

## Law and Order in Anglo-Saxon England

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**Reviewer:** Philippa Byrne

It is the title which gives away a great deal about this very fine book, and should alert us to Tom Lambert's ambition for this project, which has grown out of a University of Durham PhD thesis. 'Law' positions it as a work of legal history, but it is the component of 'order' which offers the second and bolder half of Lambert's argument. Under the heading of 'law', Lambert examines the surviving codes and legal texts of Anglo-Saxon England, teasing out their implications and asking how they might best be placed in the context of other evidence which has not survived. The heading of 'order', however, is much more expansive: it encompasses not just the imposition of law and legal norms, nor simply the attempt of law to construct models for 'orderly' behaviour, but strikes at the ordering of society, social relations and expectations, and hierarchy. The other clue to the scope of this project lies in that final part of the title, for Lambert really does aim to cover almost all of Anglo-Saxon England, proceeding from the sixth century to the 11th. Indeed, implicit in his argument is the assertion that examining a shorter period would obscure a fundamental reality: that Anglo-Saxon legal culture worked within a set of basically unchanging parameters.

*Law and Order in Anglo-Saxon England* is, ultimately, centred around the case for an under-appreciated kind of continuity. Lambert argues that what legal codes of the period offer to the historian are a means of understanding how social order was conceived of, and how it functioned. That social order was, by the year 1000, one of long standing. Seventh-century Anglo-Saxon rulers would have recognised and understood the priorities of late Anglo-Saxon kings. Though the latter had more expansive powers, social ideals and models of social order remained more-or-less the same. Those ideals were based on a vision of a community which respected honour and the ability to respond to an affront, where the use of violence was not just legitimate but a core part of one's identity. This was a community which placed a premium on being free and on being a man, and personal honour revolved around both of these concepts. The role of both 'freedom' and 'manliness' in recent political discourse in both Europe and America only serves to make this study more timely and its themes rather more piquant. This model of how Anglo-Saxon communities were constructed constitutes the core of the book, and it is with this underpinning that Lambert then explores how particular aspects of the law worked – be those notions of theft, peace, oath-making or loyalty. Where and when kings sought to introduce new legislation, he argues, their changes 'worked with the grain of the established legal order rather than against it' (p. 349).

I suspect that an argument for continuity will feel instinctively right to medievalists. We broadly accept that tradition was a powerful force throughout the medieval period, that innovation was often – if not always – couched in a language of continuation and respect for the past, and that medieval rulers rarely had the capacity or inclination entirely to upend established sets of rules and expectations. In the context of Anglo-Saxon law, however, this case for continuity requires Lambert to wrestle with multiple historiographical obstacles.

From Lambert's perspective, historians of early English law have done at once too much and too little. Too much, in that they have been too willing to project back a category of 'the state' into the Anglo-Saxon evidence, too eager to look for justifications that make sense only in the context of kings trying to usher a modern state into existence. This tendency, even when unconscious and inadvertent, has led them to disregard the context in which laws were applied, and to overlook the question of *who*, precisely, was applying them. They have put rather too much emphasis onto royal action, and too little on the role of local assemblies, who preserved a keen sense of tradition and respect for old law. The remedy against such state-friendly assumptions is to be ever-vigilant of such anachronistic assumptions sneaking into our accounts, and to ever-foreground contemporary practices – from Lambert's perspective, the term 'state-less' is as bad as 'state'. If all historians have a teleological bent, the danger is perhaps greatest with legal history.

On the other side of the coin, historians have also done too little with the evidence available to them. Lambert identifies a tendency in more recent historiography to dismiss laws as setting out an idealised vision of social relations: presenting a model for society which society itself could never live up to, and which therefore offers the historian very little. Lambert turns this on its head: laws may distort, but what laws aim at must reveal something about contemporary perceptions of order and disorder. But this can only be achieved with the application of imagination. Legal texts can be used to think our way into a social system.

Having laid out the stakes in the introduction, Lambert takes us chronologically through Anglo-Saxon law. The chapters, for the most part, follow a model of first parsing textual evidence, typically surviving law codes, then move onto attempts to draw out what this might reveal about social world in which those laws operated.

The book is divided into two parts, the first entitled 'The foundations of the Anglo-Saxon legal order'. Chapter one examines laws before Æthelberht, whose codification of law is typically approached as an ideological assertion of Romano-Christian kingship. Lambert does not challenge this judgment so much as refine it: first by asking why it was that this specific set of rules – concerning compensation for affronts to honour – was selected to be set down in writing, rather than any other legal stipulations. The latter part of the chapter then asks how such laws might have been used, and posits that rules on compensation were not so

much strict guidelines as starting points to assist communities in dealing with personal affronts. Chapter two makes a broader argument about change and continuity, and underlines the underlying historiographical principle at play here: our assumptions about royal motivations make a difference to how we read the evidence. Here, it is argued that new forms of punishment set out by royal codes in the late seventh century – the Kentish codes of Hlothre and Eadric and Wihtred – did not represent a challenge to the existing legal culture. The exercise of royal ‘vertical’ power was compatible with ‘horizontal’ notions of order. Royal punishment of offenders could work to support personal pursuit of individuals who had given an affront and were sought for compensation. Moreover, kings worked within a frame of legal tradition: both formal and prestigious law typically transmitted orally (‘*ae*’) and the expectation formed by customs (‘*þeawas*’) (p. 70). Royal judgments were not handed down so much as ‘performed’ by kings for an assembly audience closely familiar with existing rules. Chapter three encompasses an assessment of royal legal ambitions and their place within communal traditions, arguing that local justice ran itself, and royal reeves and thegns only guided it when necessary, and collected its profits.

Part two, ‘Order and “the state” in late Anglo-Saxon England’, adopts a somewhat different approach: Lambert concentrates his focus on the ‘state’ in Anglo-Saxon historiography and to asking where, exactly, we should fit law within this narrative. Lambert is not concerned to tear down the accepted historiographical picture of a complex, sophisticated, and increasingly well-organised kingship: rather, he asks whether that narrative about governmental structures should be extended to law. A model of ‘activist’ kingship might at least, he suggests, demand the introduction of legal nuance. Even tenth-century royal activism in law worked within a traditional framework. New laws may have been established but they did not replace existing law, and nor did they entail the end of feud as a legitimate form of legal practice. Lambert summarises it thus: ‘in its approach to wrongdoing, late Anglo-Saxon law resembled early Anglo-Saxon law much more than it did the common law of the late twelfth and early thirteenth centuries’ (p. 200), though this is accompanied by the caveat that contemporaries would still have been struck by the increasing severity of punishments in the tenth century. Kings may have got better at getting the outcome they wanted from local justice, at enforcing punishments, expanding requirements for witnessing, and creating more demanding burdens of suretyship. But they did not fundamentally change the nature of justice, which was still run by communal leaders and local assemblies. Royal attention was only required when violence threatened to become a social harm: either where enmity threatened to spiral out of hand, or where there were moral questions raised about the dangers of unrepented sin bringing doom upon the whole community. In this sense, too close a focus on punishments meted out by royal power threaten to distort how Anglo-Saxon kings fitted into the legal order. The relentless focus throughout the book, despite working predominantly from ‘royal’ law codes and royal pronouncements, is not so much what kings were doing, but what everyone else was doing.

For all his stress on continuity, Lambert does not shirk the question of change. The break he sees is not ideological, but financial. In the late tenth century and into the 11th, power began to shift away from local communities and towards kings, as legal revenues – previously unreliable, offered in kind, not cash, and of relatively low value – became more lucrative. In these new economic circumstances, kings’ abilities to control and distribute these legal rights served to enhance their power, while a network of sheriffs could be deployed more aggressively to operate the mechanisms of these revenues. The institution of sheriffs offered the capacity to extract payments, making flesh royal claims to authority, and accomplishing much more than the earlier figure of the rural reeve. One might wish to read more on some elements of this case for change: the increasing value of legal revenues is explained with reference to increased urbanisation and economic growth, and the discussion in the footnotes (p. 344) merits expansion into several pages.

As should be readily apparent from this summary, *Law and Order in Anglo-Saxon England* offers a great deal to historians across a number of different fields. Those working on the Late Anglo-Saxon period will have to consider afresh how to set law within their accounts of other developments in kingship and royal action. Scholars of feud, vengeance, peace and violence will be interested in Lambert’s arguments about how concepts intersected with Anglo-Saxon concepts of identity. Historians of the Anglo-Norman realm might be encouraged to think about the discussions of continuity and discontinuity, not least in relation to when the value of justice as something within the royal gift becomes valuable. But *Law and Order in Anglo-Saxon England*

has something still more significant to offer to the field of legal history. Lambert is a specialist, but the decision to connect 'law' to 'order' is what gives this book value for the non-specialist. Too often (with some noteworthy exceptions, such as Patrick Wormald, Paul Hyams on feud and vengeance, or John Hudson for the post-conquest period), legal history has projected an unfortunate image of an insular domain, developing in splendid isolation, which other historians might fear to enter. In his footnotes, Lambert is admirably frank about the difficulties and frustrations of grappling with particular kinds of historiographical debate which are both off-putting to outsiders and which can prove blind alleys for researchers within the discipline. Lambert's achievement is to explain how such questions might be fitted into a broader narrative, how social context informs law, and vice-versa. One might readily recommend this to students unfamiliar with the specifics of Anglo-Saxon law in order to show them the methodological possibilities of using legal evidence to provide a window on the medieval world.

Given the scope of this book, it necessarily cuts across a number of different historiographical debates, some older and some more recent. Chapter four, for example, assesses Naomi Hurnard's 1949 reading of the *Leges Henrici Primi*, disputing the implications for royal punishment of homicide and her interpretation of the forfeiture of killers' wergilds to the king. But, aside from Anglo-Saxon kings, the figure who looms largest in this book is Patrick Wormald, and it is Wormald with whom Lambert is primarily in dialogue.

Patrick Wormald's contribution to the study of Anglo-Saxon law was so vast and varied that it would be to mischaracterise Lambert's work by describing it as a 'challenge' to Wormald's arguments, for Wormald is engaged on multiple fronts. On the purpose of the production of early law codes, Lambert does not disagree with Wormald's thesis that such texts represented ideological statements on the part of kings, but instead shifts the focus to a discussion of the society that produced them. In other places, Lambert is following up, and developing upon, Wormald's ideas about community (p. 138), or the nature of loyalty oaths (p. 211). In still other places, Lambert challenges the Wormaldian line – for example, in discussions of whether the strategies of dispute settlement by royal fiat versus by private settlement really ought to be so polarised, and by bringing communal judgment and community practice to the fore (see fn. 143, p. 108). Lambert is, of course, not the first to respond to the details of Wormald's arguments on particular points, but one of the strengths of *Law and Order* is that these discussions are integrated into the book, points encountered along the way to sketching out a broader narrative of order, rather than presented as a point-by-point response. One is reminded by the footnotes to almost every page of Wormald's contribution to scholarship, and his legacy for medieval legal history (the index lists no less than 22 articles, chapters, or books under Wormald's name). But one is no less impressed by Lambert's endeavours, in picking up on so many threads, hints, and observations, and carrying them forward into this fresh account of the social and moral dimensions of Anglo-Saxon law.

My criticisms are small. Lambert sets out his overarching argument clearly, but at times the surfeit of subdivisions and subheadings within chapters may prove frustrating to the reader. Perhaps this is necessary given the nature and partial survival of Lambert's sources, and the fact that he has many separate-but-related points to make within the course of a chapter, but at times these divisions threaten to break up the flow of his argument. This is a problem not entirely overcome by the outline of argument offered at the start (and sometimes too the end) of each chapter.

The first half of the book occasionally introduces a method of working through an imaginary case starring the invented protagonists to illustrate the practical dimensions of Lambert's arguments about the community and legal standing. This 'fictional case' turns on a freeman named Ælfstan who seeks to avenge an affront inflicted by his stubborn and violent enemy Berhtred, and whose injury is used to open up the multiple possible strategies a level-headed freeman might employ in such a scenario (pp. 41-4). Ælfstan's difficulties allow Lambert to demonstrate how a local assembly judgment might support a sensible freeman's attempt to secure social compensation, and how threats of violence were tied into, not separate from, local assembly practice. This technique is entirely in keeping with Lambert's plea in the introduction for historians to use imaginative methodologies to make the most of surviving texts. But one might hope to see the same approach extended into the second half of the book. If Ælfstan's dispute has run his course, then the figures

of 'C' and 'D' might plausibly have been introduced, for example to explain the mental calculations when offenders made the choice to defy or flee from punishment in the later part of this period.

*Law and Order in Anglo-Saxon England* makes good on its promises, persuasively demonstrating the role of Anglo-Saxon communities in enforcing law, and the role of legal assemblies in constituting communities, over the course of four centuries. It is precisely because it able to draw these imaginative connections, engaging with matters of identity and community as much as it does legal and social order, that this book deserves a wide audience.

The author would like to say: 'I am grateful to Phillipa Byrne for this extremely generous review. She gives a good account of the book's argument and her critical comments are very reasonable so there is little for me to say in response, but I would like to thank her for reading my work with such care and sympathy.'

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