Introduction to the Paperback Edition

This reprinted edition of Dorothy Whitelock's *Anglo-Saxon Wills*, first published by the Cambridge University Press in 1930, forms part of a series of three volumes containing texts and translations, with commentary, of the corpus of surviving vernacular charters from Anglo-Saxon England. Whitelock's *Wills* followed Florence Harmer's *Select English Historical Documents of the Ninth and Tenth Centuries* (Cambridge, 1914), and was itself followed by Agnes Jane Robertson's *Anglo-Saxon Charters* (Cambridge, 1939; 2nd ed., 1956). As explained in the reprint of Harmer's *Select English Historical Documents*, the series had been conceived by Hector Munro Chadwick, Elrington and Bosworth Professor of Anglo-Saxon in the University of Cambridge (1912–41); and it was completed, after the war, by Harmer's *Anglo-Saxon Writs*, published by Manchester University Press in 1952 (reprinted in 1989). A multi-volume edition of the entire corpus of charters – each volume of which presents the charters formerly preserved in the archives of a particular religious house (or group of houses) – is now in progress, published under the auspices of the British Academy–Royal Historical Society Joint Committee on Anglo-Saxon Charters (Oxford, 1973–). The new edition includes charters which have been brought to light in the past fifty years, and incorporates more detailed discussion of each text in its appropriate contexts.

Whitelock's *Anglo-Saxon Wills* (1930) contains texts and translations of nearly 40 records. As may be seen from the Concordance below, Whitelock did not include wills which were already available in 'modern' editions, whether in *Crawford Charters*, ed. Napier and Stevenson (1895), or in Harmer's *Select English Historical Documents* (1914); she also omitted certain texts which one might have expected her to include, apparently because they had been earmarked for Robertson's *Anglo-Saxon Charters* (1939). Nor did she cover any of the wills which survive only as Latin texts, known to have been derived from vernacular originals now lost. There are good examples of such Latin texts from Ely and Ramsey abbeys, which in themselves throw light on the production and use of written wills in the later Anglo-Saxon period; and since so many of the wills in Whitelock's volume are from the archives of Bury St Edmunds, it is helpful to be reminded in this way that they were once more widely distributed. The most spectacular *addition* to the corpus since 1930 remains the will of Æthelgifu, preserved in single-sheet form from the archives of St Albans, which came to light in

1939 and of which Whitelock published a separate edition, with detailed commentary, in 1968; the vernacular texts of two more wills, also (as it happens) from the archives of St Albans, came to light more recently.

The surviving wills are best approached in the context of Anglo-Saxon land law. After a period of unfolding complications in the seventh and eighth centuries, an essential distinction had emerged by the end of the ninth century between 'folkland' and 'bookland', which remained in place thereafter until the Norman Conquest. Folkland was land held in accordance with customary or 'folk' law, subject to a range of worldly burdens (including renders to the king, and provision of military service), and not alienable outside the kindred (its descent being governed by laws of inheritance now all but unknown). Bookland was land held on privileged terms, in accordance with a 'book' (or charter): *freed* from the worldly burdens which were incumbent upon folkland (with the exception of three forms of military service), and *alienable* in perpetuity to anyone of the holder's choosing. Bookland was created, from folkland, by act of the king and his councillors, at a royal assembly, on which occasion the charter would be handed over to the new owner of the land, to serve thereafter as the title-deed for the estate in question; bookland could also be converted by act of the king and his councillors back into folkland. An estate of bookland, once created, could be given or sold to another person, or to a religious house, by the handing over of the original charter, or title-deed, in the presence of witnesses, for example at a local assembly; so the charter itself was essential evidence of title, and if a charter was lost in a fire, or fell into the wrong hands, or was stolen, trouble could follow. A king, any other layman, or a religious house might wish to lease some part of their property, including holdings of bookland, to other parties, as loanland, on terms decided between them; and under certain circumstances such arrangements were bound to give rise to further complications.

A person of substance would hold some of his (or her) land as folkland, some as bookland, and might also hold loanland from another person or from a religious house; but, of its nature, only the bookland was alienable by will. A man thus needing to make provision in the event of his death for the disposition of his bookland, and for the disposal of his moveable possessions (weapons, livestock, precious items, etc.), and to provide also for the good of his soul, might make prior arrangements (e.g. for burial and commemoration) with a religious house, and would then declare his wishes in the presence of witnesses. It was the oral declaration, before wit-

nesses, which constituted the legal act; but under conditions which came to prevail in the tenth century, when a man's estates were often quite widely dispersed, it must have become all the more necessary to make a record or records of the declaration in writing, so that the terms of a will could be transmitted to and read out at a local (or higher) assembly, and so that copies could be retained thereafter by interested parties.

All of the wills edited in Whitelock's volume date from the tenth and eleventh centuries, and in certain respects represent a development from ninth-century documents of the same kind (some edited in Harmer's volume, and some in Robertson's). Examination of ninth-century wills which survive in single-sheet form throws light on the circumstances in which such documents were produced, revealing (for example) that the drafting and then the witnessing of the documents might be conducted in separate stages or on separate occasions: a will drawn up in the first instance as a record of an oral declaration was then seemingly submitted to an assembly, whereupon the names of witnesses were added (Harmer, nos. 2 and 9). We learn from King Alfred's will (Harmer, no. 11) that the will of his father, King Æthelwulf, had been read out at a royal assembly in the early 870s, and that when making what proved to be his own last will, some years later, Alfred recovered and destroyed copies of earlier wills. In the tenth and eleventh centuries it appears to have become the practice for a will to be declared orally, presumably (although not always explicitly) in the presence of witnesses; for a written record to be made on that occasion, sometimes (though not always) in two or three copies (as the parts of a bi- or tripartite chirograph), for purposes of wider publication (and security); and in this way for its substance to be made known at a local or royal assembly, as part of a process whereby permission was sought from the appropriate authority that the will might stand. In any one case, we might see just a glimpse of the circumstances in which a will was made. In the 930s, a thegn called Wulfgar seems to have repaired to a nearby royal estate so that his will could be set down on parchment (Robertson, no. 26). Later in the tenth century, we encounter two men in different contexts who made their respective wills on falling ill: Ælfheah of Wouldham, who sought help from Archbishop Dunstan (Robertson's *Charters*, no. 41), and Siferth of Downham, who sought help from the Abbot of Ely (*Libellus Æthelwoldi*, ch. 12); and in both cases, the procedure evidently involved the production of a tripartite chirograph. In another case (c. 1000), Wulfgeat of Donington asked his friend Æthelsige 'to make this known to my lord

and to all my friends' (Whitelock, no. 19). Most remarkably, we learn in the case of Æthelstan, eldest son of King Æthelred the Unready, how when the atheling lay dying he received his father's permission to make his will, as he saw fit (Whitelock, no. 20). In this case, a surviving copy of the will, on a single sheet of parchment, is the top part of a chirograph, started by one scribe and completed by another, and subsequently preserved at Canterbury; a second part of the chirograph went to Winchester (copied in the twelfth-century *Codex Wintoniensis*); and a third, perhaps, was retained by Æthelstan. Another single sheet, apparently a contemporary copy (with a wrapping tie), appears to represent a further stage in the process of publication, and like the first came to be preserved at Canterbury; a fourth copy, preserved at Winchester, may also in its existence reflect the process of publication. One imagines, in effect, that practices varied according to the circumstances. In the early 1040s a certain Thurstan gave his land at Wimbish, in Essex, to Christ Church, Canterbury, to take effect after the death of his wife; the document is extant in two versions (in each case as the top part of a tripartite chirograph), with significant differences (Whitelock, no. 30). A year or two later Thurstan made a long and detailed will, beginning with the bequest of Wimbish, but extending much further; interestingly, the will incorporates separate lists of witnesses, in Norfolk, Suffolk, Cambridgeshire, and Essex, and was again issued as a tripartite chirograph, one for Bury St Edmunds (Whitelock, no. 31), one for Ely, and one retained by Thurstan in his own household.

The varied interest of these documents requires little further advertisement. A charter or title-deed for an estate of bookland, in the form of a royal diploma in Latin, represents an act of a king and his councillors at a royal assembly, and is of interest for its own sake (as a record of that assembly), and in relation to other diplomas of the same king or the same period. A will, on the other hand, opens a window into the life of a person seen in the context of his family, friendships, and associations, caught in the act of devising a strategy, with a view to the hereafter, for the disposal of his holdings in bookland, and other chattels, and perhaps involving matters which would prove contentious (and which might lead to challenges). There are documents here which are suffused with the significance of the testators themselves: the will of Theodred, bishop of London (no. 1), the will of Ælfsige, bishop of Winchester (no. 4), the will of Ealdorman Ælfheah (no. 9), the will of Ælfric, archbishop of Canterbury (no. 18), and the will of the ætheling Æthelstan (no. 20). There are testators who gain in

significance when their wills are examined more closely, such as Æthelric of Bocking, in Essex (no. 16), and Wulfric Spot, founder of Burton abbey in Staffordshire (no. 17). There are documents which form the component parts of complex stories, notably the wills of (Ealdorman) Ælfgar (no. 2), of his daughter Æthelflæd (no. 14), and her sister Ælfflæd (no. 15). Yet no less telling, in their different ways, are the wills of all those of lesser degree, ending with the will of Siflæd, made when she was about to go across the sea (Whitelock, no. 38; cf. no. 37), and the will of Ulf and Madselin, made when they were about to set out for Jerusalem, uncertain that they would ever return (Whitelock, no. 39).

The wills themselves are rarely dated, and part of the challenge in making full and effective use of such documents for historical purposes lies in identifying the persons and places mentioned, and in establishing their apparent date or period of issue. In some cases, there may be a need to question a judgement or an identification made by Whitelock in 1930. Much hangs on the identification of Ælfgifu (no. 8), who may or may not have been the wife of King Eadwig, and who may or may not have been the sister of Ealdorman Æthelweard. The will of Brihtric and Ælfswith (no. 11) is here dated 'between 973 and 987'; but it is arguable that it was made before the death of King Edgar in 975. The will of Archbishop Ælfric (no. 18) is here dated '1003 or 1004', though a better formulation might be 'after the translation of Wulfstan from London to York, in the late summer or autumn of 1002, and before Ælfric's death on 16 November 1005'. The will of Æthelstan atheling (no. 20) is here dated '1015', on the basis of a later endorsement; but it can be shown on internal evidence, interpreted in the light of Canterbury and Winchester necrologies, to have been drawn up on 25 June 1014. Such refinements of chronological detail might seem trivial; but in each of these cases, and in others, the exact dating of the document has potentially significant historical implications.

A guide to scholarly discussion of each document is provided in the revised and updated version of Peter Sawyer's *Anglo-Saxon Charters: an Annotated List and Bibliography*, available online in the form of the 'Electronic Sawyer' (see below).

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CONCORDANCE

In the table below, each document in Whitelock's *Anglo-Saxon Wills* is assigned its number in Peter Sawyer's *Anglo-Saxon Charters: a Revised List and Bibliography* (1968), available online in a revised and updated form at www.esawyer.org.uk (the 'Electronic Sawyer'). The number of a charter in the relevant volume of the new edition of the corpus, published under the auspices of the British Academy, is also given where possible.

Abbreviations

Abing	*Charters of Abingdon Abbey*, ed. S. E. Kelly, 2 vols., AS Charters 7–8 (Oxford, 2000–1)
Bath	*Charters of Bath and Wells*, ed. S. E. Kelly, AS Charters 13 (Oxford, 2007)
Burt	*Charters of Burton Abbey*, ed. P. H. Sawyer, AS Charters 2 (London, 1979)
BurySt E	*Charters of Bury St Edmunds*, ed. Katie Lowe and Sarah Foot, AS Charters (forthcoming)
CantCC	*Charters of Christ Church, Canterbury*, ed. Nicholas Brooks and S. E. Kelly, 3 vols., AS Charters (forthcoming)
CantStA	*Charters of St Augustine's Abbey Canterbury*, ed. S. E. Kelly, AS Charters 4 (Oxford, 1995)
CrawChart	*The Crawford Collection of Early Charters and Documents now in the Bodleian Library*, ed. A. S. Napier and W. H. Stevenson (Oxford, 1895)
LE	*Liber Eliensis*, ed. E. O. Blake, Camden 3rd ser. 92 (London, 1962)
LondStP	*Charters of St Paul's, London*, ed. S. E. Kelly, AS Charters 10 (Oxford, 2004)
Pet	*Charters of Peterborough*, ed. S. E. Kelly, AS Charters 14 (Oxford, 2009)
Roch	*Charters of Rochester*, ed. A. Campbell, AS Charters 1 (London, 1973)
StAlb	*Charters of St Albans*, ed. Julia Crick, AS Charters 12 (Oxford, 2007)
WinchNM	*Charters of the New Minster, Winchester*, ed. Sean Miller, AS Charters 9 (Oxford, 2001)
WinchOM	*Charters of the Old Minster, Winchester*, ed. A. R. Rumble (forthcoming)

Whitelock	Sawyer	Archive	*Summary of content*
1	1526	*BurySt*E	will of Bishop Theodred
2	1483	*BurySt*E	will of [Ealdorman] Ælfgar
3	1539	uncertain	will of Wynflæd
4	1491	*WinchNM* 18	will of Bishop Ælfsige
5	1524	*WinchOM*	will of Ordnoth and his wife
6	1496	*WinchNM* 21	bequest by Æthelgeard
7	1512	*WinchOM*	will of Brihtric Grim
8	1484	*WinchOM*	will of Ælfgifu
9	1485	*WinchOM*	will of Ealdorman Ælfheah
10	1498	*WinchNM* 25	will of Ealdorman Æthelmær
11	1511	*Roch* 35	will of Brihtric and Ælfswith
12	1505	*WinchNM* 29	will of Æthelwold
13	1487	*Westminster*	will of Ælfhelm Polga
14	1494	*BurySt*E	will of Æthelflæd
15	1486	*BurySt*E	will of Ælfflæd
16/1	1501	*CantCC* 136	will of Æthelric of Bocking
16/2	939	*CantCC* 137	confirmation of Æthelric's will
17	1536	*Burt* 29	will of Wulfric Spot
18	1488	*Abing* 133	will of Archbishop Ælfric
19	1534	Worcester	will of Wulfgeat
20	1503	*CantCC* 142 + *WinchOM*	will of the atheling Æthelstan
21	1538	*Bath* 21	will of Wulfwaru
22	1495	*LondStP* 22	will of Æthelflæd
23	1523	Thorney	will of Mantat
24	1527	*BurySt*E	will of Thurketel
25	1528	*BurySt*E	will of Thurketel Heyng
26	1489	*BurySt*E	will of Bishop Ælfric
27	1537	*BurySt*E	will of Wulfsige
28	1490	*BurySt*E	will of Ælfric Modercope
29	1521	*BurySt*E	will of Leofgifu
30	1530	*CantCC* 166	bequest by Thurstan (two versions)
31	1531	*BurySt*E	will of Thurstan
32	1535	*CantCC* 176	will of Wulfgyth
33	1516	*BurySt*E	will of Eadwine
34	1519	*BurySt*E	will of Ketel
35	1499	*BurySt*E	will of Bishop Æthelmær
36	1529	*BurySt*E	bequest by Thurkil and Æthelgyth
37	1525	*BurySt*E	will of Siflæd (one version)
38	1525	*BurySt*E	will of Siflæd (another version)
39		*Pet* 27	will of Ulf and Madselin

Supplementary texts

	Sawyer	Archive	*Summary of content*
Vernacular texts included in other editions			
CrChart 9	1522	Westminster	will of Leofwine (dated 998)
CrChart 10	1492	Exeter (ex Crediton)	will of Bishop Ælfwold
Harm. 2	1482	*CantCC* 70	will of the reeve Abba
Harm. 10	1508	*CantCC* 96	will of Ealdorman Alfred
Harm. 11	1507	*WinchNM* 1	will of King Alfred
Harm. 20	1504	*WinchOM*	will of Ealdorman Æthelwold
Harm. 21	1515	*WinchNM* 17	will of King Eadred
Rob. 3	1500	*CantCC* 39a	will of Æthelnoth, reeve
Rob. 6	1510	*CantCC* 78	will of Badanoth Beotting
Rob. 9	1514	*Roch* 23	will of Dunn
Rob. 17	1513	*WinchOM*	bequest by Ceolwynn
Rob. 26	1533	*WinchOM*	will of Wulfgar
Rob. 27	1509	*WinchNM* 11	bequest by Alfred
Rob. 32	1506	*CantCC* 121	will of Æthelwyrd
Vernacular texts discovered since the publication of Whitelock's 'Wills'			
	1497	*StAlb* 7	will of Æthelgifu
	1517	*StAlb* 15	will of Eadwine of Caddington
	1532	*StAlb* 13	will of Wulf
Selection of Anglo-Saxon wills known only from Latin abstracts			
	1502	*CantStA* 38	bequest by Æthelric Bigga
		Ely (*Libellus*, ch. 12)	will of Siferth of Downham
		Ely (*Libellus*, ch. 38)	will of Eadric the Long
		Ely (*LE* ii. 59)	will of Æthelgifu of Thaxted
		Ely (*LE* ii. 60)	will of Leofwine, son of Æthulf
		Ely (*LE* ii. 61) + Ramsey	will of Ælfwaru of Bridgeham
		Ely (*LE* ii. 64)	will of Æthelflæd
		Ely (*LE* ii. 66)	will of Uvi of Willingham
		Ely (*LE* ii. 68)	will of Æthelric
		Ely (*LE* ii. 81)	will of Godgifu
	1520	Ely (*LE* ii. 88)	will of Leofflæd, wife of Oswig
		Ely (*LE* ii. 89)	will of Lustwine and Leofwaru
	1493	Ramsey	Ærnketel and Wulfrun
	1503a	Ramsey	will of Æthelstan Mannessune
	1518	Ramsey	will of Godric

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ANGLO-SAXON WILLS. Edited with translation and notes by DOROTHY WHITELOCK, M.A., Allen Scholar of the University of Cambridge; sometime Marion Kennedy Student of Newnham College. 1930.

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COMMENTS ON THE WRITINGS KNOWN AS ANGLO-SAXON WILLS

THROUGH Miss Whitelock's skilful editorship some of the most important private documents of the later Anglo-Saxon age have been made easily accessible to scholars. Not only are these scattered documents, written in Anglo-Saxon, now ready to hand; they are illumined both by the editor's faithful translation and by her learned notes. Especially by means of the notes, which are based on much painstaking research, the 'wills' have been placed in their environment of time and place; and, in addition, they have been minutely explained as evidences of the growth of Anglo-Saxon as a living language. Miss Whitelock has taken pains to give us information as to the sources from which the wills in their present form have been derived; and she has also dealt with some of the diplomatic problems raised by the documents. She has made, in fact, a most welcome and valuable addition to our knowledge of a part of that priceless heritage of documents in which so much of Anglo-Saxon social, legal, and institutional history is enshrined.

While these present writings, by the accepted terminology of scholars, bear the name of 'wills', they are not wills in the later juridical meaning of that term. The true will is not only a unilateral written disposition of property to take effect on the death of the testator; it possesses also the qualities of revocability and ambulatoriness; and, in addition, it names an executor. While the germs of one or more of these features of the later will are to be found in some of these Anglo-Saxon documents, no one of them possesses all the requisite qualities. They are in fact the predecessors of the will; and as such they are of great interest to the student of legal history. They picture to us, among other things, some of the earlier stages of the growth of testamentary power. For a long time the claims of kindred and lords had to be reckoned with: and in the documents now before us we can watch certain features of that long process whereby men

ultimately acquired the right freely to alienate their property by 'last will and testament'.

These documents are not wills; and, moreover, they are not even the actual gifts, the dispositions, made by the donors. The gifts as found in the documents are of varied character; but the one that is most distinctive and general is the gift *post obitum*. The donor says: 'I *give*...*after* my death'; or he says: 'I *give*... *after* my death and the death of X and Y'; or he uses a formula similar to these. One of the main problems in regard to Anglo-Saxon wills is to find the correct interpretation of gifts which are thus phrased, strangely enough it may well appear to us, both in the present and in the future tense. However this problem may be resolved—and to that we shall return—the writings are only the evidence, the documentation, of these gifts; they are not the gifts themselves. Nor is there any line of distinction to be drawn between writings which evidence death-bed gifts *mortis causa* and the writings which evidence gifts *mortis causa* made by persons in full health and with no thought of death. In both cases the dispositive act of giving *mortis causa* is an oral and formal act; and this act, done before witnesses, is one which needs no documentation to make it valid and binding in the law. The transaction itself, the juristic act, is complete without the writing. The writing, in other words, is not a document combining in itself both dispositive and evidentiary qualities; it is merely an evidence-document[1]. The making of the oral or nuncupative will is evidenced by living witnesses; it is also evidenced by a parchment upon which the scribe has reproduced the oral will. Living witnesses forget and die; a documentary witness, a written *testimonium*, never forgets and never dies[2].

This view as to the character of the Anglo-Saxon 'will' may seem strange to the man of to-day who rightly regards the modern will as a dispositive instrument; but, if he be surprised, let him but project his mind into the early periods of Roman and Germanic legal development. In those far-off times men concluded

[1] On the distinction between these two types of documents, see Bresslau, *Urkundenlehre*, pp. 44, 45.

[2] It may, however, be lost or destroyed.

their legal transactions in oral speech and by the use of forms and symbols[1]; and only by gradual processes of change did they come to employ dispositive and evidentiary documents[2]. The Anglo-Saxons inherited the legal traditions of Germanic peoples on the Continent; and, like those peoples, they adopted Graeco-Roman writings, under ecclesiastical influence, and at the same time transformed them to suit their own purposes within a native Germanic environment of oralism, formalism, and symbolism. The Anglo-Saxon documents, and not least of all our so-called wills, must be studied, therefore, in their relation to these characteristics of Germanic legal transactions before early custom had been touched by Romanic practices. The introduction of documents based on Graeco-Roman models did not displace the oral, formalistic, and symbolical features of Germanic legal transactions in the England of pre-Conquest times. While they received written instruments as a new feature of their legal life the Anglo-Saxons did not use them in all respects as the later Romans had used them; on the contrary, in the process of adopting them, they adapted writings to the requirements of their own native customary transactions in the law of contract and property. Early Germanic custom demanded that these transactions be not only capable of being heard and seen, but that they be actually heard and seen[3]; and, hence, spoken words and manual acts that were formal and symbolical dominated the law in regard to the formation of contracts and the conveyance of property. Nor were these features of primitive Germanic custom absent in the case of Anglo-Saxon transactions of legal import. They ruled, not least of all, the gift of property *mortis causa*.

The Anglo-Saxon 'will', as contained in a writing, generally

[1] See von Ihering, *Geist des römischen Rechts*, II, 2, 5th ed. §§ 43–47 *d*, for a brilliant illumination of transactions in early Roman law. On early Germanic law, see Heusler, *Institutionen des deutschen Privatrechts*, I, §§ 11–19; Schröder, *Lehrbuch der deutschen Rechtsgeschichte*, 4th ed. §§ 11, 35, 61; von Amira, *Grundriss des germanischen Rechts*, 3rd ed. §§ 69–71.

[2] On the use of writings by Germanic peoples, see Heusler, *op. cit.* § 19; Schröder, *op. cit.* § 33; von Amira, *op. cit.* § 71; Brunner, *Zur Rechtsgeschichte der römischen und germanischen Urkunde* (bibliography, pp. xiii–xvi). Bresslau's *Urkundenlehre* gives valuable information on the diplomatic aspects of the development.

[3] Von Amira, *op. cit.* § 70.

embraced a number of these gifts, both of land and chattels, to a variety of lay and ecclesiastical persons; it was in fact, if one may use the term, a bundle of gifts *mortis causa*. The document which tells us of this bundle of gifts possessed, however, a unity of its own; not only did it assume one or another of the several diplomatic forms known to the age, but it had relations to other documents, more particularly the land-book[1]. If for a moment, therefore, we look not at the separate gifts mentioned in the written will, but if we keep our eyes on the instrument itself and view it in its entirety as a documentary unit, we shall gain clearer notions as to the diplomatic and juridical nature of the writing which contains the gifts and is known as the will. But, while looking on the writing as a unit, we should not consider it in isolation. Not only ought we to study its relation to other instruments of the time, such as the land-book; we should also envisage the writing in its environment of custom in respect of oral, formal, and symbolic transactions in general[2]. It is only by applying these methods in our study of the written will that we can see this documentary entity in its true light. It is not the will itself; it is only evidence of the will.

There are indeed clear indications in these writings described by historians as wills, and there are further and valuable proofs in other legal sources of the age, that the will itself, the act in the law, is oral; and that, while in some instances this jural act appears to be unilateral, in most cases at least it is bilateral and is in fact a contract between the donor, or *quasi*-testator, and one or more of the principal donees. Even when the will appears to be unilateral it may be doubted whether, in the majority of instances, this is truly the case. Wills in Anglo-

[1] The relation of the written will to the land-book will be considered briefly in later paragraphs.

[2] For aspects of this environment in Anglo-Saxon times, see Pollock and Maitland, *History of English Law*, 2nd ed. I, pp. 25–63; Holdsworth, *History of English Law*, 3rd ed. II, pp. 56–118. Similarly, the English writ-system, a written formalism, can be understood only by studying it in its relation to the traditional oral formalism in procedure which it supplanted; and the nature and purpose of written pleadings can be grasped only by considering them in their historical relation to the oral pleadings which they displaced.

Saxon times, as in contemporary Germanic law on the Continent[1], are *donationes irrevocabiles post obitum*; and the reason why they are irrevocable is because the donor has contractually promised by the making of his will, by the conclusion of a transaction *inter vivos*, that on his death the donees are to have conveyed to them the properties which form the subject-matter of his gift[2]. When, therefore, the will as embodied in the writing appears to be unilateral it is nevertheless, in most instances, based on a contract, express or implied, with one or more of the donees. Even when it can be shown that the will is truly unilateral the gift *mortis causa* is but a promise; it is a promise which can only be fulfilled *post obitum*. The Anglo-Saxon oral will, viewed as an entity, is only one of the several species of the great genus Gift[3]; and many of the gifts of that genus are not present gifts, but promises to give. In the Germanic Gift contract and conveyance are in truth closely interwoven; but in that species known as the *donatio post obitum* contract predominates. The complete *donatio* is composed of two jural acts: the gift-

[1] See Heusler, *op. cit.* II, §§ 195–199; Brunner, *Grundzüge der deutschen Rechtsgeschichte*, 5th ed. § 57; Brissaud, *History of French Private Law* (Continental Legal History Series), §§ 486–513.

[2] The burning of his former wills by King Alfred is clearly an exceptional case, owing to the fact that the *quasi*-testator is the King himself; and this instance cannot be cited as proof that wills were in general revocable in Anglo-Saxon times. For King Alfred's will, see Harmer, *English Historical Documents of the Ninth and Tenth Centuries*, No. XI, pp. 15–19. It is to be observed, moreover, that King Alfred refers in his will to the fact that when he made his earlier wills he had "more money and more kinsmen." It would seem that the death of certain kinsmen, who were donees under his former wills, was one of the chief reasons why he revoked these and made a new will. Whether *quasi*-testators in general could revoke their wills, and, if so, only in the event of the death of donees, must be left an open question. Attention may be drawn to five instances in the present collection where the donor seems to consider the possibility of his wishing to "alter (*wendan*)" his will: in four of these cases this possibility is expressed in the anathema. See No. II, p. 8, lines 25 *et seq.*; No. IV, p. 16, line 20; No. XXIX, p. 78, line 8; No. XXXI, p. 82, line 25; No. XXXV, p. 92, lines 6 *et seq.*, *infra*. This does not necessarily mean that alteration could take place without the consent of the donee. In all cases where the will took the form of a contract between the donor and the donee, the consent of the donee to an alteration made by the donor would mean that the parties modified the original contract by a later agreement.

[3] The broad scope of Gift (*Gabe*) in Germanic law may be studied in von Amira's *Nordgermanisches Obligationenrecht*, I, §§ 72–74, II, §§ 64–66. 'Gift' in English medieval law also illustrates the Germanic conception. See Pollock and Maitland, *op. cit.* Index, *s.v.* Gift.

contract and the gift-transfer. Even though in the contract the donor may use the present tense and say that he 'gives', his gift is but a promise to give until the property has been transferred to the donee[1]. The oral will of Anglo-Saxon times is a bundle of these Germanic contractual *donationes irrevocabiles post obitum*.

The validity of the oral *verba novissima*, the Anglo-Saxon death-bed will, at least from the eighth century onwards, has always been admitted[2]; and the evidence furnished by our sources points irresistibly to the fact that oral wills made by persons who were in good health and had no fear of imminent death were also recognised by Anglo-Saxon law as binding. The written will, not less than the land-book, was an exotic in England. Ecclesiastical in origin, it was not only developed under clerical influence for the material benefit of Anglo-Saxon churches and convents, but it was ultimately brought in a later age within the scope of the jurisdiction of ecclesiastical courts. At least from the beginning of the eighth century onwards ecclesiastical policy furthered the idea that spoken words were sufficient for gifts and contracts. Lest, however, spoken words fade from the memory, declare ecclesiastical draftsmen in the preambles to eighth-century Anglo-Saxon charters, it is best to have evidence of these words in a writing[3]. To the proof of oral acts furnished by transactions-witnesses, which was already a feature of Anglo-Saxon law, there was now the added evidence of writings; and, so far as one can see, it is this new species of proof introduced by the ecclesiastics which helps us more than perhaps anything else to understand the legal nature and purpose of the documents that are now known as Anglo-Saxon 'wills'. These documents were not the wills themselves, the dispositive acts in the law. The wills were the oral declarations before witnesses; the writings were merely evidentiary. From one point of view too much stress has been laid upon the term *cwide* by writers on the history of Anglo-Saxon 'wills'; and from another point of

[1] Von Amira, *op. cit.* I, § 72 (at pp. 510–512), II, § 64 (at pp. 620–622).
[2] Pollock and Maitland, *op. cit.* II, p. 318. For a good example of the death-bed will, see Domesday Book, I, f. 177 *a*.
[3] See Brandileone, 'Anglo-Saxon Documents of the Eighth and Ninth Centuries' (*Wigmore Celebration Essays*, pp. 384–393, at pp. 386–387).

view too little importance has been attached to it. Although in later Anglo-Saxon times the term *cwide* was frequently used to indicate the document which we know as a 'will', other terms, especially 'writing' (*gewrit*), were also employed in the same sense; and, in fact, *gewrit* was not only used earlier, but also more generally, than *cwide*. The original meaning of *cwide*, and a meaning which it always retained, points clearly to orality; for in this basic sense *cwide* is simply speech, discourse, *dictum*. By a natural process in the development of thought the writing in which the oral *cwide* was embodied for purposes of evidence was itself called the *cwide*[1].

In the literature dealing with Anglo-Saxon wills too much stress, it may be thought, has also been laid upon the ecclesiastical origin of the writings; it has been too often assumed that the importation of written instruments implied the wholesale reception of Romano-ecclesiastical legal ideas in regard to the dispositive, as well as the evidential nature of documents. This assumption colours much of the literature on the land-book[2]; it also gives its tone to some of the historical accounts of the written will. On examination it is found, however, that this assumption carries us too far. One of the most important contributions of the Church to the legal polity of the Anglo-Saxons was the introduction of writings for the purposes of evidence; and, so far as one can see, in pre-Conquest days churches and

[1] The naming of a document after the oral transaction which it evidences is a well-known phenomenon in legal history. Thus, for example, when the *maldage*, or oral contract, of western Scandinavian law was embodied in a document, the document itself acquired the name *maldage*. See von Amira, *op. cit.* II, pp. 274–275, 334–338. In Anglo-Saxon times the writing which evidenced the oral will might consist of an entry in a church-book. For an illustration, see Kemble, *C.D.* 755, where an oral will, which was not a death-bed disposition, was upheld by the gemot and then entered in a church-book for purposes of permanent evidence. The entry was merely a *notitia*, an evidence-document. No legal significance attaches to the fact that an evidence-document is called a *cwide*. Any kind of writing, by whatever name it may call itself, is sufficient if it has legal efficacy as an evidence-document, such as an entry in a church-book. Certain kinds of writings, such as *chirographa*, have unusual strength as evidence-documents owing to the mode of their execution. Of this hereafter.

[2] Maitland, more cautious, seems never to have taken a definite position on the question as to whether the land-book was dispositive and evidential or merely evidential.

convents were themselves content if they had merely evidence-documents to prove title to the gifts that were made to them orally and never pressed for the acquisition of dispositive instruments. While, however, ecclesiastics recognised the adequacy of spoken words for gifts and contracts, since it was a part of Church policy to further formlessness in legal transactions, and while they were satisfied, apparently, by documents which merely evidenced those verbal transactions, the Germanic custom of the Anglo-Saxons required that oral contracts and gifts be confirmed by the use of certain formalities and symbols. Both native custom and ecclesiastical legal doctrine were at one in their recognition of the validity of oral transactions; and the point on which they differed chiefly concerned formalism and symbolism. In this matter custom proved to be stronger than ecclesiastical policy. We shall miss many features of Anglo-Saxon legal history if we do not grasp the point that to the very end of the epoch traditional employment of formalities and symbols retained its full control of the rules governing oral dispositive acts. To this aspect of our problem in regard to oral wills we shall return presently. For the moment it is important to establish the fact that, with the firm support of the Church, the Anglo-Saxons continued on their own traditional Germanic course and made their wills, just as they concluded all their other jural acts, by word of mouth.

The oral character of the Anglo-Saxon will is proved by many statements found not only in the written wills, but also in documents which recount the history of transactions in regard to certain properties. The donor, using the vernacular, 'bequeathes in spoken words[1]'; and no doubt some of these words are spoken formally in order that the oral disposition may be strengthened or confirmed[2]. The donor 'speaks his saying', he

[1] Thorpe, *Diplomatarium Anglicum*, p. 495 (at p. 497): Ic cweþe on wordum. Cf. Thorpe, *D.A.* p. 139 (at p. 141): þ word gecwæð (he said that word). Bosworth-Toller, *s.v. becweðan*: Swa ðu worde becwist (as thou sayest by word). In Anglo-Saxon sources *word-riht* has the sense of a spoken law, a law expressed in spoken words.

[2] Cf. *word and wedd* in Æthelred's laws. Here, as Gierke has remarked, *word* means the formal word which confirms or strengthens the promise. See *Schuld und Haftung*, p. 184, n. 48. Thorpe, *D.A.* p. 176: ic...mid wordum afæstnige.

'speaks his *cwide*[1]': and his *cwide*, spoken in Anglo-Saxon, is reproduced in the written will. The very fact that the written wills are in the vernacular is some proof, although of course not conclusive proof, that the scribe has merely taken down what he heard[2]. This point, however, need not be pressed; for there are many confirmatory proofs of orality. In some of the documents it is stated that the *quasi*-testator 'declares and commands to be written what are his wishes as to the disposal of his property after his time[3]'; and in many of the other instruments there are statements of similar import. The donor *mortis causa* 'makes known' or 'declares' by the 'writing' how he grants, or has granted, his property; and there is no doubt, as we shall see later, that in these and similar instances an oral declaration of the will has either preceded or accompanied the writing of the document[4]. The will may take, and indeed generally does take, the form of a contract; and here too, as we shall see presently, the will-agreement is spoken[5]. In one way or another the written wills disclose to us the fact that the will itself, in contrast with the writing which enshrines it, is a will declared orally in the presence of witnesses: the writing is merely the documentation of the oral will[6].

[1] Thorpe, *D.A.* p. 271 (at p. 272): he cwæð his cwide beforan him. P. 26, lines 11–12, *infra*: Ðis is Byrhtrices 7 Ælfswyðe his wifes nihsta cwide ðe hi cwædon on Meapaham on heora maga gewitnæsse. P. 22, lines 8–9, *infra*: Ælfheah... his cwidæ gecwæðen hæfð. Harmer, *English Historical Documents of the Ninth and Tenth Centuries*, No. XX, p. 33, lines 22–24: 7 eall þæt yrfe þæ ic hæbbe on lænelandum, þonne wylle ic þæt þæt sie gedeled for mine sawle swa swa ic nu þam freondum sæde þæ ic to spræc. See also Harmer, *E.H.D.* No. XI, p. 16, lines 28–30 (cydde... gecwædon).

[2] The documentary wills in Latin all appear to be later versions of the originals. Some wills are contained in Latin documents which are not primarily versions of the wills, but include the wills together with other matter.

[3] See, e.g., Thorpe, *D.A.* pp. 469, 476, 480; Harmer, *E.H.D.* No. II, p. 3, lines 3–4.

[4] Illustrations will be found in the present as well as in other collections of Anglo-Saxon written wills.

[5] The terms *word-gecwide* and *cwid-ræden* mean oral contracts in Anglo-Saxon sources; while *cwide* sometimes indicates an oral decree or ordinance.

[6] See, e.g., No. II, p. 8, lines 19–22; No. V, p. 18, lines 5–9; No. IX, p. 22, lines 8–9; No. XI, p. 26, lines 11–16; No. XX, p. 56, lines 10–13; No. XXII, p. 66, lines 1–2; No. XXIII, p. 66, lines 16–24; No. XXXII, p. 84, lines 8–16, *infra*. For illustrations, see also Thorpe, *D.A.* pp. 462, 469, 476, 480; Harmer, *E.H.D.* No. XX, p. 33, lines 22–25. In this last case the witnesses

Support for the view that the will was spoken is to be found in some of the Latin documents. Thus, Æthelric, the son of Æthelmund, states[1], in 804, that at the synod of Clofeshoh the archbishop, *cum testimonio* of the king and his *optimates*, gave a decision that Æthelric was free to give his land at Wæstmynster [Westbury, Glos.] and the title-deeds (*libellos*) to whomsoever he wished. Æthelric then pledged the land before he went to Rome; but, on returning, he redeemed it. A few years later at the synod of Acle, in the presence of the king, bishops, and *principes*, he reminded them of the decision of the former council; and, with their permission, he testified to whom he wished to give his inheritance. In the document this statement is followed by the will, which is introduced by the words: *et sic dixi*. The will, which is mainly composed of gifts to Worcester, includes a clause to the effect that there are three copies of the document and ends with an anathema and a list of witnesses[2].

In another Latin document[3] the donor declares that she makes gifts of certain lands to certain churches. She concludes her *dispositio* with the words: *sicut prædictus vir meus Alfwoldus eas adhuc vivens viva voce eidem ecclesie concessit*. While it is not altogether easy to interpret this document as a whole, a possible

of the oral declaration are at the same time the 'protectors' of the will; that is, they are charged with the duty of distributing at the death of the donor, in accordance with the oral directions of the donor, the property that is granted.

[1] Birch, *Cartularium Saxonicum*, 313 (preserved in Worcester cartularies: Tiberius A, xiii: Nero E, 1) = Thorpe, *D.A.* p. 54. The present writer is much indebted to Miss Whitelock for drawing his attention to this document and for her observations upon it.

[2] Possibly this document was touched up a little by the Worcester scribe, but that he should have invented the whole seems improbable. Worcester was engaged a little later in a dispute over the estate (Birch, *C.S.* 379, dated 824, from the same sources as the document containing the will) and the compiler of the cartulary may have wished to make their title as strong as possible. But, since passages like that about pledging the land have a genuine ring, one seems entitled to use the document as at least supporting evidence in favour of the view that the Anglo-Saxon will was oral. It may be added that the reference to three copies means that the document is a chirograph. Chirographic written wills come under observation in later paragraphs.

[3] Birch, *C.S.* 1061 = Thorpe, *D.A.* p. 516. This document is a copy of a chirograph of about the middle of the tenth century.

view is that the donor's husband had given the lands to the churches by his oral will, but with the reservation of usufruct for the life of his wife, the present donor; and that title to the lands had been conveyed to the grantees with this reservation. On this view the present gift appears to be in the nature of a release (*resignatio*)[1].

The first of these two Latin documents, the one containing the will of Æthelric, the son of Æthelmund, is evidence for the view that wills were sometimes made orally before the witan[2]. It is also possible that in some cases the will in its written form was read out to those who had witnessed the making of the oral will; but under these circumstances the oral reading of the writing would appear to have constituted what one may describe as a secondary orality which, although not part of the jural act of making the will, had as its purpose the strengthening of the earlier oral declaration, or announcement, of the will[3]. Towards the end of the written will of the Ætheling Æthelstan[4] is the statement: 'Now I pray all the councillors, both ecclesiastical and lay, who may hear my will (*cwide*) read, that they will help to secure that my will may stand, as my father's permission is stated in my will'. It is clear that this is a special case[5], for Æthelstan was a great man in the realm, the son of King Ethelred; and, moreover, the will itself may have belonged to the category of *verba novissima*. Whether or not the oral will was made before the witan, that is, 'the councillors, both ecclesiastical and lay', it seems impossible to tell; but if it was a will made during illness, and hence a case of *verba novissima*, this hardly seems likely. The more natural explanation is that the will was read before the witan because of Æthelstan's high rank; and, as Miss Whitelock remarks, 'it is hardly likely that the wills of

[1] The release (*resignatio*) as a form of gift *mortis causa* will be mentioned in a later paragraph.

[2] There are instances which imply that the king was sometimes present at the making of wills. See, e.g., Nos. VIII, XIII, XV, *infra*. In some cases he is named as a witness. See Nos. XXX, XXXII, *infra*.

[3] Cf. Brunner's suggestion as to the reading out of the text of the land-book in the process of booking land. See his *Urkunde*, p. 161; and cf. von Amira, *Grundriss des germanischen Rechts*, p. 228.

[4] No. XX, *infra*.

[5] See pp. 167–174, *infra*.

lesser people were read there[1]'. In old Scandinavian law the publicity of transactions could be effected by one or the other of two modes. Either the transaction was itself concluded before an assembly; or the transaction, already complete and binding, was announced to an assembly. After the introduction of writings into Northern legal life this announcement (*lýsing*) was closely associated with the document in which the transaction was embodied; and it often consisted of reading the document to the assembly[2]. It is possible, therefore, that in the instance of Æthelstan's will we have to do with an announcement to the Anglo-Saxon *witan* comparable with the announcement to the assembled *thing* in Scandinavia[3].

While it has seemed important to mention at the outset certain proofs of the oral character of the Anglo-Saxon will, attention should be drawn to the point that they are supported by other proofs which will come under our observation in later paragraphs. For the moment, however, let us take account of the fact that Anglo-Saxon wills were not only oral dispositions of property *mortis causa*, but that many of them, perhaps most of them, were contractual dispositions. The contractual character of early Germanic gifts *mortis causa*, as predecessors of the unilateral and revocable will or testament in the later and true sense of that term, has long been recognised by scholars[4]; and it need occasion no surprise, therefore, that contractual gifts *mortis causa* were also known to Anglo-Saxon law. They are in truth but a further illustration of the large part played by contract in the Anglo-Saxon age. Status and contract were two of the main foundations of social life; but, although many relationships were based on status, contract became ever more important as time

[1] See p. 173, *infra*.

[2] See von Amira, *Nordgermanisches Obligationenrecht*, II, §§ 33, 34; and also *op. cit.* I and II, register, *s.v. lysing*.

[3] Cf. the case of King Ethelred's *confirmation* of Æthelric's will, where an oral declaration was 'straightway written and read before the king and his witan'. See No. XVI (2), p. 44, lines 22–24, *infra*. By concluding and also by announcing transactions before the witan the widest publicity and the highest authority were obtained. See Liebermann, *National Assembly in the Anglo-Saxon Period*, p. 71.

[4] See, e.g., Brissaud, *History of French Private Law* (Continental Legal History Series), §§ 486, 489; Hübner, *History of Germanic Private Law* (Continental Legal History Series), §§ 110–113.

went on and tended in fact to displace status. The Grant (or Gift) of property was one of the chief forces making for this progress to contractual conditions. Grant, however, was one of the broadest general conceptions known to Anglo-Saxon law and custom; and these broad general conceptions, such as Grant and Wrong, were characteristic of early stages of legal growth in all parts of Europe. In Anglo-Saxon times Grant, or Gift, included within itself both the idea of conveyance and the idea of contract. Conveyance and contract were aspects of Grant; and in some grants one or the other of these two characteristics predominated. Only gradually, in the course of long centuries, were these two juridical ideas, conveyance and contract, finally differentiated by legal reasoning and given their separate and distinct places in the general scheme of jurisprudence. One of the reasons why Contract in Anglo-Saxon times has been partly concealed from our gaze is because it so often played its rôle behind the mask of Grant. Although the purchase of land was a transaction in which the contractual element was prominent, the transaction itself did not take the form of a contract of sale; it took the form of a grant[1]. If, moreover, we look only at the higher ranks of society we can now see that grants, or gifts, of land were the main foundation of relationships. The gradual feudalisation of land in Anglo-Saxon times was accomplished by gifts of land which had their contractual as well as their conveyancing features. The feudal *nexum* was created by gift; and it seems in fact never to have lost the duality of conveyance and contract involved in gift. The gift of land, even the gift of book-land by the king, and even more so, perhaps, the gift of loan-land by the owner of book-land, had marked contractual aspects. The Anglo-Saxons think in terms of grantor and grantee; and by grant they mean both conveyance and contract. The king and leading laymen form a large part of the class of grantors; while the ecclesiastics and ecclesiastical institutions are one of the

[1] Professor Chadwick has kindly supplied the following examples. Birch, *C.S.* 146: Ego Aeðilbold pro redemptione animae meae largitus sum terram... contra eius pecuniam.... Birch, *ibid.*, 348: ...ego Coenuulfus...Vulfredo archiepiscopo...pro intimo caritatis affectu...seu etiam pro commodo pecunio illius, hoc est vii libras auri et argenti...terram. For other examples see Birch, *ibid.*, 373, 455, 509.

largest, perhaps the largest, class of grantees. These grantors and grantees are traffickers. The subject-matters of their bargaining are not, however, spears and chasubles: these two groups of men are concerned with things of far greater durability and value. The men of this world want things in the next; while the men of the next world want things in this. By their gifts the lay folk buy things in the spiritual world; and by their counter-gifts and counter-performances the clerical folk buy things in the corporeal world. Rights in terrestrial possessions are exchanged for rights in the heavenly mansions; and these rights are exchanged by grants which at the same time are contracts. In Anglo-Saxon law, as in other Germanic customary systems, gift is not gratuitous; gift requires counter-gift or counter-performance. When, therefore, lay folk and clerical folk bargain, they exchange gifts. The gift of the laymen is land; the gift of the clergy is the care of the soul by spiritual services. In these gifts and counter-gifts there is the intermingling of conveyance and contract; and sometimes these two inherent qualities, or aspects, of gift seem almost inextricably interwoven. Nor is there any difference, in this respect, between gifts *inter vivos* and gifts *mortis causa*; and, moreover, be it noted, donors by their gifts *mortis causa*, not less than by their grants *inter vivos*, are thinking of their souls and buying a secure and lasting place for them in the world to come. Many gifts *mortis causa* are primarily contracts; they are promises that on the death of the donors the donees shall have conveyances. Some of them are present conveyances which still leave the donor a promisor; as when the donor himself conveys book-land to the donee, with a reservation of usufruct for one or more lives. The transaction here is *inter vivos* and at the same time it is *mortis causa*; the conveyance is a present conveyance which can be perfected only at a later time. It is in fact perfected only when, on the death of the donor and of others who have the usufruct, the donor's promise is fully performed by the final surrender of the land to the donee.

The approach to gifts *mortis causa* must be by this gateway of the Germanic Grant of Anglo-Saxon law and custom; for gifts *mortis causa* are grants and they are, moreover, grants in

which both conveyance and contract are mingled. For the moment let us pay particular attention to the contractual aspect of these grants; and, first of all, let us consider a notable feature of many wills. The writings in which wills are embodied prove to us that in fact many a donor, or *quasi*-testator, confirms by his will agreements which he has already concluded with his wife, members of his kindred, or other persons, in regard to the devolution on their death of properties which belong to them[1]. These contracts (*forword*, *gecwide*, *wordgecwide*, *maldage*, *pactum*) were concluded orally in the presence of witnesses; and they were confirmed by the parties by formal acts, such as solemn promises to God and the saints or the mutual delivery of symbolic pledges (*wedd*)[2]. The written wills leave us in no doubt as to the nature of these contracts: they were 'spoken' agreements made binding by the use of formalities and symbols. Since they were concluded in such a way as to be not only capable of being heard and seen, but actually heard and seen by witnesses, these agreements complied with the general requirements of Germanic custom in regard to legal transactions[3]; and there is at least some evidence that in certain instances they

[1] A provision as to survivorship is a usual feature of these agreements: that is, the parties stipulate that the one who outlives the other is to have property belonging to the deceased. See p. 166, *infra*.

[2] Examples of these oral agreements *mortis causa* confirmed by will are to be found in Nos. IV, X, XIII, XV, XIX, XXIV, XXXI, XXXIII, XXXIV, XXXIX, *infra*; Thorpe, *D.A.* pp. 576, 586 (two); Harmer, *E.H.D.* Nos. X, XI. The terms *forword* and *maldage* are of Scandinavian origin. While *maldage* is rarely found in Anglo-Saxon sources, *forword* is used frequently in the sense of contractual agreement. See Thorpe, *D.A.* pp. 1–455, *passim*, for examples of *forword* in documents that are not written wills. Cf., on the use of '*vorwort*' in other Germanic sources, Puntschart, *Schuldvertrag und Treugelöbnis*, § 19 (at pp. 379–80). In Nos. XXXIII and XXXIV, *infra*, both of which must be read together, there is an instructive instance of a partnership agreement (*felageschipe*), confirmed by will, in regard to the devolution of property. As Miss Whitelock points out, *felageschipe* corresponds to the old Icelandic *felagskapr*, which means any kind of partnership. See pp. 194, 203, *infra*. Indeed the term *felag* has reference to the several kinds of partnership known to the old law of Sweden, Norway, Iceland, and Greenland. In some instances the devolution of partnership property was the subject-matter of the agreements. See von Amira, *op. cit.* I, pp. 670–680, II, pp. 1, 807–822.

[3] See the writings of von Amira and other historians of Germanic law and custom. The witnessing of a legal transaction was a formality; and it was also a means of proof.

were reduced to writing[1]. The chief points to observe, however, are that by their formal contracts, concluded orally, parties made gifts *mortis causa*; and that these contracts, confirmed by will, were themselves, in all essential particulars, 'wills' in the Anglo-Saxon sense[2]. Be it noted especially that these contractual gifts are *donationes post obitum*[3]; and, moreover, since they are based on binding contracts they are *donationes irrevocabiles post obitum*. The contractual *grant* or *dispositio* is sometimes phrased in the same way as are grants in the case of gifts *post obitum* in the 'wills': the famous formula in the wills—'after my day'—also appears in the contracts. Other *formulae*, such as 'if I outlive X' and 'if X survive me', are also used; and these are especially appropriate to contractual gifts *post obitum*. The contracting party expresses, furthermore, his concern about the 'standing', the performance, of the agreement[4]; and here, again, there is a parallel with the anxiety voiced by *quasi*-testators in regard to the 'standing' of their wills. In truth these contracts confirmed by will are themselves 'wills': later wills confirm earlier wills. When, therefore, we think and talk about Anglo-Saxon 'wills' we should think and talk about these contracts *mortis causa* as being true 'wills' in the Anglo-Saxon sense of that term.

There is, moreover, a still more important point to consider. Not only are many oral contracts *mortis causa* confirmed by oral will; some, and indeed most, of our Anglo-Saxon 'wills', including those of the present collection, are themselves oral contracts *mortis causa*. There is, indeed, no essential difference between these two categories of oral contract *mortis causa*: both of them are contractual *donationes irrevocabiles post obitum*. Restricting our attention for the moment to those writings which are known as wills, let us observe two things: first, some of the writings are not only framed in terms of contract, but are called contracts (*forword*, *geþinge*, *gerednes*, *conventio*[5]); secondly, the contractual character of many of the other writings is disclosed,

[1] See Harmer, *E.H.D.* No. XI (King Alfred's will).

[2] The contracts were confirmed by the oral will; but no doubt the will in its written form, since it bore the Christian crosses, further confirmed them.

[3] See the passages mentioned in note 2, p. xxi, *supra*.

[4] See, e.g., No. XIII, p. 32, lines 14–16, *infra*.

[5] For examples, see Nos. V, XXIII, XXXIX, *infra*; Thorpe, *D.A.* pp. 459, 465, 468, 492, 509, 585, 593.