

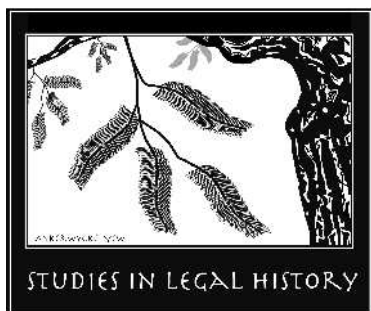
The Laws of Alfred

Alfred the Great's *domboc* ("book of laws") is the longest and most ambitious legal text of the Anglo-Saxon period. Alfred places his own laws, dealing with everything from sanctuary to feuding to the theft of bees, between a lengthy translation of legal passages from the Bible and the legislation of the West-Saxon king Ine (r.688–726), which rival his own in length and scope. This book is the first critical edition of the *domboc* published in over a century, as well as a new translation. Five introductory chapters offer fresh insights into the laws of Alfred and Ine, considering their backgrounds, their relationship to early medieval legal culture, their manuscript evidence, and their reception in later centuries. Rather than a haphazard accumulation of ordinances, the *domboc* is shown to issue from deep reflection on the nature of law itself, whose effects would permanently alter the development of early English legislation.

Stefan Jurasinski is Professor of English at SUNY Brockport. He is the author of *The Old English Penitentials and Anglo-Saxon Law* and, with R. D. Fulk, *The Old English Canons of Theodore*. With Andrew Rabin, he edited *Languages of the Law in Early Medieval England: Essays in Memory of Lisi Oliver*.

Lisi Oliver, author of *The Beginnings of English Law* and *The Body Legal and Barbarian Law*, was Houston Alumni Professor of English and Distinguished Research Master at Louisiana State University. With Andrew Rabin and Stefan Jurasinski, she edited *English Law Before Magna Carta*.

Cambridge University Press
 978-1-108-84090-3 — The Laws of Alfred
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The Laws of Alfred

*The Domboc and the Making of Anglo-Saxon
Law*

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University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,
New Delhi – 110025, India
79 Anson Road, #06–04/06, Singapore 079906

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www.cambridge.org

Information on this title: www.cambridge.org/9781108840903

DOI: 10.1017/9781108881708

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First published 2021

A catalogue record for this publication is available from the British Library.

ISBN 978-1-108-84090-3 Hardback

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*et nunc reges intelligite
erudimini qui iudicatis terram*

Psalm 2:10

*Ongytað nu, kyningas, and leorniað ge domeras þe ofer
eorðan demað.*

*King Alfred's Old English Prose Translation of the First Fifty
Psalms*, ed. Patrick P. O'Neill (Cambridge, MA: Medieval
Academy of America, 2001): 101.

*Observe how parts with parts unite
In one harmonious rule of right;
See countless wheels distinctly tend
By various laws to one great end;
While mighty Alfred's piercing soul
Pervades, and regulates the whole.*

William Blackstone, "A Lawyer's Farewell to His Muse," in *A
Collection of Poems in Six Volumes by Several Hands*, ed.
Robert Dodsley (London: J. Hughs, 1758), 227.

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Preface

William the Conqueror's coronation in Westminster Abbey on Christmas Day of 1066 placed in his care the only European polity excepting Ireland to have been for some time governed (at least in aspiration) by laws written in its native tongue.¹ The development of this tradition had unfolded over nearly five centuries. It survived even the accession of the Danish king Cnut in 1016, whose two-book compilation of ecclesiastical and secular ordinances, written by an English bishop, repurposed in its second half ("II Cnut") much of what had come before.² Though his dealings with the English people and their institutions would prove, of course, anything but gentle, those who supplanted the Anglo-Saxon aristocracy in the wake of William's victory at Hastings were keen to understand and preserve the legal learning of those they had vanquished. To the care of Anglo-Norman scribes and translators we owe much of what may be known about law in England before the Conquest. There is every reason to think that they grasped its importance and, in some respects, inaugurated the scholarly study of its remains.³

The origins of this tradition of vernacular lawmaking, unparalleled anywhere else in Europe in its duration and depth, may be traced ultimately to the Kentish kingdom of the seventh century. Yet its halting experiments in legal prose, now surviving only in a manuscript prepared nearly a century after the Conquest, did not form the greater part of the foundations on which later Anglo-Saxon

¹ On the coronation, see Douglas 1964: 206–207.

² Richards 2010: 147.

³ See especially Chapter 4, 132–144.

monarchs would build. These would instead be established by King Alfred (“Alfred the Great”) in a text to which he devoted the last years of his life. Here Alfred assembled in one compilation the judgments (“domas”) of his own era along with those issued by the West-Saxon king Ine toward the end of the seventh century. To these, Alfred attached a lengthy translation into English of biblical materials – the earliest extant as we have no trace of Bede’s rendering of the Fourth Gospel – and a short historical account of English law tracing its origins to conciliar legislation.⁴

The significance of Alfred’s *domboc* to later developments in English law has until the last few decades been overlooked by historians. For the most part, attention has been drawn instead to the twelfth century, a period rightly credited with establishing as the preserve of the kings’ justices matters previously deemed civil wrongs.⁵ Yet the *domboc* held the seeds of these developments. As the present volume will show, much in the formation of English common law might have proved impracticable (and perhaps inconceivable) without Alfred’s having earlier dissolved somewhat a firm association between law and notions of unwritten custom – a problem over which Kentish kings seem to have fretted ineffectually, and which had assumed a new importance during the reign of Charlemagne and his successors.⁶ Alfred’s orientation of legislative practice toward Carolingian models lent form and an intellectual superstructure to such efforts.

To an extent not yet appreciated by commentators, the *domboc* also effected (and doubtless sought) a pronounced shift in the way subsequent kings would regard the practice of lawmaking. Alfred’s “revolution” was, to be sure, a conservative one. None of the ideas animating it was new. In seventh-century Kent as well, the impetus to make law a matter of writing as much as custom had been felt from across the Channel, and all such aspirations recalled (knowingly or not) the rather guarded view of custom as a source of norms earlier articulated in Justinian’s *Digest*.⁷ But while the emulation of

⁴ According to the younger Cuthbert’s “Epistola de obitu Bedae” (ed. and trans. Colgrave and Mynors 1969: 82–83), Bede had spent his final months at work on “the gospel of St. John, which he was turning into our mother tongue to the great profit of the Church (*in nostram linguam ad utilitatem ecclesiae Dei*).” On the identity of Cuthbert, see Whitelock 1976: 33.

⁵ See Chapter 1, 8.

⁶ See Chapter 2, 55–56.

⁷ The matter is considered at §1.3.32 (ed. Watson 1985: 1, 13–14). See also the discussion in Rio (2011: 5).

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Continental modes of lawmaking had been earlier cultivated in seventh-century Kent, the kingdom's submission to the ultimately doomed Mercian empire halted any subsequent developments along these lines. Only in Wessex, first at the close of the seventh century, and again at the very end of the ninth, would the possibilities of the Kentish experiment be realized. And these involved less the mimicry of Frankish examples than a daring synthesis of native resources with Frankish-derived reflection on the nature of law itself.

That this should have happened in Wessex rather than elsewhere was not inevitable. Though the inclination of many historians is to deny Alfred some of the credit given him by earlier generations for the achievements of his reign, it is hard to ascribe the success of the *domboc* to any cause other than Alfred's forceful and somewhat fixated personality.⁸ Prior to Alfred's accession, Wessex had not been one of the more promising kingdoms of the "Heptarchy."⁹ Where Bede mentions it at all in his *Historia Ecclesiastica*, it is rarely to say anything favorable, Wessex having come late to the developments that brought Kent (and then Bede's Northumbria) into close contact with the wider West European world.¹⁰

Given his other pursuits, a lawbook distinguished from its predecessors in emphasizing the renewal of learning is what might be expected of Alfred. In overseeing the preparation of the *domboc*, Alfred also achieved the practical end of bringing honor to his West-Saxon ancestor Ine, a king all but ignored by Bede. But the efforts of one great king and his counselors, however strenuous, cannot alone explain the depths of legal culture evidenced by the *domboc*. Alfred's achievement presupposes a reservoir of West-Saxon learning to which the thin documentary evidence of this period does not attest. If we believe Alfred, what learning (inevitably clerical) had built up in Wessex in the intervening centuries was all but decimated prior to his accession. His cryptic remarks about the backgrounds and purpose of the *domboc* provoke a range of questions. What textual resources beyond the handful mentioned by Alfred might have been available to the king and his circle, and what use did they make of them? Did Alfred's ambitions for the *domboc* extend to reforming

⁸ On the debate over Alfred's authorship of the works attributed to him, see Chapter 1, 31–32.

⁹ The term is an Elizabethan coinage with foundations in pre-modern sources: "The idea that the early Anglo-Saxon kingdoms were seven in number derived ultimately from Bede but crystallized in twelfth-century histories, notably Henry of Huntingdon's" (Goffart 1997: 55).

¹⁰ See Chapter 1, 17–18.

rather than modestly recording (as prior kings claimed to have done) the legal norms and practices of his day? What did written legislation mean to people who seem to have had little use for it prior to the issuance of the *domboc*?

The following five chapters deal with these and related questions. Though the *domboc* has, over the centuries, attracted a fair amount of learned commentary, many of these questions remain inadequately addressed or have not really been dealt with at all. It is hoped that considering these matters anew will scrape away some old accretions to shed light on matters long thought settled. Chapter 1 offers a sense of the circumstances under which written legislation was adopted and refined in the centuries preceding Alfred's reign. Its later sections consider the relation of the *domboc* to the educational reforms on which much of his fame rests. Particular attention is given to how Wessex came to benefit from the earlier achievements of Kent, a kingdom that had pioneered the use of vernacular legislation in the century prior to Ine's accession.

Chapter 2 addresses the derivation of both Ine's and Alfred's laws. It begins by considering anew the relationship between Ine's and Wihtred's codes (and their relative chronology) before turning to questions suggested by Alfred's curious adaptation of Mosaic law in the *domboc*, a feature of the text we think has never been adequately understood. This chapter offers new arguments about the role of "Irish" sources in structuring the Prologue and a fresh perspective on Alfred's claim, toward the Prologue's conclusion, that he derived some of his laws from prior "synods."

Chapter 3 concerns provisions of the *domboc* long assumed to constitute legislative innovations. Here doubt is cast on the view, accepted for more than a century, that Ine's laws are the first to acknowledge use of the ordeal. Reconsideration of the relevant clauses in light of others (as well as the tenth-century Fonthill Letter) suggests instead that the chronology of the ordeal in England ought to be rewritten. The chapter also traces to their roots in ecclesiastical legislation – as has not been done before – the admonitions about oaths and their gravity with which Alfred's portion of the *domboc* famously begins. That these provisions are not (as Wormald supposed) the echoes of an "oath of loyalty" imposed by Alfred on his subjects becomes clear when they are viewed in light of early pastoral writings on the oath and its spiritual hazards. Here the *domboc* probably exhibits influence, heretofore unappreciated, from Alfred's clerical advisors, whose learning had been sought by the king to make up for what had been lost before his reign.

Remaining chapters consider the intermediaries through which we encounter the *domboc* in the present day and their capacity to obscure its contents. Chapter 4 examines its manuscript transmission, its reception in the post-Conquest period, and its rediscovery by the Elizabethan antiquarians who were the first to circulate the text in print. A particular concern is the twelfth-century reception of the *domboc*, which receives a substantial reassessment. Chapter 5 considers how the *domboc* was employed and imagined after Alfred's lifetime. Early sections move from the reigns of Alfred's successors into the waning centuries of the Anglo-Saxon period. The chapter proceeds thence to trace the reception of the *domboc* into the later Middle Ages and the age of print. Here we show how the editing of the *domboc* had just begun to shed some of the baggage of William Lambarde's 1568 *editio princeps* when what remains its standard edition was published as part of Felix Liebermann's *Gesetze der Angelsachsen* (1903–1916). While Liebermann's is indeed a brilliant performance, its achievement is somewhat vitiated by excessive trust of Lambarde's work and by the creeping fog of German Romanticism, a movement then at the height of its influence.

The book concludes with a critical edition and translation of the *domboc*. Here innumerable smaller questions suggested by particular clauses are dealt with in the edition's interpretative commentary, which brings to bear on these texts the century of scholarship since Liebermann's work. This section in particular was undertaken in the hope of making the *domboc*, whose importance to the early history of English law was maintained from the outset of its reception into the nineteenth century, once again fully accessible to an Anglophone readership.

Readers should note that the numeration of chapters in *Alfred* and *Ine* differs in our edition from those employed by Liebermann; these he had adopted from the earlier editions of Schmid (1832; revised 1858) and Thorpe (1840). The rationale for the revised numeration is set forth in the headnotes accompanying the editions of Alfred's and Ine's laws (the numeration of clauses in the Prologue remains unchanged). It is understood that assigning new numbers to these chapters is an unattractive expedient given their long use. But unhappiness with the standard numeration has been expressed with increasing urgency by editors and commentators from Liebermann's lifetime into the present. Liebermann himself left Schmid's chapter divisions intact only out of resignation: doing otherwise, he felt, would be detrimental to scholarship on the laws. Nonetheless, he

compiled a short list of chapters he would have rather seen renumbered.¹¹ By far the most substantial scholarly treatment of the twentieth century – Richard Dammery’s doctoral dissertation of 1990 – likewise criticizes Schmid’s “misleading numeration” and laments that subsequent editions by Attenborough and Whitelock, in not departing from it, “perpetuat[ed] the problem.”¹² While Dammery’s edition retains Schmid’s numeration, it simultaneously offers new chapter numbers as suggested “alternative[s].”¹³ Wormald seems to insist on a more decisive approach than Dammery’s for any future editors of Old English legislation: “[Liebermann’s] numbering of royal codes followed Schmid’s, even where he knew this to be wrong”; “Few things better betray the enslavement of early English legal studies to traditional practice than continuing use of numeration for Æthelstan’s laws that everyone at least since 1858 has known to be wrong.”¹⁴ Our remarks in the headnotes to Alfred’s and Ine’s laws should lay out adequately how the standard numeration does no less violence to these texts than it does to Æthelstan’s (and others’). Nor is the matter of Schmid’s chapter numbers merely some arcane problem of textual editing alone. In a notable essay by Thomas Charles-Edwards, much depends upon the insight that *Ine* §§63–66 (Liebermann’s numeration) constitute not disconnected clauses (as is suggested by the standard chapter numbers) but a logical unit, with “64–6, all subordinate to 63, deal[ing] in turn with decreasing areas of land, twenty hides, ten hides, three hides.”¹⁵ Examples of similar arguments published in the years since Liebermann’s edition could doubtless be multiplied. So that there are no impediments to comparing our text with prior editions, we nonetheless supply (in square brackets, e.g., *Alfred* 20 [L18]) each renumbered clause with the number assigned in Liebermann’s *Gesetze*. But to avoid crowding the page unnecessarily with cross-references,

¹¹ “Otherwise I would have had, for example, *Alfred* §5.5, 9.2, 18.1 and 40.2 begin new chapters” (“[S]onst hätte ich z.B. mit Af 5,5, 9,2, 18,1, 40,2, ein neues Kapitel begonnen”) (Liebermann 1903–1916: III, 40).

¹² Dammery 1990: I, 186 and n. 16.

¹³ Dammery 1990: II, ix: “[A]n editor of this material must have considerable reservations about perpetuating a practice so misleading, despite its now conventional use. Alternative clause numbers have therefore been provided with this text, in angled brackets, at the right-hand side of the page.”

¹⁴ Wormald 1999a: 22 and 291 n. 129, respectively.

¹⁵ Charles-Edwards 1976: 185. The points that follow these in Charles-Edwards’s essay are no less damaging to the view that the standard numeration even of clauses subsequent to these is anything but a hindrance to their appropriate interpretation.

citations of clauses in the *domboc* in the introductory chapters that follow (and in the commentary on the edited texts) employ our revised numeration rather than Liebermann's. Oliver's 2002 edition of the Kentish laws, now recognized as superseding Liebermann's, also revised the standard numeration. Accordingly, citations of the Kentish laws in the present study follow Oliver's numeration, but do so with the old numbers also given in square brackets (as described above) for those without access to Oliver's edition.

Acknowledgments

This book considers the emergence of written legislation in Wessex from the seventh through the ninth centuries. It concludes with the first scholarly edition of the *domboc* (“book of judgments”) issued during the reign of Alfred the Great (d.899) to appear in print since Felix Liebermann’s *Gesetze der Angelsachsen* (1903–16). Along with the laws of Alfred, the present volume contains those issued by the seventh-century West-Saxon king Ine (r.688–726). Appended by Alfred to his own and appearing in no manuscript apart from Alfred’s laws, Ine’s legislation appears to have been regarded as intrinsic to the *domboc* in spite of (or perhaps because of) its age. While some of its clauses are superseded in Alfred’s, others were likely seen as applicable to ninth-century problems. Subsequent legislation of the pre-Conquest period repurposed or alluded to the legislation of both kings with seeming indifference to their periods of origin. What mattered was less their association with one king or another than their appearance within “the *domboc*,” which remained for the duration of the Anglo-Saxon period the only legislative text of its kind.

Work on the present book commenced in 2006, when Professor Oliver and I first agreed to prepare it in collaboration. Its progress accelerated during a year-long period of leave made possible by an American Council of Learned Societies Collaborative Research Fellowship awarded for the 2014–15 academic year. The painful events that followed immediately after the completion of the fellowship need not be rehearsed here, but some account of how these circumstances altered the trajectory of the project may be thought desirable by some readers, not least because responsibility should

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not be imputed to Oliver for work she did not have the opportunity to see. At the time of her death, Professor Oliver had established the texts of Alfred's and Ine's laws (and their rubrics) from comparison with the principal manuscript (Cambridge, Corpus Christi College 173) and we had completed the bulk of the commentary that now accompanies the editions; the text of the Prologue and its commentary was also complete. Four of the present five chapters, to which Oliver contributed the basis of a discussion of Ine's reign, existed in a very undeveloped state; at the time, these materials were conceived of as sections appearing within a lengthy Introduction (as is conventional in scholarly editions published by the Early English Text Society or the Selden Society) rather than stand-alone chapters.

Toward the conclusion of our shared work on this project, it became evident to both of us, given the many new insights unearthed by sustained examination of these texts, that the book was going to be something more than a conventional scholarly edition and should probably be recast as a monograph. Beginning in 2016, I began the process of collating the principal manuscript with all other witnesses and cataloguing variant readings for the scholarly apparatus. All of the chapters were also drastically rewritten at this time. In their final form they bear little resemblance to what had been prepared during the fellowship; nonetheless, I feel that they bring to fulfillment conclusions on which Oliver and I had agreed at various stages of the project's development even as they depend in many cases upon new insights that emerged after 2015. Chapter 3 was prepared in this period, and though Oliver did not see it in any form, it confirms her doubts about Liebermann's discovery of the ordeal in *Ine* (set forth in her own words in the commentary for *Ine* chapters §§38 [Liebermann §37] and 66 [Liebermann §62]) with textual evidence she did not have the opportunity to consider and arguments she did not formulate. While the other chapters do not diverge from Oliver's views as I understood them, I have refrained from using "we" and "our" in attributing the conclusions argued for therein since they represent for the most part work she was unable to comment on. In the editions, however, I have left such language in place as these represent less ambiguously our shared views.

Naturally, a work that has been in progress for almost fifteen years will leave its authors indebted to many people. For their letters in support of our application, much gratitude is offered to Paul Hyams and James Q. Whitman. Matthew Goldfeder of the American Council of Learned Societies (ACLS) offered valuable guidance over the course of the fellowship year. Robin K. Collor and Ann Whitmer,

both of Louisiana State University, were of tremendous help in sorting out the practical aspects of the fellowship.

For their many kindnesses during our visit to the Parker Library in March of 2015, particular thanks are due to Steven Archer and Elizabeth Dumas. Zoe Stansell of the British Library answered several questions about a particularly mysterious sixteenth-century manuscript. Katherine Barclay and Pru Kemball of the Winchester Excavations Committee offered tremendous help under difficult circumstances concerning knowledge of Alfred's coinage. Andrew Rabin, Nicole Marafioti, and Wallace Johnson read early drafts of the book and offered many helpful suggestions. The readers commissioned by Cambridge University Press expertly tracked down errors and infelicities, and Michael Lobban's commentary, offered during multiple readings of the typescript, resulted in improvements too numerous to count (as well as a solution to the unanticipated difficulties of assigning the book a title). Enough good things cannot be said about the patient and careful work of Rachel Blaifeder and Ruth Boyes in helping to prepare the manuscript for delivery to the press, and Sarah Turner brought an astounding meticulousness to the task of editing the final text.

Some last-minute insights into Isidore of Seville were provided by Bruce Brasington. Advice less formally offered but nonetheless valuable was furnished at various stages by David Pelteret, Bruce O'Brien, Robert Dennis Fulk, Alice Rio, Abigail Firey, Rory Naismith, Paul Brand, Tom McSweeney, Charles Insley, Robert Berkhofer, and Susannah Brietz Monta. Our work also owes a great deal to the generosity of Mary Richards.

Some sections of this book have appeared elsewhere. Portions of Chapter 2 appear in Stefan Jurasinski, "Royal Law in Wessex and Kent at the Close of the Seventh Century", in Stefan Jurasinski and Andrew Rabin, eds., *Languages of the Law in Early Medieval England: Essays in Memory of Lisi Oliver* (Leuven: Peeters), 25–44. Some material from Chapter 3 appears in Stefan Jurasinski, "The Emergence of the Ordeal in Anglo-Saxon England", *The Mediaeval Journal* (forthcoming). Translations from ancient and modern languages are our own unless otherwise indicated; where others' translations have been employed, these works are cited immediately after the primary text.