

TREASON AND RELATED OFFENSES IN THE ANGLO-SAXON DOOMS*

IT HAS long been the accepted practice to begin the broader outline of British history with the Anglo-Saxon period, both in the textbooks and general histories. Although the treatment is frequently all too brief, this difficult epoch is dealt with competently in most of its major aspects despite the relative paucity of the sources. Monographs on the Anglo-Saxon era are fewer than one might suspect, though some of the more recent are notably good, and a few of the older have become almost classic even when modified by subsequent research. Still the primary emphasis has been social, economic, or literary. There are significant studies on parliamentary origins, the beginning of feudalism, the village community, the class structure, and the transmission of the classical and Christian heritages.¹ But in legal history the field is narrowed down markedly save for a few most distinguished contributions, despite the existence of a very considerable body of documentary sources of unusual richness and variety contained in the Anglo-Saxon Dooms.²

The Anglo-Saxon Dooms represent a unique development in Germanic legal history and are unlike the continental folklaws in many important respects. They are composed in the native tongue, Anglo-Saxon, for the most part, instead of in Vulgar Latin. They contain relatively few traces of the direct influence of Roman Law, although Roman ideas have been conveyed indirectly through ecclesiastical channels.

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They are not the completed work of a single legislator, but a series of enactments made by various kings from the seventh to the eleventh centuries. And, while they are unsystematic on the whole, they nevertheless constitute a fair representation of Germanic legal thought in a comparatively unadulterated form. It will not be the purpose of this study to analyze all matter relating to public law since, despite the admitted limitations in Anglo-Saxon studies, the Doms have been investigated more adequately than most of the other *leges barbarorum*.³ Such general considerations as the theory of a special royal interest and the king's peace are tentatively accepted without an extended analytical examination.⁴ The idea of a *scandal*, committed in violation of the royal peace, appears as early as the Doms of Aethelberht (d.617)⁵ where one reads that "if the king summons his freemen (*leode*) before him and anyone there does evil to them, let the offender make double compensation (*bot*) and fifty shillings besides to the king,"⁶ and "if the king feasts in a man's home and anyone there commits a wrong, let the offender make a double compensation."⁷ The royal protection extends not only over certain places, but over certain property and persons, as well. "If a freeman steals from the king, let him restore it nine-fold,"⁸ and "if anyone kills a man on the king's properties (*tun*), let him pay fifty shillings as compensation."⁹ Later in the century, this same general principle is evident in the laws of Ine which probably fall between 688 and 694. "If anyone fights in the king's house, let him forfeit his property and be at the mercy of the king to decide whether he shall live or not."¹⁰ A special ecclesiastical peace is also recognized,¹¹ together with the right of sanctuary, so that whoever is guilty of killing and flees to a church may keep his life and amend his crime according to law.¹²

Although high treason is not specifically mentioned in this legislation,¹³ the laws of Ine mark a distinct step in the development of the idea in Anglo-Saxon law. The earlier enactments of Aethelberht indicate plainly that royal displeasure was incurred by unruly conduct in the king's presence or by actions interfering with the royal business. All these crimes were repressed by very heavy fines. Nevertheless, they were amendable and may have been regarded as acts harmful to the general welfare quite as much as insults to the king. However, the idea was clearly emerging that certain crimes are unamendable and should be dealt with only by the king because they are in contempt (*oferhyrnes*, *overseunessa*) of the king.¹⁴ Thus, the royal peace came to include a class of crimes which were insulting to or in contempt of the king, and was no longer limited to specified persons, property, or places. The next stage in its evolution attaches obviously to the time when breaches of the peace become injuries to the person of the king, who personifies public authority. At that point *insult* and *scandal* shade into typical high treason. Little may be found in this early Anglo-Saxon legislation comparable to the provisions of the folklaws of the Germanic peoples on the continent for repressing offenses against the land and folk (*Landesverrat*). Ine declares that a man who has been accused of participation in a marauding expedition or raid (*hereteam*) may redeem himself only upon payment of his *wergeld*.¹⁵ Another law states that an attack upon a fortified residence must be compensated by a payment to the king, bishop, or other holder of the property thus assailed.¹⁶ Such laws indicate how offenses against the peace of king or bishop may be settled in the interest of the general welfare; and it is matters of this sort which become violations of the peace of the land and treason to land and folk when they are

unregulated and perpetrated irresponsibly without restraint at the whim of individuals. In this connection one law commands:

"If a *gesiðcundman*, who possesses land, absents himself from military services on a campaign, he shall pay 120 shillings and lose his land; a nobleman, who holds no land, shall pay sixty shillings; and a churl, thirty shillings as a fine for not accompanying the host."¹⁷

When one comes to the so-called Introduction to the Dooms of Alfred (871-900), treason is definitely recognized as an unamendable crime. Ecclesiastical influences evidently did much to give direction to the evolution of the crime and to give shape to the matured idea which was set forth as follows:

"They, then, ordained, out of the mercy which Christ had taught, that secular lords, with their leave, might, without sin, take for almost every misdeed, for the first offence, the money bot which they established; except in cases of *treason* against a lord, to which they dared not assign any mercy, because God Almighty adjudged none of them that despised Him, nor did Christ, the son of God, adjudge any to him who sold Him to death."¹⁸

It should be noted, however, that high and petty treason are not differentiated here, and that treason is not associated with the king's peace. In the main code of Alfred's Doms, the more purely Germanic ideas are evident, and the law establishes that it is necessary before all else that each man be faithful to his oath and pledge, and respect his contract.¹⁹ But, if anyone is compelled to do anything wrong thereby, be it the betrayal of his lord or aid in an unlawful undertaking, it is better that he break such an oath than fulfill it.²⁰ The old Germanic principles of fidelity are maintained in their complete integrity. Broken troth is the supreme offense, and is justified only in cases where keeping the oath leads to a

greater injustice or treason. The first detailed definition of treason in Anglo-Saxon law is contained in a famous enactment of Alfred:

"If anyone plots against the king's life, of himself, or by harboring outlaws or faithless men in the king's service, let him be liable in his life and in all that he has. 1. If he wishes to prove himself *true*, let him do so according to the king's *wergeld* (i.e., by an oath equal to the king's *wergeld*). 2. So, also, we ordain for all degrees, whether *ceorl* or *eorl*. He, who plots against his lord's life, shall be liable in his life to his lord, as well as in all that he has, or he shall prove himself *true* according to his lord's *wer*."²¹

Here high treason is specifically distinguished from petty treason; and the idea of conspiracy is emphasized over actual killing, as has been observed in many continental codes.²² The view advanced in this study is consistent with the position of Pollock and Maitland who hold that conspiracy is not based on any original Germanic tradition, but is borrowed from the Roman law of *maiestas*, especially the provisions which relate to plotting against the lives of the republican magistrates and later of the emperors.²³ Further they consider that no aspect of Roman Law was more likely to be adopted by the Germanic invaders of the Empire and the barbarian conquerors of the *provinciales* than this material concerning the crime of majesty. Hence, when the idea of conspiracy is first encountered in England in the legislation of Alfred, it may be presumed to have been imported from the continent, although one should not infer that the rulers of the barbarian kingdoms needed the formal example of the *lex Julia maiestatis* to impress upon them the importance of repressing plots and machinations against their lives. But, on the other hand, these authors hold rightly that "the close association of treason against the king with treason against one's personal lord who is not the king is eminently Ger-

manic. This was preserved in the 'petty treason' of mediaeval and modern criminal law."²⁴ And it is precisely this bond of personal faith and troth between a king and his *fideles* and between a lord and his vassals, this element of a contractual allegiance, that is not discernible in Roman Law where the relation between emperor and subjects rests upon a basis of deference and veneration.²⁵

An additional feature appears in this law which may be made the subject of dispute. This is the matter of a royal *wergeld* after the fashion of the ducal *wergeld* in Bavarian law.²⁶ As has been noted, the Introduction to Alfred's Dooms designates treason very definitely to be an unamendable crime, and this precludes the possibility of a *wergeld* payment, such as is suggested in Alfred c.4.1. The result is an apparent contradiction. Wilda pointed out in his *Strafrecht der Germanen* more than a century ago that a special *wergeld* was attached to the king, partly because of his descent from the first family of the land and partly because of the royal office vested in him. He, then, drew the distinction between the real *wergeld* belonging to the king through the circumstances of his exalted position and birth, and payable to his relatives, and the *cynebot* or *cynegyld*, which pertains to the kingdom and is paid to the folk.²⁷ But Wilda acknowledged that treason is an unexpiable offense, and he attempted to reconcile the situation by suggesting that such a *wergeld* could not be paid in cases where the king was struck down premeditatedly, but only where he was struck down in the heat of anger. In the latter instance, the offense cannot be construed as real treason. Thus, Wilda seems to discriminate here much along the line of the difference that distinguishes murder (*morð*) from ordinary homicides in Germanic law. Also he clearly differentiates the person of the king from the

office of king. This would make the determination of treason very much a matter of intent, and this is a most dangerous rule to apply to a crime whose scope tends to widen constantly, as well as a very awkward precedent to attach to the foundations of the English Common Law. Wilda further suggested that in cases of acknowledged treason it is possible that the people or the king's successor might allow the offender to redeem himself by paying the royal *wer* which, however, would be so large an amount that very few could pay it. Hence, the crime would be virtually unamendable in practice. The higher *wergeld*, he continued, was not so much the basis as the consequence of a higher law and a higher fine attached to the king, and this higher law partook of the nature of a special peace.²⁸ All crimes committed against the king must be amended by a heavier fine than in the case of anyone else, and were punished in a higher degree without being regarded as high treason.²⁹ This argument establishes some validity for the *wergeld* and proves equally that such a *wergeld* could not be offered ordinarily in restitution for plotting against the king's life, as set forth in Alfred c.4. Furthermore, a careful reading of the law shows that nothing is said that a man may redeem himself upon payment of the royal *wergeld*. It merely states that if a man wishes to clear himself, prove that he has been faithful, and is wrongfully charged with the crime, he must do so in accordance with some weighty method of proof equated to and corresponding with the scale of the royal *wergeld*. In other words, the defendant must have more compurgators or successfully pass a more difficult ordeal. It is not at all a question of allowing a guilty man to escape with the payment of "blood-money" or a fine.³⁰

Very little additional legislation on treason appears in

Alfred's Dooms. Scandals in the royal palace are repressed by a law stating that if anyone fights or draws his weapon in the king's house, the king may kill him, or let him live provided he wants to forgive him.³¹ The culprit is thus placed completely at the king's mercy. Similar special ecclesiastical peaces are established³² which prohibit stealing from churches³³ and maintain the right of asylum and sanctuary.³⁴ There are no laws specifically directed against *Landesverrat* although penalties are provided for attacks on fortified posts (*burhbryce*),³⁵ and an enactment in the Introduction establishes the death penalty for parricide.³⁶

Additional legislation relating to treason appears in the laws of Aethelstan, Edmund, and Edgar of the early tenth century. Aethelstan (*ca.* 925-39) commands that those accused of plotting against their lords shall hold their lives forfeit if they cannot purge themselves or come clean from the triple ordeal.³⁷ Punishment is also prescribed for breaches of the ecclesiastical peace.³⁸ And for the first time in Anglo-Saxon law, penalties are provided for the crimes of moneyers, a fact which would indicate the increasing influence of the Roman law. Aethelstan demands that "there be one money in the whole realm, and let no one mint money except in a town."³⁹ Furthermore, if a moneyer is found guilty, he shall lose the hand with which he fashioned the illegal coin, but if he wants to clear himself, he must submit to the ordeal of the hot iron and redeem the hand with which he is charged with having wrought the false.⁴⁰ This crime is not associated with treason by Aethelstan, but it was to resume the connection, which it possessed formerly with that crime in the Roman law, in the later compilations of Glanvill and Bracton.⁴¹ In a law of Edmund, the special peace and rights of sanctuary of churches and certain royal forts are affirmed.⁴² Edgar

commands that the lives of those who have plotted the death of their lords shall never find safety in any refuge unless the king grants them protection.⁴³ He, too, ordains that there shall be but one money throughout the realm, and no one shall refuse it.⁴⁴

The Dooms of Aethelred develop more fully the laws concerning the coinage. Thus, one reads:

"Let every moneyer, who shall be accused that he has wrought false after it has been forbidden, go to the triple ordeal, and, if guilty, let him die. And no one shall have a moneyer save the king."⁴⁵

"And moneyers, who make counterfeit in the forests, shall forfeit their lives unless the king show them mercy."⁴⁶

The laws reiterate the necessity for "improving the coinage, so that there shall be one money throughout the land without counterfeit."⁴⁷ The seriousness of these crimes becomes evident when one notes that the penalty is death and that the accused has to clear himself through the triple ordeal.⁴⁸ It will be observed that these are practically the same regulations prescribed for cases of high treason, so that crimes of falsification and treason are now associated through identical procedure and penalties.

"If any one plots against the life of the king, let him forfeit his life, and if he will purge himself, let him do so according to the king's *wergeld* and with the triple ordeal following the English law."⁴⁹

"And, if any one plots against the life of the king, let him forfeit his life and everything he has if it be proved against him, and if he will and can purge himself, let him do so with the hardest oath or with the triple ordeal according to the law of the English, or according to the law of the Danes, as the case may be."⁵⁰

But in general, little is added to the definition of high treason established in Alfred c.4. Besides the matter of counterfeiting mentioned above, other features of Aethelred's Dooms are

certain distinct references to *Landesverrat*. The general principle is stated that the king's subjects should willingly undertake the repair of fortified posts and bridges, and provide for the equipment of the royal navy and perform the duties of military service, since those are matters promoting the general welfare (*for gemænelicre neode*).⁵¹ Military crimes detrimental to the common weal are punished as follows:

"If anyone leaves the army without permission, when the king is with the army, let it be at peril of his life and all his estate; and whoever deserts the army when the king is not present shall be fined 120 shillings."⁵²

"If any one leaves the army without permission, when the king is with it, he shall imperil his estate."⁵³

Desertion, at a time when the king is accompanying the host, is plainly designated a more serious offense than desertion under other circumstances. Perhaps, this may be explained on the ground that desertion in the former instance might imperil the king's life, and therefore could be constructed as a sort of high treason. Finally, a law is established protecting the navy, which states that any one harming a public warship must pay a fine, and if he destroys it so that it cannot be used, he must recompense the damage in full.⁵⁴ In addition, he must pay the *mund-bryce* to the king for breaking the peace. The entire realm is considered to be in the royal *mundium* or under the king's protection, and since the king personifies public authority, he is responsible for the maintenance of the general welfare. Thus, in a large measure, the king's peace and the peace of the land are identified. But traces of the original distinction remain in the compensation to the people which is kept separate from the special fine to the king.

The Dooms of Cnut of the eleventh century constitute, perhaps, the most fully developed body of Anglo-Saxon law. High treason is punished by death and confiscation of property: "If anyone shall plot the death of the king or of his lord in any way, let him forfeit his life and all that he has, unless he purge himself by the triple ordeal."⁵⁵ The idea of *scandal* emerges in a law stating that "if anyone fights in the king's household, he shall lose his life, unless the king shows him mercy."⁵⁶ Other laws are directed against the more general, undifferentiated type of treason which may be either high treason against the king or petty treason against a lesser lord. Thus, one reads that "Whoever plots the death of his lord shall ever be in danger of his life."⁵⁷ And in another place, the ancient Germanic idea of *infidelity* is stressed instead of the Roman idea of *conspiracy* or plotting that becomes so common in the later Anglo-Saxon Dooms. "Infidelity toward one's lord (*hlafordswice*) is unamendable (*botleas*) according to the secular law," and is associated with the crimes of house-breaking (*husbryce*), arson (*bærnet*), open theft (*open ðyfð*), and manifest killing (*æbere morð*) which is undeniable.⁵⁸ Another enactment prescribes penalties for a crime resembling the Frankish *herisliz*.

"The man who flees from his lord, or from his comrade, by reason of his cowardice, be it in the *ship-fyrd* or in the *land-fyrd*, shall forfeit all that he possesses and his life as well; and let his lord seize the property and the land that he (the lord) previously gave him; and, if he have *bocland*, let that pass into the hands of the king."⁵⁹

"But the *heriots* of the man, who falls in battle before his lord, be it within the land or abroad, shall be remitted; and his heirs may inherit his land and property, and justly divide it among themselves."⁶⁰

Landesverrat is not as carefully defined. The general principle is stated that one should willingly participate in

the repair of forts and bridges, and the mobilization of the navy and army, as often as the general welfare or common need requires it.⁶¹ But, if any one neglects the performance of these duties, he shall pay a fine of 120 shillings to the king, or he may clear himself.⁶² However, if any one causes a capital breach of the peace (probably homicide) in the king's army, he must lose his life or redeem it by the payment of his *wergeld*; but if he merely makes a minor breach of the peace (less than a homicide), he shall be fined according to what he has done.⁶³ Finally, those who become outlaws shall be at the king's mercy, and if they possess *boc-land* (i.e., held by title-deed), it shall pass into the hands of the king regardless of the question whose vassal they are.⁶⁴ A special law states the penalties for counterfeiting:

"Whoever makes counterfeit shall lose the hand with which he did the crime, and he may not redeem it with silver or gold or in any way. If he claims that the reeve gave him leave to commit the crime, let the reeve clear himself by a three-fold oath (probably requiring 76 compurgators), and let him suffer the same doom as he who wrought the false 'money.'"⁶⁵

This extension of the law is clearly intended to prevent the connivance of public officers with counterfeiters, and shows how vital the king considered his policy of maintaining a single coinage throughout the realm. The introductory portion of Cnut's Doms consists of ecclesiastical regulations supporting the special peace attached to churches and clergymen. One enactment possesses unusual interest because it seems to define what the relation should be between ecclesiastics and their lords, and suggests a considerable trend toward feudalism as reflected in the personal relation between lord and vassal.

"We (ecclesiastics) believe that we should always be faithful and true to our lords, and that we should exalt their glory

among all men and do as they wish us to do, because, whatever we do in just fidelity to our lords, may redound to our great advantage; and, surely, God is true to him who is rightly true to his lord. And, likewise, every lord has the very great duty that he treat his men justly."⁶⁶

Finally, as the Anglo-Saxon period drew to its close, the tendency becomes apparent that the royal power is drawing a wide variety of offenses relating to public order and the general welfare into the special area of the king's peace. A brief summary of such crimes is contained in the *Leges Henrici Primi*, a late compilation, probably of the earlier twelfth century, based on the Dooms of Cnut and other similar materials.⁶⁷ Among the pleas, placing a man at the mercy of the king, are listed: breach of the peace, established by the king; contempt for the royal writ; whatever is done to injure the king's person or whatever is done in contempt of his commands; the killing of royal servants or agents in a city, or in a castle, or wheresoever they happen to be; infidelity and treason; disrespect to the king; holding a castle without royal permission; outlawry; and whoever does these things shall be held accountable to the king's law, and if he have *boc-land*, it shall pass into the king's hands; theft, if proved, shall merit death.⁶⁸ And, again, among the criminal or capital cases are named: theft, murder, treason to one's lord, robbery, outlawry, house-breaking, arson, and counterfeiting.⁶⁹ But securing control over whole classes of crimes was a slow process, and the royal peace long remained an attribute peculiar to specially designated and limited geographical areas, or to specially designated persons and property. The tenor of the following laws will substantiate this assertion:

"If anyone shall commit homicide in a house, or in a courtyard, or in a town, or in a castle, or in the army, or in the

host of the king, let him be at the king's mercy in life, limb and property."⁷⁰

"And if anyone shall assault another on the king's highway, which is the crime called *forestel*, let him pay one hundred shillings to the king."⁷¹

Besides, this code continues that "Whoever fights in the king's house shall pay with his life,"⁷² and "whoever breaks the peace in the host shall lose his life and compound with his *wergeld*."⁷³ In addition, "Let counterfeiterers lose a hand and redeem it in no wise";⁷⁴ "Whoever shall flee because of cowardice from his lord or companion in arms, whether in war by land or by sea, shall lose all that he has and his life besides, and his lord shall take back for his own the land and property which he gave him, and if it be *boc-land*, it shall rightfully fall to the king."⁷⁵

In conclusion, one cannot fail to be struck by the fact that the Anglo-Saxon Dooms, although written in a native Teutonic tongue and filled with purely Germanic legal ideas, contribute little to the general conception of treason and related offenses that has not already been encountered in the continental folklaws. The peculiar royal *wergeld* is only incidental to the study of treason and finds a close parallel in Bavarian law. The penalty for deserting the host, heavier when the king accompanies it than when he is absent, creates an interesting situation associating typical high treason and typical *Landesverrat* in a single crime; yet it has a modified counterpart in the Frankish *herisliz*. The strictly Germanic idea of *infidelitas* persists in Anglo-Saxon law, even in the most recent legislation as the Dooms of Cnut attest, but the early definition of high treason in the laws of Alfred considers the essence of the crime to be conspiracy. The bond of fealty is always respected despite the incorporation of Roman concepts. However, as Pollock and Maitland assert,

"A Roman element entered when men began to hear a little of the *crimen laesae maiestatis*. Less emphasis was thrown upon the idea of betrayal, though such terms as *traditio*, *proditio*, *sedition* are always pointing back to this,— and plotting against the king's life or the lord's life became prominent."⁷⁶ Nevertheless, the term *maiestas* is not used, and there seems to be no more reason to believe that the Anglo-Saxons understood that Roman conception better than their continental neighbors.⁷⁷ It is true that high treason consists in plotting the death of an individual who is the bearer of public authority, a king with executive powers far stronger than the ancient Germanic royalty that "ruled but did not govern." But the Anglo-Saxon king can hardly be considered to personify governmental authority in a regularly constituted state, for it was an age "becoming feudal," in which a ruler tended to be *dominus* as well as *rex*. The ruler's constitutional position was gravitating away from the pole of *sovereign majesty*, which, of course, no Anglo-Saxon king had ever attained, toward the opposite pole of mere *dominium*. And it is difficult to allocate his position exactly, or measure his progress along this course with precision in the Anglo-Saxon period. The uncertain, even precarious, condition of the state is evident when one observes that it was still a time of outlawry and special peaces (*paces*). In an effort to secure the general welfare, the king was endeavoring to attract all particularly destructive and disruptive offenses into his special interest and special field of competence. Therefore, it must be given as a final opinion that the Anglo-Saxon Dooms differ in no essential respect as regards the sphere of public criminal law from the Germanic legislation on the continent, despite considerable evidence of Roman influence and Christian purpose.

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NOTES

1. Among the most useful background books I should recommend F. M. Stenton, *Anglo-Saxon England* (Oxford: Clarendon, 1943), and R. H. Hodgkin, *A History of the Anglo-Saxons*, 2 vols. (Oxford: Clarendon, 1935). For valuable older studies on the Anglo-Saxon period, see H. M. Chadwick, *Studies on Anglo-Saxon Institutions* (Cambridge: University Press, 1905); F. W. Maitland, *Domesday Book and Beyond* (Cambridge, 1897); F. Seebohm, *The English Village Community* (London, 1883), and *Tribal Custom in Anglo-Saxon Law* (London, 1902); Sir Paul Vinogradoff, *The Growth of the Manor* (London, 1905); *English Society in the Eleventh Century* (Oxford: Clarendon, 1908); *Villainage in England* (Oxford, 1892); Edward A. Freeman, *The Growth of the English Constitution* (London, 1872); and *The History of the Norman Conquest of England*, 6 vols. (Oxford: Clarendon, 1867-79). On Anglo-Saxon letters, see E. S. Duckett, *Anglo-Saxon Saints and Scholars* (New York: Macmillan, 1948) and G. K. Anderson, *The Literature of the Anglo-Saxons* (Princeton University Press, 1949).
2. The standard indispensable treatises on English law are Fred. Pollock and F. W. Maitland, *History of English Law before the Time of Edward I*, 2 vols. (2nd ed., Cambridge: University Press, 1898), especially I, 25-63 on Anglo-Saxon Law; Sir William Holdsworth, *A History of English Law* (4th ed., London: Methuen, 1936), II, 3-118, on Anglo-Saxon Antiquities (449-1066); Sir James Fitzjames Stephen, *A History of the Criminal Law of England*, 3 vols. (London, 1883), especially I, 51-74; Bishop William Stubbs, *The Constitutional History of England* (5th ed., Oxford: Clarendon, 1891), I, 39-314.
3. The most nearly definitive text of the Anglo-Saxon Dooms may be found in F. Liebermann, *Die Gesetze der Angelsachsen*, 3 vols. (Halle, 1903-16) with the Anglo-Saxon texts, German translation, and Glossary. There is also the older, but still useful, *Die Gesetze der Angelsachsen* by Dr. Reinhold Schmid (2nd ed., Leipzig, 1858) with Anglo-Saxon and Latin texts and German translation, and *Ancient Laws and Institutes of England* by B. Thorpe (folio, Public Records Commission, 1840) with the Anglo-Saxon and Latin texts, English translation, and Glossary. Thorpe's rendering into English is inadequate in many respects and is now generally supplanted by two very useful recent works: F. L. Attenborough, *The Laws of the Earliest English Kings* (Cambridge: University Press, 1922), and A. J. Robertson, *The Laws of the Kings of England from Edmund to Henry I* (Cambridge: University Press, 1925) which contain the edited Anglo-Saxon texts, an adequate English translation, and exten-

- sive notes in commentary upon the various specific laws.
4. The position of the king in his relation to the peace of the land is succinctly stated by Stubbs, *op. cit.*, I, 200: "When the king becomes the lord, patron and *mundborh* of his whole people, they pass from the ancient national peace of which he is the guardian into the closer personal or territorial relation of which he is the source. The peace is now the king's peace, . . ." although this concept of a *national peace* is rejected by J. Goebel, *Felony and Misdemeanor* (New York: Commonwealth Fund, 1937), I, 7-25, 37-38, 327-335, 423-440. Also cf. Stubbs, *op. cit.*, I, 193-206, on power of the king and special royal peace, and Aethelberht, c.1, on ecclesiastical peace.
 5. Cf. *Leges Visigothorum* (ed. Zeumer), 2, 1, 8 and 9, 2, 8; *Edictus Rothari* (ed. Bluhme), 35-40.
 6. Aethelberht, c.2. The *leode* are comparable to the Frankish *leudes* and the later *barones* of the feudal age.
 7. Aethelberht, c.3.
 8. Aethelberht, c.4.
 9. Aethelberht, c.5. *Tun* may mean a hamlet or small village.
 10. *Ine*, c.6.
 11. *Ine*, c.6,1.
 12. *Ine*, c.5.
 13. In general, for treason and related public offenses in early English law, see Pollock and Maitland, *op. cit.*, II, 462-511, on "Felony and Treason," which is an almost definitive treatment of the subject within the range under consideration; also Stephen, *op. cit.*, I, 53-59. In addition, see F. Liebermann, *op. cit.*, Glossary in Vol. II (first half) on *hlafordswice* (p. 116); Vol. II (second half) on *Hochverrat* (pp. 510-11); also notes on particular laws in Vol. III; and R. Schmid, *op. cit.*, on *hlaford-searu* (p. 612) and on *fyrð* (p. 587).
 14. Holdsworth, *op. cit.*, II, 48-49. The expression *ofer-hirness*, *ofer-hyrnes* "contempt," in the Anglo-Saxon Dooms corresponds to *overseunessa* (*ofer-seweness*) in the *Leges Henrici Primi*. The term, *overseunessa*, is very probably a corrupt rendering by an Anglo-Norman scribe. Numerous similar corrupt Norman renderings of Anglo-Saxon terms appear in the Latin text of the *Laws of Henry I*.
 15. *Ine*, c.15.
 16. *Ine*, c.45. Attack upon or breaking into a fortified post, residence, or premises is termed *burg-bryce*.
 17. *Ine*, c.51. Such a fine is designated *fyrð-wite*.
 18. *Alfred*, Introd., 49. Cf. Thorpe, *op. cit.*, p. 26.
 19. *Alfred*, c.1.
 20. *Alfred*, c.1,1.

21. *Alfred*, c.4; 4,1,2. Cf. Hodgkin, *op. cit.*, II, 604.
22. Cf. *Ed. Roth.*, 1; *Leges Saxonum*, 24; *Leges Baiuvariorum*, 2,1; *Leges Alamannorum*, 23. See Pollock and Maitland, *op. cit.*, II, 503, 504, who, in speaking of the contrast between Roman Law and early English Law, observe that "the crime was in this case (treason) found, not in a harmful result, but in the endeavour to produce it, in machination, 'compassing,' 'imagining.' The strong feudal sentiment claimed as its own this new idea; the lord's life, as well as the king's, is to be sacred against plots or 'imaginings'"; also Brunner-von Schwerin, *Deutsche Rechtsgeschichte*, Vol. II (2nd ed., Leipzig, 1928), 884, n. 26; F. S. Lear, "The Idea of Majesty in Roman Political Thought" in *Essays in History and Political Theory in Honor of Charles Howard McIlwain* (Harvard University Press, 1936), p. 196, n. 97, regarding intent and conspiracy in the Roman Law; *Codex Justinianus*, 9, 8, 5. *Ad Legem Iuliam Maiestatis*, and *Codex Theodosianus*, 9, 14, 3 *Ad Legem Corneliam de Sicariis*, for the principles of the *Lex Quisquis*.
23. Cf. *Digest*, 48, 4, 1, 1 *Ad Legem Iuliam Maiestatis*; Paulus, *Sententiae*, 5, 29, 1-2 *Ad Legem Iuliam Maiestatis*; Glanvill, 14, 1.
24. Pollock and Maitland, *op. cit.*, I, 51-52.
25. In general, on the problem of allegiance in barbarian law, see F. S. Lear, "Contractual Allegiance vs. Deferential Allegiance in Visigothic Law," *Illinois Law Review*, XXXIV (1940), 557-566; *McIlwain Essays*, pp. 168-198.
26. Cf. *L. Baiuw.*, 2, 20, 1-5.
27. W. E. Wilda, *Geschichte des deutschen Strafrechts*, I (Das Strafrecht der Germanen) (Halle, 1842), pp. 990-991; Brunner-von Schwerin, *op. cit.*, II, 884-885.
28. Cf. Wilda, *op. cit.*, I, 258-264; 460-472.
29. *Ibid.*, 991: "Das höhere wergeld war nicht sowohl der Grund, als vielmehr die Folge des höheren Rechtes und der höheren Busse, die dem König eigen waren, welches höhere Recht den Charakter eines besonderen Friedens annahm, . . . Alle Missethaten gegen den König begangen, mussten daher schwerer gebüßt werden, als gegen irgend einen andern, waren in einem höhern Grade strafbar, ohne dass sie als Hochverrath angesehen wurden."
30. Pollock and Maitland, *op. cit.*, I, 52: "The crime of treason was unatonable, and the charge had to be repelled by an oath adequate in number of oath-helpers, and perhaps in solemnity, to the wergild of the king or other lord as the case might be. If the accused could not clear himself by oath, and was driven to ordeal, he had to submit to the threefold ordeal." Cf. *ibid.*,

II, 503, n. 6: "In old times the king had a *wergild*, but before we draw inferences from this we must remember both that a *wergild* was exacted when the slaying was unintentional, and that the price set on the king was no less than £240. Hardly in any case could such a sum be raised, except when the death of the king of one folk could be charged against another folk, as when Ine obtained a heavy sum from the men of Kent for the death of Mul."

31. *Alfred*, c.7.
32. *Alfred*, c.5.
33. *Alfred*, c.6.
34. *Alfred*, c.2 and 5.
35. *Alfred*, c.40.
36. *Alfred*, *Intro.*, c.14.
37. *Aethelstan*, c.2,4.
38. *Aethelstan*, c.2,5.
39. *Aethelstan*, c.2,14.
40. *Aethelstan*, c.2,14,1.
41. Cf. *Glanvill*, 14,7; *Bracton*, f. 119b; *Britton*, I, 41; *Fleta*, p. 42.
Also cf. *Codex Justinianus*, 9, 24, 2 *De Falsa Moneta*.
42. *Edmund*, c.2,2.
43. *Edgar*, c.3,7.
44. *Edgar*, c.3,8.
45. *Aethelred*, c.3,8.
46. *Aethelred*, c.3,16.
47. *Aethelred*, c.5,26; 6,32,1.
48. Cf. *Edgar*, c.1,9: "the iron, for the triple ordeal, 3 pounds weight, and for the single ordeal, one pound weight."
49. *Aethelred*, c.5,30.
50. *Aethelred*, c.6,37.
51. *Aethelred*, c.5,26-27; 6,32,3 (*trinoda necessitas*).
52. *Aethelred*, c.5,28.
53. *Aethelred*, c.6,35. Here mention of death penalty is omitted conspicuously.
54. *Aethelred*, c.6,34.
55. *Cnut*, 2,57.
56. *Cnut*, 2,59; *Leges Henrici Primi*, 13,7; 80,1-2; 80,7.
57. *Cnut*, 2,26; *L.H.P.*, 75,1-2.
58. *Cnut*, 2,64. Cf. *L.H.P.*, 12,1: *Quedam non possunt emendare, quae sunt: husbryce et bænet et open ðyfð et æbere morð et hlafordswice et infraccio pacis ecclesie vel manus regis per homicidium. It should be noted that these crimes are related through common characteristics, being alike unfaithful, treacherous, dishonorable, and deceitful.*
59. *Cnut*, 2,77; *L.H.P.*, 13,12; 43,7.

60. *Cnut*, 2,78. One might use, "be it on land or at sea," as a possible alternative reading for "be it within the land or abroad."
61. *Cnut*, 2,10.
62. *Cnut*, 2,65; *L.H.P.*, 13,9.
63. *Cnut*, 2,61; *L.H.P.*, 13,8.
64. *Cnut*, 2,13.
65. *Cnut*, 2,8,1-2. Cf. *L.H.P.*, 1,5; 13,3.
66. *Cnut*, 1,20.
67. See Stephen, *op. cit.*, I, 51-52, on the authenticity and significance of the *Leges Henrici Primi*.
68. *L.H.P.*, 13,1.
69. *L.H.P.*, 47.
70. *L.H.P.*, 80,1.
71. *L.H.P.*, 80,2.
72. *L.H.P.*, 13,7.
73. *L.H.P.*, 13,8.
74. *L.H.P.*, 13,3.
75. *L.H.P.*, 13,12. Cf. *L.H.P.*, 43,7.
76. Pollock and Maitland, *op. cit.*, II, 503.
77. Cf. F. S. Lear, "Blasphemy in the *Lex Romana Curiensis*," *Speculum*, VI (1931), 445-459, regarding the absence and omission of the expression *maiestas* from the barbarian codes. Further consideration is given to this problem in my study on "The Public Law of the Visigothic Code" which is forthcoming in *Speculum*.