et Fos,	De quatre chemins, ceo est a saveir Watlingestrete, Ermingestrete, Fosse Hykenild,

⁵⁷ Matzke, Lois, pp. xxvi-xxxix.

The readings common to I and S are sometimes obviously worse than the corresponding passages in Hk (Chs. 3.2, 10.1), and on occasion better (2.2a).⁵⁸

The two examples just mentioned where Hk's text gives undeniably superior readings are of particular importance in the establishment of a stemma since they preserve phrases in French which were omitted from the Latin version we possess but which must have been contained in the Latin archetype of section one. The scribe who produced the manuscript from which S and the Ingulf Urtext derived must have shifted his eyes while transcribing article 10.1 from the phrase ad unciam which appeared before VIII den. in the Latin archetype down to the ad unciam which preceded IIII den.; he thus omitted the whole passage, which Hk retains, about wounds on covered parts of the body. That this passage should have appeared in the original wording of the article is highly probable since the law on which this regulation is apparently based, Alfred 45,⁵⁹ also includes it. In article 3.2 the scribe likewise omitted through haplography the figure XX sol., which appears to be correctly transcribed in Hk since the same fine is mentioned in article 3.1 and since 100 shillings is equivalent to twenty shillings plus four pounds, reckoning, as the work's composer generally did, at twenty shillings to the pound. Based on these observations, we can draw two significant conclusions: 1) Since exactly the same mistakes are made in I as in S, both texts must have derived, S directly and I by translation, from a common Latin ancestor; and 2) Because Hk preserves the full texts of articles 3.2 and 10.1, it must

⁵⁸ Liebermann, in Gesetze, I, 494, indicates that the sums given by S and I in chapter 2.2a are to be preferred over those in Hk.

⁵⁹ Attenborough, Laws of the Earliest English Kings, p. 87. Cf. also article 66.1, p. 91.

have been translated from the archetype itself or from an uncorrupted copy of the archetype.

These two statements imply that Hk and I were translated from different redactions of the Latin version of section one. Yet an examination of these two texts quickly reveals that, despite numerous isolated points of difference, they are on the whole two copies of a single French composition. Indeed if this were not true we would not be able to speak of a single 'French version' of the Leis as distinct from the 'Latin version' found in S. For the first twenty-eight chapters of the code, with the exception of the articles omitted from Hk, one can construct from Hk and I a common version, as Matzke does, allowing their differences to disappear into the variant readings at the bottom of the page. We must, therefore, add another conclusion to the two just drawn, namely,

3) The French texts, Hk and I, derived their common elements from a single French ancestor.

These three conclusions are, if not logically contradictory, at least inconsistent as guidelines for the construction of a stemma in which each element proceeds from a single ancestor on which it depended for its text. In particular, the Ingulf Urtext has been credited with two different exemplars, a Latin one from which it inherited the singularities shared by I and S, and a French one from which it derived the balance of its text. In this situation we must conclude that the manuscript tradition has been contaminated:

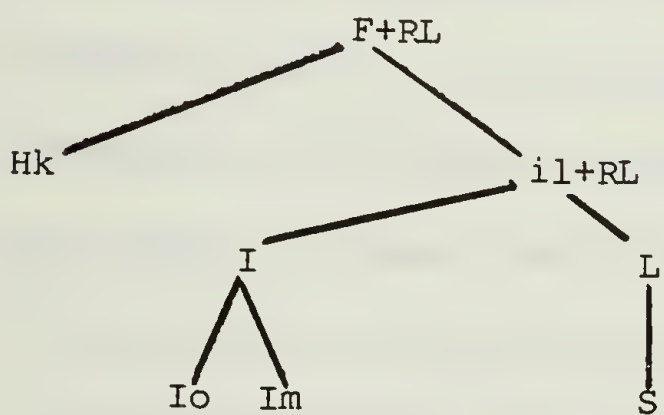
Contamination is revealed where the contaminated witness on the one hand fails to show the peculiar errors of its exemplar (having corrected them from another source), and on the other hand does exhibit peculiar errors of exemplars on which he does not in the main depend.⁶⁰

⁶⁰ Paul Maas, Textual Criticism, tr. by Barbara Flower, English edition (Oxford: Oxford University Press, 1958), p. 7. The book was first

If we take as I's exemplar the ancestor it shares with Hk, it is easily seen that I "fails to show the peculiar errors of its exemplar" since it contains articles omitted from Hk and presumably from Hk's model; but I does indeed exhibit peculiar errors which it must have derived from the ancestor it shares with S, for example the omissions in articles 3.2 and 10.1. As a result of this analysis we conclude that the stemma must necessarily account for instances of contamination, i.e. passages in which the scribe consulted more than one exemplar.

Before proceeding to describe a stemma that will incorporate our conclusions, we shall review the solutions proposed by others in order to see how they have dealt with the problems we have encountered. Matzke and Liebermann construct essentially identical stemmata which account for the relationships between I and S and between I and Hk. To do this they reject our fundamental premise that the first three sections of the code were composed in Latin, and as a result they have difficulty explaining why certain passages read more originally in the Latin version.

Liebermann's stemma is as follows:⁶¹



F=French archetype of the entire work
 RL="Rudimenta Latina", i.e. Latin passages in the text next to which French translations were supplied
 il=copy of F including the Rudimenta
 L=Latin translation of il with the RL transcribed in original Latin form
 I=Ingulf Urtext, copied without RL

"published in German under the title Textkritik in 1927 as Part VII of Gercke-Norden, Einleitung in die Altertumswissenschaft, Vol. I, 3rd ed. A second edition was published separately by the firm of B. G. Teubner of Leipzig in 1949, and a third edition in 1957," from which the English edition was translated.

⁶¹Liebermann, "Über die Leis Willelme," p. 123. Matzke's stemma appears in Lois, p. xxvii.

Liebermann conjectures that the law book was composed in French, but that certain passages, found mainly in section three but also including chapter twenty-five, were first introduced into F in Latin and provided with adjacent French translations; these Latin passages in the French archetype he calls "Rudimenta Latina."⁶² Hk's copyist transcribed only the French readings and ignored the Latin. The hypothetical MS. il was a copy, Liebermann says, of F which included the Rudimenta; from this text came I, the Ingulf Urtext, whose copyist reproduced only the French versions of the laws, and L, a Latin translation, whose translator copied the Rudimenta directly rather than the French translations next to them. This formulation accounts for a number of the peculiarities in the texts. Since Hk is an independent copy of F, it could easily show singular readings against I and S; and since I and L are copies of the same corrupt exemplar, which presumably suffered the omissions from chapters 3.2 and 10.1, they would be expected to exhibit common peculiar errors against Hk.

But there are serious drawbacks to this stemma. First, it conflicts with our conclusion that the first three sections of the code were composed in Latin. In this chapter we have presented numerous arguments supporting this position and have rebutted those adduced by Liebermann and Matzke to support their theory of a French archetype. Second, Liebermann's invention of the hypothetical Rudimenta Latina⁶³ introduces a highly improbable element into the stemma since it entails the existence

⁶²Liebermann, "Über die Leis Willelme," pp. 121-23; idem, Gesetze, III, 283.

⁶³Matzke, apparently unaware of the Latin version's resemblances to the Corpus Juris Civilis, did not incorporate any device similar to the Rudimenta Latina into his stemma. His explanation therefore fails to account for the superior Latin readings.

of not only a bilingual archetype, but also of bilingual copies of this archetype. It is certainly possible that copies of F intervened between it and il, and each intermediate copy and il as well had to include both the Rudimenta Latina and their French translations. Yet if I's copyist ignored the Latin in his exemplar, why did not il's copyist do the same? It would seem to be inherent in the nature of marginalia that they would disappear, either into the text or from the work entirely, when the next copy was made. This objection seriously weakens Liebermann's stemma, since without the Rudimenta Latina he cannot explain those passages in which the Latin version of the Leis reads more originally than the French version. Third, Liebermann follows Matzke in assuming that a Latin translator clarified and augmented many of the laws and reordered the chapters of il that he perceived to be out of place. We argued earlier in this chapter that it is simpler to postulate that a good Latin archetype existed which was shortened and corrupted by its French translators.

Richardson and Sayles too reject Liebermann's stemma, calling it a "figment of the imagination," and assert that the work was originally constructed from four independent sections written in Latin. In place of a stemma they offer the following description of the derivation of the texts:

The French translation found in the Pseudo-Ingulf obviously lies between an earlier translation of the first section and an imperfect Latin text, the ancestor of the Harleian manuscript. It looks as if a second translator added a translation to the second, third and fourth sections and then revised the translation of the first section to make it accord more or less with the defective text of the Latin he had before him. He even committed the absurdity of striking out a line or two from the French translation of chapter 10 because there had been a careless omission by the copyist of the Latin text.⁶⁴

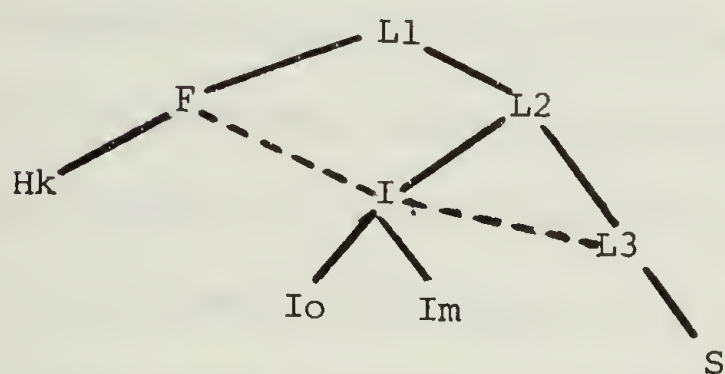
⁶⁴ Richardson and Sayles, Law and Legislation, p. 174.

These scholars believe that a number of the peculiarities in the texts originated when a French translation of the entire code was made by the author of the Ingulf Urtext. This author, they say, modified an existing translation of the first section to agree with an imperfect Latin version of the code which he possessed, and then appended to it translations of the latter three sections found in the Latin model. This contamination of the Ingulf Urtext as a result of the use of two different sources for the first section accounts for the omission of the passage from article 10.1, which the composer deleted from his French text since it had been accidentally dropped earlier from the Latin text. With this interpretation Richardson and Sayles incorporate their conclusion that the whole work was first composed in Latin into a scheme which explains in a general way how the two French texts were derived from the Latin archetype and its copies.

Two major objections can be raised against this theory. First, Richardson and Sayles suppose that the fourth section of the work was composed in Latin while, as we have already shown, there is reason to believe that it was originally written down in French. Second, their account lacks detailed explanations for several important idiosyncrasies in the texts, such as the inferior order of the chapters of the French texts, the omissions of articles 17a, 17b, 17.2, 17.3, 19, 19.1, and 20.4 from Hk and their inclusion in I, the process by which the French archetype of section four was incorporated into the code, and the origin of the rubrics in the Latin version. We propose to present an interpretation of the derivation of the texts which will take into account all the conclusions which we have drawn in this chapter and will, in particular, address the problems just mentioned that Richardson and Sayles do not discuss.

The explanation which we are about to give does, however, share two fundamental suppositions with the scheme suggested by Richardson and Sayles: the Ingulf Urtext is considered to have been contaminated, as we inferred earlier, by its author through the use of more than one exemplar for section one; and the work as a whole is regarded as a conglomeration of four independent sections which were not originally associated with one another. The diagram presented here is not, strictly speaking, a stemma;⁶⁵ rather than arranging the texts in an order which elucidates their relationships to a single archetype of the complete work, it attempts to trace the hypothetical process by which the original Latin version of section one was translated, augmented, and corrupted until a document twice as long finally emerged.

The derivation diagram, with explanations of the conjectural and lost elements, is as follows:



- L1=Latin archetype of section one
- F=French translation of L1
- L2=copy of L1 corrupt at least in articles 3.2 and 10:1, plus Latin archetypes of sections two and three
- I=Ingulf Urtext consisting of a French translation of L2 made with reference to F, plus the French archetype of section four
- L3=copy of L2 plus a Latin translation of section four, and original rubrics

In this reconstruction, the code originated as a Latin version of section one alone which was translated into French in hypothetical MS. F, the ancestor of Hk. The first French rendering had the correct text of articles 3.2 and 10.1 but suffered from the omissions which are characteristic of Hk's text. Like L1, it only included the first twenty-eight chapters

⁶⁵Maas, in Textual Criticism, p. 48, remarks that "where contamination exists the science of stemmatics in the strict sense breaks down."

of the work. To L1 were added the original Latin versions of sections two and three; this composite text is designated L2 in the diagram. As a result of a scribal error, L2 was corrupt in at least the omissions that S and I make from articles 3.2 and 10.1. Otherwise, however, it contained the articles which are lacking in Hk's text.

The text of I was composed mainly as a French translation of L2, but the translator used the existing text of F as a guide for the wording of the first twenty-eight chapters. He nevertheless preserved the peculiar omissions and additions of L2, and, in particular, translated the corrupt paragraphs of 3.2 and 10.1 from the Latin text, ignoring the extra words in F. For the articles in L2 missing in F and for the whole of sections two and three he supplied the first translation. One piece of evidence which corroborates this account is the existence of article 20.4 after chapter 38, that is at the end of section three, in I's text. Presumably the translator neglected this article while making his copy of the code and, having discovered his error, added the paragraph at the end of the work as it stood, that is after chapter thirty-eight. To this French translation of the first three sections the composer of I then added the French archetype of section four; he thus completed the French version of the code.

The author of the final Latin conjectural element, L3, copied L2's Latin text and added a Latin translation of I's section four. This manuscript thus contained a complete Latin text which was the ancestor of the version contained in S. At this stage too the copyist of the Latin text added the rubrics that are found only in S's rendering. Since this copyist had in front of him the French original of section four it is understandable that some of his rubrics bear an affinity, which

both Liebermann and Matzke notice, to the French text of the section.

This explanation is, of course, highly conjectural. It does, however, offer one possible account of how the surviving texts of the Leis Willelme, with all their peculiarities, might have come into being. It conforms to the conclusions reached earlier since it 1) postulates a Latin archetype for the first section; 2) explains the similarity of the texts of Hk and I by hypothesizing that the translator of I used F's text; 3) accounts for the common readings of I and S by deriving them from the same ancestor, L2; and 4) recognizes the better readings in Hk by deriving its ancestor, F, from the Latin archetype of the first section. The diagram also incorporates the conclusions concerning the original languages of the four sections of the code. Finally, it suggests the means by which I came to have article 20.4 after chapter 38, and why the Latin text is the only one to have rubrics. Because this description is able to account in some way for all the major idiosyncrasies that any stemma of the Leis Willelme must be able to explain, it is presented here as a possible solution to the problem of the origination of the texts of the law book.

CHAPTER V

THE DATE AND SIGNIFICANCE

OF THE LEIS WILLELME

In this concluding chapter we examine several arguments for the date of the Leis Willelme and apply their conclusions to the derivation diagram just presented. Our objective is to determine as nearly as possible the composition dates of the four sections and of the law book as a whole. The arguments to be reviewed are of two types: those based on philology that Matzke, Suchier, and Liebermann offer; and those based on English legal history that Liebermann, Pollock and Maitland, and Richardson and Sayles advance. Following this discussion we assess the significance of the code based on its character and date, questioning whether it is an authentic product of William's court or rather an unofficial work which may preserve some traces of his legislation. With this judgment our analysis of the Leis Willelme will be complete.

In chapter three we summarized the conclusions of Matzke's philological analysis of the language of Hk.¹ We noted there that Matzke undertakes a detailed examination of the phonology and morphology of Hk in which he compares its characteristics to those of a series of Old French texts dating from the twelfth and thirteenth centuries which are

¹Matzke, Lois, pp. xxxix-lii. Matzke's arguments were described on pp. 54 and 55.

arranged according to their composition dates. The comparisons are made in nineteen categories of linguistic traits including, for example, the form of the relative pronoun. Matzke observes that the Leis employs the nominative form ki and the accusative que, which matches the orthography that is found in manuscripts dating from the middle of the twelfth century. Older texts generally use chi and qui, while at the end of the twelfth century the form ke is found along with que, and in the thirteenth century ki and que are used interchangeably. Matzke's analysis reveals "that whenever the language of our text shows a striking resemblance to antecedent texts, these texts belong to the years that immediately follow the middle of the twelfth century," and he concludes that

one ought to place the composition of O [the French original] between 1150 and 1170. Perhaps one or two of the oldest traits permit us to regard the middle of the twelfth century as the definitive composition date. But we cannot assign an older date to the work based solely on philological considerations.²

These results apply, however, only to Hk. Matzke wished to establish the age of the common ancestor of Hk and the Ingulf Urtext, but chose to study only the language of Hk since he regarded it as a copy of a primitive version of the French text in which parts of chapter seventeen and all of chapter twenty were still lacking. Furthermore, Hk's text is far less corrupt than I's, which suffers in addition from mistakes in transcription made by the editors of its printed editions. Matzke felt that to analyse the language of the texts found in these printings involved too great a risk of error.

²Ibid., p. lii, my translation.

Hermann Suchier criticizes both Matzke's accuracy and his method of analysis in a review of the study.³ Suchier asserts that Matzke's statements about the characteristics of twelfth-century French are not always correct because he depended for his texts on carelessly produced editions instead of consulting the manuscripts of the works themselves. He cites five instances of what he believes to be inaccuracies in Matzke's presentation. Suchier also claims that the method used by Matzke to date the Leis Willelme's archetype is conceptually unsound:

Matzke errs if he supposes that he can fix the age of a medieval prose text from its archaic linguistic traits: the true date of composition cannot be ascertained in this way since the archaic characteristics only fix the point in time after which the text could not be composed. The possibility must also be considered that the Urtext contained still older forms which have been entirely effaced.⁴

Suchier objects not only to this method of dating the archetype but also to Matzke's assumption that an analysis of Hk's text alone would suffice to yield the desired information:

And furthermore Matzke only concerned himself in his investigation with the text of Hk and neglected the manuscripts (or printings) of the Pseudo-Ingulf. And yet the latter have preserved just as many archaic traits as Hk, only in the orthographic peculiarities of their writing.⁵

He cites several characteristics of the Ingulf texts which indicate that they were written before 1150 and indeed in the reign of Henry I, i.e. before 1135.

³ Hermann Suchier, in Literaturblatt für germanische und romanische Philologie, 22(1901), 119-121.

⁴ Ibid., p. 120; my translation.

⁵ Ibid.

Suchier pronounces Matzke's entire undertaking to be ill-conceived, but his judgment is surely too harsh. While it is true that a later copyist can efface the signs of an archetype, a composer can also deliberately employ archaic forms which would make his text appear older than it actually is; contrary to what Suchier says, the archaic traits do not necessarily determine the upper limit of a text's date. In addition, although it is regrettable that Matzke did not undertake a dating of the Ingulf printings, his results are still valid for Hk. Suchier's five criticisms, while noteworthy, do not substantially weaken Matzke's general conclusion, which appears to be based on sufficiently numerous criteria of judgment. Matzke's findings should perhaps be restated to reflect these qualifications the following way: the text of Hk exhibits the linguistic traits of the mid-twelfth century which may derive from Hk's immediate exemplar and perhaps even from the original of the French version of section one.

This judgment is corroborated by Suchier's own estimate of 1120-1170 and most likely 1130 for the date of the Leis Willelme's French version based on both Hk and I, which Liebermann reports Suchier communicated to him in a private letter in 1892.⁶ It is unfortunate that Suchier never published the particulars of his analysis. Liebermann too observes that there are numerous traits found in I's text which demonstrate that it was composed before 1150.⁷ He accepts Matzke's date of

⁶Liebermann, "Über die Leis Willelme," p. 126.

⁷Ibid., p. 127; Liebermann gives a list of the traits that he says point to the earlier date for the work's exemplar.

1150 for Hk and Suchier's date of 1130 for the ancestor of both Hk and I, but asserts that these data fix the upper boundary of the date of the exemplar's composition. The latest possible date, he says, is 1140, which seems to be an average of Suchier's and Matzke's figures,⁸ and he assumes that if we had the original in front of us it would exhibit many more archaic readings than are found in the surviving texts. Liebermann does this, however, without any cogent justification. Matzke and Suchier both claim to have determined the date of the exemplar of the French version, although Suchier's figures are perhaps more accurate for having taken into account I as well as Hk. While it is theoretically possible that the exemplar was composed much earlier than 1130 and had its archaic traits effaced through copying, there are no grounds to assume that this happened. What Matzke and Suchier have shown is that the common ancestor of Hk and I was probably written sometime after the middle of Henry I's reign and possibly as late as the middle of Henry II's.

There are, besides the philological arguments, considerations based on the history of English law which strongly influence the dating of the texts. Richardson and Sayles maintain that the references to justices of the king found in several passages (iustitiar. regis 2.1, iusticias regis 17.3, iusticiariis 22, iusticiarii 31) can only denote the traveling justices of either Henry I or Henry II:

The known facts of the evolution of the judicature in England make it impossible to believe that these passages were written before the institution of justiciarii totius Anglie, who visited the counties with some regularity, or before these visitations came to be regarded as a matter of course. On these grounds we might have to choose between the second half of the reign of Henry I and the second half of the reign of Henry II for the date of the tract--or rather the first section of it--but not

⁸Liebermann, "Über die Leis Willelme," p. 127.

between either of these periods and the reign of William II or the early years of Henry I. This conclusion is inevitable whether we regard the French or the Latin to be the original text.⁹

Liebermann agrees that these Latin references must be to the traveling justices, but he notes that the French version uses a singular noun justice instead of the Latin plural form, and seems to conclude that the French composition must therefore antedate the commencement of judicial eyres: "Where F speaks of a justice, in the sense of a royal judge or governmental official, L mostly employs the plural as in iusticiarii, 22, 31 and iusticias 17.3; this is hardly explainable before Henry II had inaugurated the traveling judges."¹⁰ Liebermann offers no justification for this assumption that the French singular form denotes a sedentary judge and the Latin plural form traveling justices. While the king's judges may have been more in evidence outside of London and the royal court once the eyres began, to guess that this would be reflected in the use of plural rather than singular forms in the Leis is not warranted; the difference could have resulted merely from the stylistic preference of a French translator. The corresponding phrases iustitiar. regis and la justice lu roi (ch. 2.1) in all probability refer to the same official, the king's judge in eyre.

Liebermann dates the origination of traveling justices to Henry II's reign, but Richardson and Sayles have shown that eyres commenced under Henry I as early as 1106, and, after the breakdown of central

⁹ Richardson and Sayles, Law and Legislation. p. 123.

¹⁰ Liebermann, "Über die Leis Willelme," p. 126; my translation.

authority under Stephen, were only resumed in 1166.¹¹ Based on this information they date the first section to the second half of Henry I's reign or the second half of Henry II's, but not in between, and there is no reason to reject their judgment. In terms of our derivation diagram this allows us to estimate the date of the Latin archetype of section one, L1, to be 1115-1135 or 1170-1190. Moreover, there is reason to believe that the earlier of these periods is the more likely since, as we noted in chapter one, the reign of Henry I is the great period of re-statement and adaptation of the old customary law especially under the guise of king Edward's legislation. Pollock and Maitland judge that the composer did not write the code "after the early years of the twelfth century; his statement of the old law seems too good to be of later date."¹² We might therefore restrict our date for L1's composition to 1115-1135. Furthermore, because one of the examples which Liebermann mentions as specifying the justices of the king, iusticiarii (ch. 31), occurs in section two we might also conjecture that these chapters too were composed after 1115.

A second argument of Richardson and Sayles concerns section three and the date of the introduction of Roman law into England. They assert that "there are good grounds for believing that no one in England could have written the romanesque section of the Leges Willelmi before the second half of the twelfth century, whether in Latin or in French...."¹³

¹¹ Richardson and Sayles, Governance of Mediaeval England, pp. 174-77 and 197-204.

¹² Pollock and Maitland, History of English Law, I, 102.

¹³ Richardson and Sayles, Law and Legislation, p. 122.

In support of this statement they recall that the first known Romanist came to England in the 1140s: "There is no evidence that Roman law was taught in England before Vacarius, who became a member of Archbishop Theobald's household not earlier than 1139 and probably some years later. It is also true that he was an established teacher at Oxford by 1149...."¹⁴ This Vacarius, born perhaps 1115 or 1120 and educated at Bologna in Roman jurisprudence, was persuaded to attach himself to the court of Theobald of Bec, the Archbishop of Canterbury from 1139 to 1161, and introduced the formal study of Roman law into England. He thus arrived in or after 1139 and may have lectured on Roman law while at Canterbury, and probably at Oxford beginning in 1149. He also composed the Liber Pauperum which "might be described as a condensed version of Justinian's Code illustrated by large extracts from the Digest."¹⁵ Thus, by 1150 the conditions existed in England in which a composer could have obtained a few bits of the Code and Digest like those found in section three of the Leis.

It is of interest to speculate how far back we might set this date at which fragments of Roman law may have been available to an English author. Although Vacarius came to Canterbury sometime after 1139, exactly when is unclear. Theobald was in Rome in 1139, 1144, and 1148, and might have arranged for Vacarius' employment on one of these trips. But the Archbishop was not free of the rivalry of Henry Bishop of

¹⁴ Ibid., p. 71.

¹⁵ Pollock and Maitland, History of English Law, I, 119. The work is also described in Paul Vinogradoff, Roman Law in Medieval Europe (1909; rpt. Cambridge: Speculum Historiale, 1968, from the 1929 edition), pp. 63-68.

Winchester for control of church affairs in England until 1145, and Stephen was firmly established as king only in 1143;¹⁶ we might surmise that not until the political and religious strife had subsided did Theobald have the opportunity to consider seriously inviting a Romanist to his court. Thomas à Becket entered Theobald's service sometime before 1143 and may have accompanied the Archbishop to Rome in 1143-44; John of Salisbury came to Canterbury too, perhaps between 1147 and 1150. Liebermann suggests that one of these scholars might have been responsible for inviting Vacarius to England.¹⁷ This evidence implies that Vacarius perhaps joined Theobald's household about the middle of the 1140s.

But the possibility that someone in England could have had an acquaintance, however rudimentary, with Roman law does not hinge solely on the presence of Vacarius. Canterbury itself may have been an incipient center of intellectual activity, including legal studies; Stubbs suggests "that the household of Archbishop Theobald, in the reign of Stephen, to some extent satisfied the want which was afterwards met by the University system."¹⁸ Liebermann, Vinogradoff, Pollock and Maitland, and Saltman all infer that Vacarius probably taught at Canterbury during

¹⁶ Avrom Saltman, Theobald, Archbishop of Canterbury (1955; rpt. New York: Greenwood Press, 1969), pp. 13-22.

¹⁷ F. Liebermann, "Magister Vacarius," The English Historical Review, 11(1896), p. 307.

¹⁸ William Stubbs, Seventeen Lectures on the Study of Medieval and Modern History (London: Henry Frowde, 1887), p. 163.

his residence there,¹⁹ and we might conjecture that others before him did the same. Richardson and Sayles, however, caution against attributing extensive scholarly activity to Canterbury at this early date since

it is not as a teacher that we must think of him [Vacarius] in Theobald's household. He was engaged as a man of affairs. It may be true enough that he put other members of the household in the way of learning something of Roman law: any such suggestion can be but guesswork....That Vacarius delivered formal lectures at Canterbury seems to us to be of all suggestions the most improbable. There is no hint that Canterbury was a centre of legal studies.²⁰

It is nevertheless still possible that some fragmentary knowledge of Roman law such as is found in the Leis Willelme could have been obtained at Canterbury in the 1140s, whether or not there were formal lectures on the subject or even a budding school of jurisprudence. That Theobald's household contained men of more than ordinary abilities is demonstrated by the fact that by 1150 Vacarius, Thomas à Becket, and John of Salisbury were all residing there.

John of Tilbury is another magister who was for some time in the service of Theobald and who, Richardson and Sayles surmise, was born about 1110:

It would follow that John of Tilbury learned his law in the 1130s and that he subsequently taught in schools where he was accorded the title of master. Where were these schools? Not in England certainly....The place, we suggest, was in all probability Bologna.²¹

¹⁹ Liebermann, "Magister Vacarius," p. 307; Vinogradoff, Roman Law, p. 63; Pollock and Maitland, History of English Law, I, 118; Saltman, Theobald, p. 166.

²⁰ Richardson and Sayles, Law and Legislation, pp. 71-72.

²¹ Ibid., p. 73.

Here we have the example of one Englishman who presumably found his way to Italy and studied law at Bologna in the decade before Theobald's accession to the archiepiscopate, and who later returned to England to enter the archbishop's service. It seems probable that others may have done likewise. Justinian's Digest is cited again in 1076 for the first time in the West, to our knowledge, since the end of antiquity, and the revival of Roman law is fully under way with the teaching of Irnerius at the beginning of the twelfth century. During this century Bologna was the unrivaled capital of legal studies to which students from all parts of Western Europe, including England, swarmed: "It is probable that during Theobald's time and for long afterwards those anxious to equip themselves as legisperiti went abroad if they had the means to do so."²² Richardson's and Sayles' apparent restriction of this phenomenon to the period after Theobald's accession is artificial and conflicts with their statement that John of Tilbury received his education during the 1130's. Although we have no solid evidence to guide us here, it seems reasonable that within a generation after Irnerius' celebrated teaching at Bologna word of it would have reached England and have caused some of the more curious (and wealthy) young scholars to journey to Italy. On their return they might have brought with them books or notes, either of which could have supplied those few paraphrases of passages from the Digest and Code found in the Leis. For this reason we conjecture that section three could have been written as early as 1130. To assign a date earlier than this to the section

²²Ibid., p. 72.

seems, however, to be totally unwarranted. To summarize these findings about the date of the Roman portion of the Leis we can say that the conditions necessary for its composition 1) possibly existed in the 1130's, 2) probably existed in the 1140s, and 3) certainly existed after 1150. We can therefore set the lower boundary of the section's composition at 1130-1150.

Section four is a French translation of parts of Cnut's code made, according to Suchier's analysis of its language, in the period 1120-1170, probably around 1130. Whether or not the language of the Ingulf texts is a modernization of some older archetype is impossible to ascertain. The work of translating Cnut's laws generally belongs, as we saw in the first chapter, to the reign of Henry I, and this period, 1100-1135, partially antedates and partially overlaps the lower part of Suchier's span based on philological methods. We might therefore guess that section four as found in the Leis was composed during the period 1120-1135, although it could possibly be a modernization of an older text written as early as 1100.

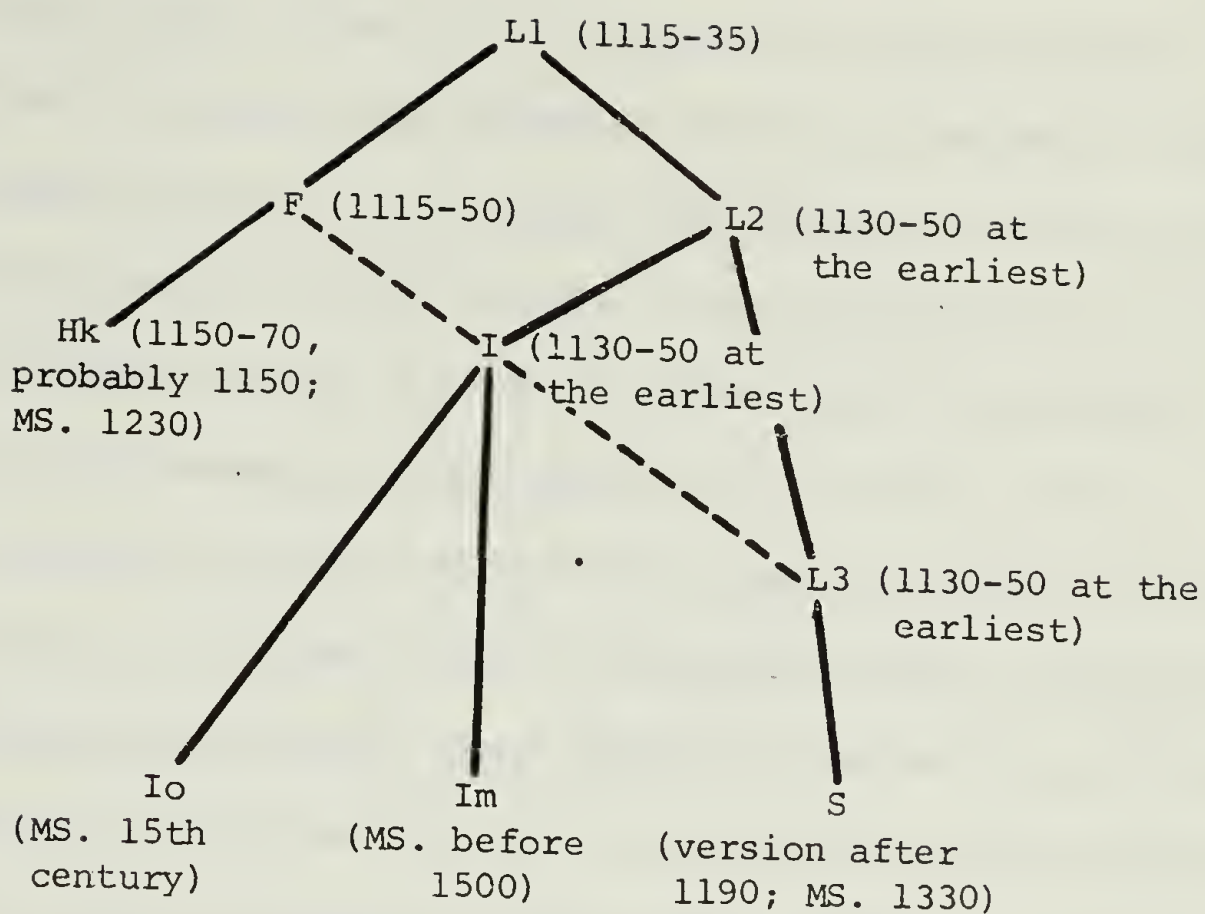
Based on this analysis we can deduce the following conclusions about the date of the elements in our derivation diagram:

1) L1, the Latin archetype of section one, was composed in the period 1115-1135.

2) From its use of iusticiarii (ch. 31) the code's second section might have originated as early as 1115. But the use of coloni and colendas (chs. 29 and 32) indicates that its author had some romanesque learning, so the section should be assigned to the period 1130-1150 at the earliest.

- 3) L2, the Latin copy of L1 with the archetypes of sections two and three appended, could only have been compiled in 1130-1150 at the earliest because of the Roman material in section three.
- 4) The Ingulf Urtext, I, could only have been made after L2 was assembled, hence during 1130-1150 at the earliest. This dating is consistent with Suchier's philological estimate of 1120-1170, probably 1130, for I's exemplar.
- 5) The French translation of section one, F, must have been made after L1 was composed (1115-1135), but before the composition of I (1130-1150 at the earliest) or Hk (1150-1170, probably 1150). It can thus be dated to the period 1115-1150.
- 6) L3, the complete Latin text, was compiled only after the French original of section four was added to I, hence after 1130-1150.
- 7) S, the Latin text of MS. Harley 746, reads in chapter 1 concessimus, a majestic plural which dates its version of the code to king Richard I's reign or later, hence after 1189. Its scribe must have changed an earlier form, such as concessi sunt. This is the only instance where the majestic plural is used in the Latin version.
- 8) Hk was dated by Matzke to 1150-1170, probably 1150.
- 9) Selden judged that Io was copied in the fifteenth century; Liebermann infers that Im was copied before 1500.

The derivation diagram incorporating this information is as follows:



We are now in a position to evaluate the significance of the Leis Willelme, and in particular to ask whether the code does indeed preserve the laws and customs that William granted to the people of England after the Conquest. One immediately obvious argument against the work's genuineness results from our conclusion that it belongs to the twelfth century. No part of the code is dated before 1115, and at least one of the sections originated in the period 1130-1150 at the earliest. The work as a whole could only have been completed during or after this period, more than forty years after the Conqueror's death. Thus, based on the dating arguments presented in this chapter, we cannot assign the code or any of its parts to William's reign or the generation following it.

It is also highly probable that two sections of the code are unrelated to any legislation the Conqueror may have promulgated. Section three, which is based on the Corpus Juris Civilis, certainly does not come from William's time since Roman law is only revived in Italy in the later eleventh century and not in England until the twelfth. Section four, which consists of excerpts from Cnut's laws, does not represent a conscious and characteristically Norman reworking of the earlier statutes but is rather merely a haphazardly chosen collection of them. Furthermore, the Leis lacks completely any mention of William's three genuine writs, which we discussed in chapter one. These observations indicate that the work's subject matter, like its date, gives us reason to doubt the attribution of the Leis to William.

The code's author seems, besides, to have had a confused understanding of the legal state of affairs following the Conquest. In the prologue to the Leis the leges et consuetudines that William granted to the English people are described as "eodem videlicet quas predecessor suus et cognatus Edwardus rex servavit in Anglorum regno." The author thus mistakenly believed William's laws to be identical with those that were observed under Edward the Confessor. This perhaps accounts for the omission of the Conqueror's writs, which the author may have considered innovations; by doing so he revealed his ignorance of Henry I's assertion in the coronation charter that pater meus eam [i.e. Lagam Edwardi] emendavit. But the composer also included regulations that obviously belong to the post-Conquest era, such as chapter twenty-two, which concerns the payment of murder fines by the Englishmen who fail to produce the murderer of a Frenchman killed in their hundred. This

identification of conditions before and after the conquest indicates that the composer lived long enough after the event itself to misunderstand the discontinuities it produced, and in particular, to accept the legend of Edward's legislative activity. This confusion about the legal situation that obtained during William's reign casts considerable doubt on the genuineness of the Leis.

Our inability to date the Leis to the eleventh century, the presence of clearly extraneous material in the code, and the author's faulty grasp of the effects of the Conquest on English law together constitute sufficient grounds for us to deny that the work is either a genuine compilation of William's laws or derived from such a document.

Liebermann agrees

that the Leis does not give us any trace of a law book of William's that is lost to us in its original language and is here only interpolated with Roman and other statutes. This follows for many reasons, in part already discussed: the lack of first-person and imperative language; the lack of a reference to the king's council in the prologue; the internal contradictions; the identification with the Confessor's laws; the omission of both reforming writs; and the preference for Mercian law. Also, it is hardly conceivable that the Quadripartitus, a compilation of royal legislation dating from 1114, and the many contemporaries who wrote about William's strong encroachments in law and government, would have been silent about a comprehensive law book of the Conqueror. Furthermore, we would find in the literature of the twelfth century, especially in the so-called Leges Henrici and Edwardi, longer and clearer parallels to the Leis if it were based on an authentic code.²³

Since the Leis Willelme cannot be considered an official compilation of William's laws we must conclude that it is a private work.

²³Liebermann, "Über die Leis Willelme," pp. 134-35; my translation.

We have shown that the Leis is not what the prologue claims it to be, a collection of Edward's laws that William granted to the English people after the Conquest, but rather some kind of private composition. This fact raises the possibility that the work may be a forgery. If we define a forgery as a document written intentionally to deceive a reader for profit or advantage, then two criteria must be met: we must demonstrate an intent to deceive on the author's part and a motivation for the deception. In the Leis the choice of subject matter is arbitrary and the arrangement illogical; no special bias is detectable. The work hardly seems calculated to gain its author profit or advantage; Stubbs remarks that "it is difficult to say what good it would do anyone to forge such a document...."²⁴ The code appears to have had no influence, fraudulent or otherwise, on the theory or practice of English law. Since neither of our criteria is satisfied we must infer that the Leis Willelme is not a forgery.

Despite the fact that the law book is a private work dating from the twelfth century, Liebermann believes that we can derive from it some information about William's actual laws. He maintains that where "the Leis agree in theme and tendency with the chroniclers or the Ten Articles we may suppose that, even in spite of differences in particulars, a true law of William lies underneath."²⁵ The following provisions are thought

²⁴ Stubbs, Lectures on Early English History, p. 47.

²⁵ Liebermann, "Über die Leis Willelme," p. 137.

by Liebermann to be vestiges of William's legislation: 1) the stipulations concerning warrantors for the sale of cattle, chapter 21; 2) the payment of Peter's Pence, chapter 17; 3) the protection of women, chapter 18; 4) the murdrum law, chapter 22; 5) the frankpledge statute, chapter 25; 6) the royal jurisdiction over the main roads, chapter 26; and 7) the protection of peasants, chapter 29.²⁶ Three other articles from section four cited by Liebermann are omitted here since the Ten Articles is used to confirm them as remnants of the Conqueror's laws. As we noted in chapter one,²⁷ this document was composed after 1110, perhaps as late as 1122, and shows signs of spuriousness. Since it is roughly contemporaneous with section one of the Leis and of doubtful authenticity, Liebermann's use of it to discover vestiges of William's statutes is of questionable value. Liebermann also surmises that some of the remaining material may consist of customary usages from the period 1090-1110.²⁸

These conjectures do not, however, really improve our knowledge of the Conqueror's supposed legislation. Liebermann uses statements from other sources to identify the remnants of William's laws in the Leis, which, he admits, probably do not reproduce the original laws' phrasing and may not even accurately summarize their provisions.²⁹

²⁶ Ibid., pp. 137-38.

²⁷ See pp. 10 to 13.

²⁸ Liebermann, Gesetze, III, 285.

²⁹ Liebermann, "Über die Leis Willelme," p. 137.

We cannot assume that the Leis articles are better versions of these statutes or that the reforms attributed to the Conqueror's reign were ever actually promulgated as statutes. All we can say is that a few provisions in the Leis are similar to practices that more reliable sources say William instituted. For instance, the Anglo-Saxon Chronicle declares that "the good security he made in this country is not to be forgotten.... And if any man had intercourse with a woman against her will, he was forthwith castrated."³⁰ Leis chapter eighteen concerns the same subject but adds nothing to the Chronicle's stipulation; article 18.1 probably derives from Alfred 25.1. An actual law need not be the source of the Leis chapter since it could merely be repeating the statement in the Chronicle.

Furthermore, the author of the Leis may not have known which of the statutes in his law book actually came from William's reign. We might surmise that the compiler of the first section collected together those legal maxims that appeared antiquated to him and took them to represent the laws that William granted and ruled by. This compiler was obviously misinformed about the post-Conquest legal milieu when he wrote section one in 1115-1135, and it seems probable that the regulations he gathered together only belong to the generation before his own. A person writing in the latter half of Henry I's reign might very well, on account of that king's innovations, have viewed statutes from the early part of the reign as outdated. We therefore conjecture that the oldest chapters in section one might date from as early as

³⁰Whitelock, Anglo-Saxon Chronicle, p. 164.

1090, although the statutes probably belong in general to Henry I's reign. The author, in compiling these unrelated and unorganized laws, probably had no idea which originated in William's time and which much later. It is not surprising that a few of the Leis articles recall practices already observed under the Conqueror that became customary usages, but it would be a mistake to suppose that the whole work or even its first section contains laws characteristic of the eleventh century.

We have concluded that the Leis Willelme is a private work executed in the first half of the twelfth century which consists of usages dating mainly from that period and excerpts from Cnut's code and the Corpus Juris Civilis. Even though it does not preserve Edward's laws as William confirmed them, it is valuable for three reasons. First, it helps us to assess the state of English law in the early twelfth century, when Old English law was giving way and the common law had not yet been established. It is, however, less useful for this than the Leges Henrici Primi, which is better organized and more comprehensive. Second, its third section provides us with some of the earliest references to Roman law in an English legal work. Finally, the Leis represents, in section four, a precocious instance of the use of the French language for written legislation.

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