

# Maitland and Anglo-Norman Law

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## Maitland's work

WHEN RALPH VAUGHAN WILLIAMS DIED in 1958, there were just two photographs in his bedroom: those of Gustav Holst and F. W. Maitland. In 1907, Vaughan Williams had commemorated Maitland with a song for chorus and orchestra, entitled *Toward the Unknown Region* — ‘no map there, nor guide, nor voice sounding, nor touch of human hand . . . that inaccessible land.’ The title, text, and theme clearly were suited to Maitland’s somewhat agnostic religious views. One wonders, though, whether Maitland’s historical interests and approaches, at the very least the meaning of the ‘Beyond’ in *Domesday Book and Beyond*, were not sufficiently familiar to the composer for him to realise how appropriate was the piece’s title.<sup>1</sup>

The working back from the known into the unknown region is the most famous aspect of Maitland’s historical technique:

if the age of Glanvill and Bracton throws light forward, it throws light backward also. Our one hope of interpreting the *Leges Henrici*, that almost unique memorial of the really feudal stage of legal history, our one hope of coercing Domesday Book to deliver up its hoarded secrets, our one hope of making an Anglo-Saxon land-book mean something definite, seem to lie in an effort to understand the law of the Angevin time, to understand it thoroughly as though we ourselves lived under it.<sup>2</sup>

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<sup>1</sup> M. Kennedy, *The Works of Ralph Vaughan Williams* (Oxford, 1964), pp. 112–13, 241, 431; Fifoot, *Life*, pp. 168, 179–81, 296 n. 7. The piece is based upon Walt Whitman’s poem ‘Darest Thou now O Soul’, from ‘Whispers of heavenly death’, and was dedicated to Maitland’s widow, Florence, sister of Vaughan William’s first wife. Vaughan Williams later set four poems by Maitland’s daughter, Fredegond.

<sup>2</sup> Pollock and Maitland, ii 673; see also *Domesday Book and Beyond*, p. xix; in *Letters*, i no. 36, to Pollock, 7 April 1888, Maitland wondered whether his contemplated history of the manor should ‘begin by describing the situation as it was at the end of cent. XIII, and then to go back to earlier times.’ Maitland’s scepticism about natural sequences of political and historical development also may well underlie his desire to base his discussion upon specific sources of ‘the known’, rather than upon preconceived stages of assumed evolution; see e.g. S. Collini, D. Winch, and J. Burrow, *That Noble Science of Politics* (Cambridge, 1983), p. 300

*Maitland's assessment of the Anglo-Norman period*

The Anglo-Norman period, with the partial exception of the Conqueror's reign,<sup>3</sup> was not central to any of Maitland's works. *Domesday Book and Beyond* focused upon the centuries before 1086, the *History of English Law* upon the years between 1154 and 1272. Let us nevertheless try to assess Maitland's overall view of the period. One might start (like a lazy and fortunate student) with an old copy of the *Encyclopaedia Britannica*, and find that the entry on 'English Law (History)' was by Maitland: 'We may regard the Norman conquest of England as marking the confluence of two streams of law. The one we may call French or Frankish. . . . The other rivulet we may call Anglo-Saxon.' However, the student's laziness will be revealed, for in the *History of English Law*, Maitland wrote that

the problem to which the historian must address himself should not be stated as though it were a simple ethnical question between what is English and what is French. The picture of two rivulets of law meeting to form one river, would deceive us, even could we measure the volume and analyze the waters of each of these fancied streams.<sup>4</sup>

He went on to emphasise the complexities of causation, the difficulties of analysis. In particular, he stressed that developments *after* the Conquest did not necessarily occur *because of* the Conquest: rather, 'a concurrence of many causes was requisite to produce some of those effects which are usually ascribed to the simple fact that the Normans conquered England.'<sup>5</sup>

Maitland regarded the Conquest's direct impact on legal change as slow and limited. This was typified by the history of legal language. If French-based words now dominate legal language, 'this is no immediate and no necessary effect of the Norman Conquest. . . . The destiny of our legal language was not irrevocably determined until Henry of Anjou was king.'<sup>6</sup> The slow pace and limited extent of legal change reflected the small number of conquerors; there was no folk migration. In addition, William did not impose a foreign code on the conquered.

There is no Norman code. Norman law does not exist in a portable trans-

for possible discussion between Maitland and his mentor, Sidgwick, concerning such natural sequences.

<sup>3</sup> See e.g. *Letters*, i no. 211 (22 March 1898) to J. H. Round: 'I feel sorry for any one who has to read *Domesday and Beyond* unless he is one of the small number of the Elect, who were predestined to fall under the Conqueror's spell.'

<sup>4</sup> *Encyclopaedia Britannica* (11th ed., Cambridge, 1910), ix 600, Pollock and Maitland, i 79; see also i pp. c–ci.

<sup>5</sup> Pollock and Maitland, i 87; see also i 89.

<sup>6</sup> Pollock and Maitland, i 80–7, quotation at 84.

plantable shape. English law will have this advantage in the struggle: — a good deal of it is in writing.

We may safely say that William did not intend to sweep away English law and to put Norman law in its stead. On the contrary, he decreed that all men were to have and hold the law of King Edward — that is to say, the old English law — but with certain additions which he, William, had made to it.<sup>7</sup>

Moreover, 'there were good reasons why the technical terms of the old English law should be preserved if the king could preserve them. They were the terms that defined his royal rights.' William was aware of the disruptive effects of lordly power, and sought that 'a combination might be made of all that was favourable to the duke in the Norman, with all that was favourable to the king in the English system.'<sup>8</sup>

Maitland also argued that there were similarities between pre-1066 English and Norman law,<sup>9</sup> and between ancient customs more generally: 'all ancient procedure is formal enough, and in all probability neither the victors nor the vanquished on the field at Hastings knew any one legal formula or legal formality that was not well known throughout many lands.'<sup>10</sup> Such similarities help to explain why no system of personal law developed in Norman England.<sup>11</sup> Rather, developments favoured a unified law for all the king's subjects, a vital precondition for the later emergence of a common law.

The need for unity was central to Maitland's view of royal law and justice. The last Anglo-Saxon kings had been, in Maitland's eyes, all too profligate in their grants of jurisdiction, and their regime displayed marked weaknesses.<sup>12</sup> The Norman kings may not have stopped the former, but until 1135 they had reversed the latter. Like many of his contemporaries, Maitland saw king and lords as naturally opposed: 'the chief result of the Norman Conquest in the history of law is to be found not so much in the subjection of race to race as in the establishment of

<sup>7</sup> Pollock and Maitland, i 79, 88.

<sup>8</sup> Pollock and Maitland, i 82, 92. When, at i 92, Maitland wrote of William I 'bringing even the Norman barons under English land law', he was referring to the obligations they owed the king for their lands, not what he would have called 'private law'.

<sup>9</sup> See e.g. Pollock and Maitland, ii 455, although note i 456 on English custom becoming unintelligible.

<sup>10</sup> Pollock and Maitland, ii 558.

<sup>11</sup> Pollock and Maitland, i 90-2.

<sup>12</sup> Note Maitland, *Constitutional History*, pp. 59-60; *Domesday Book and Beyond*, pp. 282-3. For similarities between Maitland and Stubbs' interpretations of the Norman Conquest, see W. Stubbs, *The Constitutional History of England* (3 vols, Oxford, 1874), i 247-8 (firm government), 256-7 (opposition of king and barons), 275 (limited legal change), 278 (amalgamation of Norman and English: 'the strongest elements of both were brought together'); cf. E. A. Freeman, *The Norman Conquest* (6 vols, Oxford, 1867-79), i 1-2, 4-5, v 364-404, 441-60.

an exceedingly strong kingship which proves its strength by outliving three dispute successions and crushing a rebellious baronage.<sup>13</sup> First, then, amongst the period's contributions to the development of law was powerful kingship, the smack of firm of government — famously translated in the *Leges Henrici Primi*, 6.2a, as 'tremendum regie maiestatis . . . imperium'.

One aspect of such firm Norman government was the Inquest. Derived from Frankish practice, this involved a question being put on behalf of the king or duke to a sworn body of neighbours. 'That the Norman duke brought [the Inquest] with him as one of his prerogatives can hardly be disputed . . . Under Henry II. the exceptional becomes normal. The king concedes to his subjects as a royal boon his own prerogative procedure.'<sup>14</sup> Also introduced by the Conquest was 'the general theory of tenure', that 'all land is held of the king.' This too reinforced royal power.<sup>15</sup>

Yet if the regime of the Norman kings was powerful, it was also restricted and *ad hoc*. In their court, business was primarily limited to 'the great men and the great causes'; its jurisdiction 'was of necessity a flexible, occasional jurisprudence, . . . meeting new facts by new expedients, wavering as wavered the balance of power between him and his barons.'<sup>16</sup> Elsewhere, Anglo-Norman law and judicial administration were singly lacking in organisation: 'If [the *Leges Henrici*] paint English law as a wonderful confusion, they may yet be painting it correctly.' 'The picture that these law-books set before us is that of an ancient system which has received a rude shock from without while within it was rapidly decaying.' An influx of Frenchmen into the English local courts did not help, and meanwhile 'everywhere in western Europe new principles of social and political order were emerging; new classes were being formed; the old laws, the only written laws, were becoming obsolete; the state was taking a new shape.'<sup>17</sup>

The cure which Maitland prescribed was still greater activity by the royal court and justices, and this would be provided by Henry II, the hero of Maitland's narrative. The account for his reign helps to

<sup>13</sup> Pollock and Maitland, i 94. For such opposition generating legal change, see e.g. Pollock and Maitland, i 80; he did not write in the same way about tensions between lords and their men.

<sup>14</sup> Pollock and Maitland, i 143–4.

<sup>15</sup> The most useful statement of Maitland's views is *Constitutional History*, pp. 152ff.

<sup>16</sup> Pollock and Maitland, i 108. Maitland said little of Henry I's activities — perhaps because of the lack of legislation and other written records; Pollock and Maitland, i 95–6, 109.

<sup>17</sup> Pollock and Maitland, i 100, 104–5, 105. The picture of the Anglo-Norman period as one of confusion survives e.g. in R. C. van Caenegem, *The Birth of the English Common Law* (2nd ed., Cambridge, 1988).

reveal what Maitland believed lacking in the Anglo-Norman period: 'the reign of Henry II. is of supreme importance in the history of our law, and its importance is due to the action of the central power, to reforms ordained by the king.' Key elements of Henry's reforms were that 'the whole of English law is centralized and unified by the institution of a permanent court of professional judges, by the frequent mission of itinerant judges throughout the land, by the introduction of the "inquest" or "recognition" and the "original writ" as normal parts of the machinery of justice.'<sup>18</sup>

In Maitland's overall scheme, therefore, the Conqueror and his sons were most important for correcting the weaknesses of the Anglo-Saxon state and then maintaining their power sufficiently for Henry II to undertake his work. This achievement relates to another of Maitland's preoccupations: why England developed its own Common Law, rather than succumbing to Roman Law. A lack of firm government might have led to localism and hence the triumph of Romanism. He asked whether eventually 'English law would have capitulated and made way for Roman jurisprudence' had Harold won at Hastings. Then, 'in the woful days of Stephen, the future of English law looks very uncertain. If English law survives at all, it may break into a hundred local customs, and if it does so, the ultimate triumph of Roman law is assured.' Instead, Henry II succeeded and 'in England the new learning found a small, homogeneous, well conquered, much governed kingdom, a strong, a legislating kingship. It came to us soon; it taught us much; and then there was healthy resistance to foreign dogma.'<sup>19</sup>

### *The Anglo-Norman period in The History of English Law*

Because the *History of English Law* is concerned primarily with the years 1154–1272, it is not always easy to use with reference to the Anglo-Norman period.<sup>20</sup> One certainly cannot just concentrate upon Book I, Chapter IV, entitled 'England under the Norman Kings.' This is a relatively brief chapter, of only thirty-two pages, compared with the thirty-eight on 'The Age of Glanvill' and fifty-two on 'The Age of Bracton'. Moreover, these thirty-two pages range widely outside

<sup>18</sup> Pollock and Maitland, i 136, 138; see also e.g. i 144, 150, 153.

<sup>19</sup> Pollock and Maitland, i 79, 110, 24. Yet Maitland still could refer to the Angevin period as 'a perilous moment', ii 673. The perilous moments start to become so numerous as to constitute perilous centuries. See also F. W. Maitland, *English Law and the Renaissance* (Cambridge, 1901); *Gierke*, pp. xiii–xiv; Helmholz, below. Note J. W. Burrow, *A Liberal Descent* (Cambridge, 1981), pp. 134–5, on Stubbs and Roman Law.

<sup>20</sup> Cross references, for example between Books I and II are few; for one example, see i 328 n. 2, referring back to i 71 on *beneficia* and fiefs in Normandy.

the Anglo-Norman period, in particular the seven and a half pages dealing with legal language. Of the remainder, five treat the legislation of the Anglo-Norman kings, almost eleven the *Leges*. This leaves a mere eight and a half pages for the following sub-headings: 'Effects of the Norman Conquest'; 'No mere mixture of two national laws'; 'Personal or national law'; 'Maintenance of English land law'; 'The English in court'; 'Norman ideas and institutions'; 'Custom of the king's court'; 'Royal justice'.

Treatment of elements of land law had appeared in Book I, Chapter III, on 'Norman Law', the background of the inquest waited until Chapter VI, 'The Age of Glanvill'. However, most matters of substantive law and procedure were left to Book II, 'The Doctrines of English Law in the Early Middle Ages.' There, the Anglo-Norman period was sometimes simply excluded. The *History* did not examine the origin of frankpledge. Discussion of aids did not go back before *Glanvill*, nor that of the duties of townships before Henry II.<sup>21</sup> For some other subjects, Maitland did give 'earlier' or Anglo-Norman law its own section or sub-section, but even these did not constitute thorough surveys of the evidence.<sup>22</sup> Discussion is included sometimes because of the light which later evidence casts upon it, but more often in order to explain later developments.

The positioning of such discussions is also of interest. A reverse chronological order might be seen as reflecting Maitland's 'Domesday Book and Beyond' approach. Thus the treatment of 'Wardship' deals in turn with 'Bracton's rules'; 'The law in Glanvill'; 'Earlier law'; 'Norman law'; 'Origin of these rights'.<sup>23</sup> However, such a reverse structure is untypical. More common is a forward arrangement, although sometimes preceded by a brief sub-section on the Bractonian Common Law position. With or without such an introduction, quite short sub-sections arranged chronologically forwards are followed by a considerably longer discussion of the thirteenth-century situation.<sup>24</sup> The analysis can contain flashbacks and flash-forwards. The overall chronological pattern of a chapter, such as that on 'Conveyance', tends therefore to a series of zigzags, not a constant forward or backward direction.<sup>25</sup>

Some other sections are particularly abstract in their discussion, giving no indication of chronological change. In general, as with the

<sup>21</sup> Pollock and Maitland, i 349-51, 565; see also e.g. ii 46-7 on the protection of seisin.

<sup>22</sup> See e.g. Pollock and Maitland, i 460 on aliens.

<sup>23</sup> Pollock and Maitland, i 319-27; the evidence on Norman law is not chronologically earlier, but the pattern of Maitland's thought is clear.

<sup>24</sup> Note e.g. the arrangement of sections and sub-sections in Book II, Chapter VI, 'Inheritance'.

<sup>25</sup> Pollock and Maitland, ii 80-106.

analysis of ownership and possession or of incorporeal things, these are basically Bractonian. Others contain more examples and footnote citations but concentrate on the thirteenth century, with only occasional chronological shifts backwards and forwards. Thus the chapter on jurisdiction, with the exception of the section on the borough, relies heavily on citations from *Bracton*, *Bracton's Note Book*, the *Hundred Rolls*, and the *Placita Quo Warranto*.<sup>26</sup> Treatment of aspects particularly important in Norman England, such as seignorial jurisdiction, is therefore very brief, and draws on very limited evidence.<sup>27</sup> Elsewhere the Anglo-Norman period is amalgamated in discussion of the thirteenth century, for example with citations from c. 1066–1154 being used to support a general point in the text.<sup>28</sup>

Thus one cannot simply single out the sub-sections with titles such as 'Earlier law' or 'Vassalism in the Norman age', add them to the chapter on 'England under the Norman Kings', and hope to arrive at a complete picture of Anglo-Norman law. Much material and discussion relevant to the Norman reigns is present in the bulk of the book devoted to the later twelfth and the thirteenth century. Maitland's analysis is too carefully integrated to allow easy excerpting.

### *The History of English Law and Domesday Book and Beyond*

Maitland recognised at least some of the limitations of his treatment of the Anglo-Norman period, even before they were brought into sharper focus by Brunner's review of the first edition.<sup>29</sup> In the fair copy manuscript of the *History*, Maitland deleted a long section at the end of the Anglo-Norman chapter's final footnote. In it, he had protested

<sup>26</sup> See Pollock and Maitland, i 538–9, 545–6, for shifts backwards.

<sup>27</sup> See esp. Pollock and Maitland, i 584–94. Nor does *Domesday Book and Beyond* analyse in depth the 'feudal justice' (p. 80) deriving from lordship and tenure, or exploit the charter sources concerning such justice.

<sup>28</sup> E.g. Pollock and Maitland, i 271 n. 3, 306–7, 352 n. 2.

<sup>29</sup> Pollock and Maitland, i 94 n. 2, and see below, p. 39; Maitland, of course, did not significantly modify his interpretation in the second edition. His sole response to Brunner's criticism that his treatment of gage began with *Domesday Book*, and of forms of gage with *Glanvill*, was to add two sentences referring to Anglo-Saxon landbooks to his brief paragraph on 'Antiquity of gages', and to footnote Brunner's review, a charter cited there by Brunner, and another of Brunner's works; Pollock and Maitland, ii 118. Other new footnote references, and occasional modifications to the text, in the second edition reflect publications too recent to be included in the first edition, notably works by Liebermann; e.g. i 89 and n. 6, cf. (1895) i 67 and n. 7; 101 n. 4, 103 nn. 1 and 3, 104 n. 3. Other changes in the second edition relating to the Anglo-Norman period include i 94, reference to Stevenson; i 95, a new passage concerning Westminster Hall; also occasional minor verbal changes, e.g. i 92 'capital', replaces (1895) i 70 'great'; see also below, n. 43, p. 30.

that his attitude to the influence of Norman law was made 'unbiased by any misplaced patriotism', and admitted that

the law which prevails in England at the end of the twelfth century, more especially the private law, is in a certain sense very French. It is law evolved by French speaking men, many of whom are of French race, many of whom have but begun to think of themselves as Englishmen; in many respects it is closely similar to that which prevailed in France. But we do not believe that the conquering Normans brought much legal doctrine with them, or tried to impose what they did upon the English.<sup>30</sup>

Maitland's view of what constituted legal doctrine, his preference for written law,<sup>31</sup> and his tendency to omit 'private law' from Book I all contributed to his underestimating of Norman influence.

However, the limited treatment of the Anglo-Norman period also stemmed from the way in which the *History* evolved during its writing. The 'Introduction' to the first but not the second edition included the following passage:

Our purpose at one time was to have turned back from the Angevin to the Norman time for the purpose of setting before our readers in a Third Book some speculations as to the true intent and meaning of the Domesday Survey, for we hold with Mr Seebohm that the study of that enigmatical record should come after and not before the study of less obscure texts. But our work grew in our hands and has become all too bulky. Divers other reasons also have persuaded us that what we had schemed and even written about Domesday Book had better wait for a while.<sup>32</sup>

Let us try to construct a chronology. Between late 1889 and early 1891 Maitland was writing chapters on 'Tenure', 'Status', and 'Jurisdiction', and Pollock his chapter on Anglo-Saxon law.<sup>33</sup> Then in April 1891 Maitland wrote to Bigelow that 'at present I am up to my eyes in Domesday and I hope to get some theory out of it that will enable me to attack the A-S land books. But studying Domesday involves a great

<sup>30</sup> Cambridge University Library, Add. MS 6987, f. 124.

<sup>31</sup> See above, p. 23.

<sup>32</sup> Pollock and Maitland (1895), i pp. xxxv-vi. The plan of the Third Book, apparently to be placed at the end of the existing work, is uncertain. It may have been intended to contain work by both Pollock and Maitland, for appended to the above passage is a section of a footnote initialed by Pollock: 'My own contributions in the shape of a paper in the Transactions of the Devonshire Association for 1893, and the Presidential address which opens the volume for 1894, are published for what they are worth, but must be taken as provisional. — F.P.' The decision to publish these elsewhere may indicate the early abandonment of the projected third book, leaving as its main relic a chapter by Maitland on Domesday Book. Pollock's article 'A brief survey of Domesday', *EHR* 11 (1896), 209-30 may also have used material he had assembled whilst the third book was still proposed.

<sup>33</sup> *Letters*, i nos. 78, 83, 86, 87; M. DeWolfe Howe, ed., *The Pollock-Holmes Letters* (2 vols, Cambridge, 1942), i 34.

deal of drudgery.’<sup>34</sup> On 1 November 1891 he told Pollock that ‘I have now written in rough five big chapters — Tenure — Status — Jurisdiction — Domesday — Origins of Feudalism. My next task will be the general history from 1066 to 1272. Then the way will be clear for “private law”.’<sup>35</sup> ‘Tenure’, ‘Status’, and ‘Jurisdiction’ appeared as the first three chapters of Book II of the *History*, but ‘Domesday’ and the ‘Origins of Feudalism’ came to be excluded.

In April 1892 Maitland wrote to J. H. Round that ‘D. B. “intrigues” me the more one reads it. I lectured on it for a whole term and wrote all that I said; but I have no intention of publishing anything, at any rate for a long time to come.’ This presumably refers to his lectures in the Michaelmas term of 1891 on ‘English land law in and before 1086’, and these must have been related to the draft chapters on ‘Domesday’ and ‘Origins of Feudalism’, the latter of which I take to have primarily concerned the Anglo-Saxon period.<sup>36</sup> In May, Maitland wrote the following to Vinogradoff:

F. P[ollock]. . . has written an Anglo-Saxon chapter. *Between ourselves* I do not like it very much, partly because it will make it very difficult for me to say anything about A-S law in any later part of the book. My effort now is to shove on with the general sketch of the Norman and Angevin periods so that my collaborator may have little to do before we reach the Year Book period — if we ever reach it. So I am half inclined to throw aside all that I have written — it is a pretty heavy mass — about Domesday and the A-S books. Perhaps when you have got out your folk land papers I may publish in some separate form a few things I want to say about A-S conveyancing — always supposing that you have neither said them nor wished to say them.<sup>37</sup>

In November 1893 the minutes of the Syndicate of Cambridge University Press and a letter from Maitland to Gross shows that he was still contemplating three volumes, but the relationship of these to a possible Book III concerning Domesday is unclear.<sup>38</sup> Neither the ‘Domesday’ nor the ‘Origins of Feudalism’ chapters survive in the fair copy manuscript of the *History*, but at a date which I have been unable to ascertain Maitland did submit at least his ‘Domesday’ chapter to the Press; in

<sup>34</sup> *Letters*, i no. 93; see also no. 95.

<sup>35</sup> *Letters*, i no. 96.

<sup>36</sup> *Letters*, i no. 106; Fifoot, *Life*, p. 96; on the contents of the ‘Origins of Feudalism’ chapter, see below, p. 31. Maitland published short pieces on Domesday before 1895: ‘Domesday measures of land’, *Archaeological Review*, 4 (1889–90), 391–2, and ‘Domesday Book’, in R. H. I. Palgrave, ed., *Dictionary of Political Economy* (London, 1893), pp. 629–30 (I owe these references to Mark Philpott). The first of these is a brief letter, but the latter shows that at least some of his ideas were already fully formed, for example that ‘Domesday Book is a geld book, a tax book. Geldability, actual or potential, this is its main theme.’

<sup>37</sup> *Letters*, i no. 109.

<sup>38</sup> Cambridge University Library, UA, Pr. V. 12; *Letters*, i no. 130.

July 1894 he wrote to Round concerning Domesday matters, and stated that 'I am reconsidering my position which is complicated by the existence in irretrievably printed sheets of a supposed chapter on D. B.'<sup>39</sup> It is uncertain whether the 'Origins of Feudalism' chapter had also been submitted to the Press. Nor is it clear quite when the final decision on the 'Domesday' chapter was taken. Even as late as December 1894, after he had finished the *History*, Maitland wrote to Round that 'I am meditating a postponement of all my Domesday stuff in order to avoid collision.' However, this may only mean that Maitland, having already decided to exclude the 'Domesday' chapter and other material from the *History*, was contemplating what to do with it.<sup>40</sup> In July 1895 he wrote of submitting two or three essays on Domesday to the *English Historical Review*,<sup>41</sup> but these instead became *Domesday Book and Beyond*, published in 1897.

There is no indication that the problems arising from Pollock's Anglo-Saxon chapter, from the omission of the 'Domesday' or the 'Origins of Feudalism' chapters, or from the abandonment of 'Book III' led to major changes in the plan for or content of the rest of the *History*.<sup>42</sup> Can we establish a definite relationship between the content of *Domesday Book and Beyond* and the material excluded from the *History*?<sup>43</sup> The third essay, on the hide, certainly involved work under-

<sup>39</sup> *Letters*, i no. 137.

<sup>40</sup> *Letters*, i no. 147. Maitland may have completed his fair copy manuscript at the beginning of November 1894; Cambridge University Library, Add. MS 6994, f. 303; 'Explicit 2 Nov' 1894 In festo animarum.'

<sup>41</sup> *Letters*, i no. 164.

<sup>42</sup> Conceivably Pollock's Anglo-Saxon chapter may have led Maitland to limit the amount of early, in particular Anglo-Saxon, material in the thematic chapters written after the middle of 1892.

<sup>43</sup> Comparison of the first and second editions of the *History* shows that only limited changes were made relating to the appearance of *Domesday Book and Beyond*. Pollock and Maitland (1895), i p. xxxvi n. 1, the latter part of which is cited above, n. 32, began 'Our readers must therefore be asked to forgive a few phrases which seem to promise a discourse on Domesday'; for such phrases and their replacement in the second edition by references to *Domesday Book and Beyond*, see Pollock and Maitland, i 293, 579 = (1895) i 274, 566; see also i 25, two sentences added to what was the first paragraph of the first edition ('Much of . . . this kind'). In general, most changes involving *Domesday Book and Beyond* were simply additions to footnotes, referring the reader to *Domesday Book and Beyond*; e.g. Pollock and Maitland, i 38, 42, 82, 235, 362, 619, ii 12. On other occasions the reference is preceded by an explanatory statement, e.g. i 187, 259 ('as to the old English army, see . . .'), 297 ('for the use of this word before the Conquest, see . . .'). Reference to *Domesday Book and Beyond* could replace other citations: Pollock and Maitland, i 289 n. 7. On other occasions both text and notes were modified; Pollock and Maitland, i 558 (hundred and communal property), 603 (small manor), 633 (complete re-working of section linking village and borough). Work relating to *Domesday Book and Beyond* produced a new paragraph on 'Vill and village', i 562-3; also an important addition (i 595) on the legal sense of the manor, qualified by reference to Tait's review of *Domesday Book and Beyond*. Modifications were also made to Pollock's Anglo-

taken after the completion of the *History*.<sup>44</sup> Otherwise, the preface to *Domesday Book and Beyond*, in words rather similar to those of the 'Introduction' to the first edition of the *History*, suggests a very close relationship:

The greater part of what is in this book was written in order that it might be included in the *History of English Law before the Time of Edward I. . . .* Divers reasons dictated a change of plan. Of one only need I speak [that Round's *Feudal England* had been forthcoming]. In its light I have suppressed, corrected, added much.<sup>45</sup>

Essay I, 'Domesday Book', must be very closely related to the 'Domesday' chapter of the *History*, of which Maitland had received proofs.<sup>46</sup> Particularly the opening pages of Essay II, 'England before the Conquest', show it to have derived from the chapter on the 'Origins of Feudalism'. Whether the original chapter would have included other material, for example on Normandy, must remain uncertain.<sup>47</sup>

*Domesday Book and Beyond* thus complements the *History*. However, its form and content do not suggest that Maitland ever had detailed plans for a treatment of the Anglo-Norman period as complete as that of the 'Age of Bracton'. The focus of *Domesday Book and Beyond* left uncovered topics discussed at length for a later period in the *History*. There is little or nothing about the king's court, procedure, the classification of offences, or much else which appeared in the second volume of the *History*.<sup>48</sup> Maitland wished to treat *Domesday Book* as above all a geld book, and therefore consciously left many aspects of its legal interpretation to others: 'some future historian may be able to reconstruct the land-law which obtained in the conquered England of 1086, and (for our records frequently speak of the *tempus*

Saxon chapter, including sections on the post-Conquest period: cf. i 34 and (1895) i 10 on the five hide unit and the knight's fee; i 43 omits a long passage from (1895) i 20 in a discussion of private jurisdiction. References to *Domesday* material in the first edition survive unchanged in the second: e.g. i 241-2, 313.

<sup>44</sup> In June 1896 Maitland wrote to R. L. Poole (*Letters*, i no. 177) that 'I am off to Horsepools in order that I may count "hides" in *Domesday*'. See also *Domesday Book and Beyond*, p. xx.

<sup>45</sup> *Domesday Book and Beyond*, p. xix.

<sup>46</sup> If, after the abandonment of Book III, Maitland ever seriously thought of retaining the 'Domesday' chapter, its position would have been slightly anomalous. It presumably would have been intended as part of Book II. However, unlike the other chapters of that book, it treated a wide range of themes within a confined historical period, material which otherwise might have been slotted into Chapters II and III of Book II of the *History*, on 'The Sorts and Conditions of Men' and 'Jurisdiction and the Communities of the Land'.

<sup>47</sup> *Constitutional History*, pp. 141-64.

<sup>48</sup> Conceivably Maitland restricted his discussion of some of these matters because he felt they had been treated, at least provisionally, by M. M. Bigelow, *History of Procedure in England* (London, 1880); see Pollock and Maitland, i p. cvii.

*Regis Edwardi*) the unconquered England of 1065.<sup>49</sup> A combined reading of *Domesday Book and Beyond* and the *History* still does not provide a full analysis of Anglo-Norman law.

### After Maitland

How then can historians develop Maitland's achievement? Many subjects, such as the legal position of women, the extent of regional variation in law, comparison with other realms or principalities, must here be left aside. Rather, I shall concentrate on three areas: language; disputing and the scope of legal history; the significance of the Norman Conquest and Anglo-Norman law. Throughout I look to Maitland to provide a 'map, guide, voice, and human hand.'

#### *Language*

Maitland wrote that 'language is no mere instrument which we can control at will; it controls us.'<sup>50</sup> It is hard to deny that a serious problem of language has arisen in writing about legal history, a problem related to wider questions of historical language, but also in particular to the use of terms of art associated with a technical modern discipline, law. The most obvious example from the former category is 'feudalism': 'Every one now-a-days can pick holes in "the feudal system" and some great writers can hardly mention it without loss of temper.'<sup>51</sup> That again is Maitland, who went on to justify the word feudalism as useful for comparative purposes. Although Maitland himself certainly used problematic modern words and concepts concerning medieval law, he was very aware of the linguistic and interpretative difficulties.<sup>52</sup> It was the desire to avoid anachronism, the misapplication of modern assumptions, that underlay his preference for the 'Domesday Book and

<sup>49</sup> *Domesday Book and Beyond*, p. 2.

<sup>50</sup> Pollock and Maitland, i 87.

<sup>51</sup> 'Why the history of English law is not written', *Collected Papers*, i 488-9. See also 'The law of real property', *ibid.*, i 175: "'Feudalism" is a good word, and will cover a multitude of ignorances.'

<sup>52</sup> See e.g. Pollock and Maitland, i 68, 230 for sovereignty and public and private law; Book II, Chapter VIII, 'Crime and Tort'. Note also Pollock and Maitland, i 229 on the arrangement and categorisations to be used in Book II; i 2-6, his initial discussion of 'Ownership and Possession', reveals a highly sensitive approach to thirteenth-century terminology, the relation of these terms to thirteenth-century concepts, and the relation of both to modern terms and concepts; see also ii 153 n. 1.

Beyond' approach.<sup>53</sup> What further possible solutions are there to these problems, what else might Maitland suggest were he here?

First, he would say that the use of modern categorisations, and hence language, is necessary to identify what is of interest to us; sheer amounts of evidence need not be the best indication of a matter's historical importance.<sup>54</sup> Secondly, he no doubt would argue that the proscription of certain words as historically incorrect is not a sufficient, nor perhaps a necessary, solution to the problem of language. Rather, proscription produces two other dangers: either one can use no modern language to discuss the past, and historical discourse collapses, or one resorts to other words which soon turn out to carry almost as much modern mental baggage: the two obvious examples for the legal historian are 'property/ownership' and 'rights'.

Thirdly, he would probably say that a linguistic problem was no bad thing. There should be no orthodox, correct way to tackle it. Rather a variety of intelligent approaches will bear fruit. Such is the burden of comments like the following: 'we shall, for example, pass backwards and forwards between civil and criminal procedure, just because most modern writers have sedulously kept them apart.'<sup>55</sup> Fourthly, it is necessary to question and criticise one's own categories, and to be aware of their history. Thus he wrote in the context of the law of descent that 'the main fault to be found in Blackstone's classical exposition is the tendency to treat the Lombard *Libri Feudorum* as a model to which all feudal law ought to correspond.'<sup>56</sup> Likewise, he rejected as simplistic or inappropriate any rigid positivist definition of 'right', requiring enforcement by a single sovereign body. Thus he wrote to Vinogradoff that 'the point that I should like emphasized — but perhaps you are coming to this — is that not having remedies in the King's own court is not equivalent to not having rights.'<sup>57</sup> In general, Maitland sought to tease meaning from language (and with Maitland's wit his teasing is in both senses). This is a key characteristic of his style. One of his tasks was to work out meaning when people had difficulties in saying what they meant; hence both his interest in specific

<sup>53</sup> Cf. the form of some of his notable work from the 1880s, such as 'The mystery of seisin', which, at least rhetorically, links the law of the first half of the nineteenth century more directly to that of the middle ages; *Collected Papers*, i 358–84.

<sup>54</sup> See e.g. Pollock and Maitland, i 229.

<sup>55</sup> Pollock and Maitland, ii 573 n. 7.

<sup>56</sup> Pollock and Maitland, ii 260 n. 1; see also ii 289 n. 1. Unfortunately Susan Reynolds in her *Fiefs and Vassals* (Oxford, 1994), does not discuss Blackstone; Maitland receives praise for his critique of the 'severe feudalists', *Fiefs and Vassals*, p. 347.

<sup>57</sup> *Letters*, i no. 50; see also no. 38, and *Domesday Book and Beyond*, pp. 42–3. Such concern may be connected with his worries about Austin's jurisprudence; see below, n. 62.

words, and his use of analogy where direct explanation seemed insufficient.<sup>58</sup>

The linguistic problem, for Maitland as for us, involved minimising anachronism whilst still speaking to the modern reader. The logical conclusion of his approaches was the provision of extensive portions of original texts, explicated in detail and with considerable care by a modern commentator. Terminology can be analysed, Latin words compared with the vernacular. Real cases can be dissected and compared, imaginary cases constructed to illustrate key points.<sup>59</sup> The tactics of the parties can be scrutinized, the impact of norms assessed. Such an approach is not obvious from his survey treatment of the Anglo-Norman material in the *History of English Law*. However, it is more apparent in his immersion in *Bracton* and the *Note Book* which underlies the greater part of the *History*, and is clearest in his emphasis upon editing, translating, and introducing mediaeval texts. This method provided the greatest possible chance of accurate, comprehensible, and meaningful dialogue between past and present. Only in such ways could 'by slow degrees the thoughts of our forefathers, their common thoughts about common things, . . . become thinkable once more.'<sup>60</sup>

### *Law, Legal History, and Disputing*

It seems likely that Maitland had, at least by the standards of his time, a fairly broad view of law's domain.<sup>61</sup> Excessively rigid views of law were subjected to his characteristic irony: 'tenure in villeinage is protected, and if we choose to say that it is protected by "positive morality" rather than by "law properly so called," we are bound to add that it is protected by a morality which keeps a court, which uses legal forms, which is conceived as law, or as something akin to law.'<sup>62</sup> He

<sup>58</sup> *Domesday Book and Beyond*, p. 226: 'Men are learning to say what they really mean.'

<sup>59</sup> On Maitland's use of imaginary, ideal cases, see S. F. C. Milsom, review of G. R. Elton, *F. W. Maitland, Times Literary Supplement* 28 February 1986, 225-6.

<sup>60</sup> *Domesday Book and Beyond*, p. 520.

<sup>61</sup> Note, however, that he excluded certain matters as, for instance, 'political' or 'constitutional' rather than legal: see e.g. Pollock and Maitland, i 80, 297, ii 462; also ii 603 n. 4 which sends the reader to pages in Book I for the constitutional and political aspects of the history of the Inquest. On use of the category legal, see further, J. G. H. Hudson, *The Formation of the English Common Law* (London, 1996), ch. 1, and White, below.

<sup>62</sup> Pollock and Maitland, i 361. The 'Introduction' to the *History*, which might seem the best source for Maitland's general thoughts on law and legal history, was largely Pollock's work; *Pollock-Holmes Letters*, i 60-1. Some of Maitland's ideas are apparent in his essays or suggested by his letters. Note his doubts concerning Austin's jurisprudence; e.g. *Letters*, i nos. 239, 253, and *Encyclopaedia Britannica*, ix 606 on Austin: 'though he was at times an acute dissector of confused thought, he was too ignorant of the English, the Roman and every other system of law to make considerable addition to the sum of knowledge; and when

was well aware that courts could be used to exact vengeance; the fair copy manuscript of the *History* shows him spicing up a text which first spoke of peasants who 'impleaded each other in the village courts' by replacing the word 'impleaded' with 'assailed'.<sup>63</sup> However, his emphasis remained upon substantive law and formal procedure leading to and during court cases.

Influenced in part by developments in jurisprudence and in the social sciences, legal historians since Maitland have broadened their scope, particularly to the more general category of disputing.<sup>64</sup> Rather than concentrating on court proceedings, analysis may stretch from the origins of the dispute to its termination, not just in court but also by methods such as a marriage alliance between the parties. A greater number of dispute descriptions have become available, and in addition historians have grown interested in literary accounts of disputes, particularly those in the vernacular literature designed for aristocratic audiences. Whatever the clerical influence upon them, however stylised they may be, they still provide our best written indication of aristocratic thinking.<sup>65</sup> They allow us to see in play, both in and out of court, the variety of norms and perceptions which constituted legal thought.<sup>66</sup>

Studies of disputing have analysed causation, conduct, and settlement. They have asked, for example, whether disputes typically arose in certain circumstances. For the Anglo-Norman period, insufficient evidence survives to give any worthwhile detailed answers concerning offences against the person or moveable goods, but concerning land disputes some suggestions may be made. Re-marriage seems to have been a particular cause of inheritance disputes. The ending of grants

Savigny, the herald of evolution, was already in the field, the day for a "Nature-Right" — and Austin's projected "general jurisprudence" would have been a Nature-Right — was past beyond recall.

<sup>63</sup> Cambridge University Library, Add. MS 6987, f. 56; Pollock and Maitland, i 85.

<sup>64</sup> On 30 March 1895 Maitland wrote to Bigelow: 'I hope that you have received a copy of the book that Pollock and I have just published. With my share of the gift go pleasant memories of hours spent over the *Placita Anglo-Normannica* and of pleasant talks with its author'; *Letters*, i no. 153. However, Maitland expounded very few cases, real or imaginary, with specific reference to the Anglo-Norman period: see Pollock and Maitland, i 106-7 (imaginary case), 450-2; for briefer mentions of cases, see e.g. i 91, 93, 110 n. 1, ii 599 n. 2; cf. the lengthy expositions of real later cases at i 156-60, 549-51. Even the case of Modbert and the priory of Bath, which he described in a review as 'perhaps the best of all the "*Placita Anglo-Normannica*" that have come down to us', received only a footnote reference: *Collected Papers*, iii 19, Pollock and Maitland, ii 602 n. 2.

<sup>65</sup> They also present our best chance of discovering the spoken words behind the Latin of documents.

<sup>66</sup> See e.g. P. R. Hyams, 'Henry II and Ganelon', *Syracuse Scholar*, 4 (1983), 22-35; S. D. White, 'The discourse of inheritance in twelfth-century France: alternative models of the fief in *Raoul de Cambrai*', in Garnett and Hudson, eds, *Law and Government*, pp. 173-97.

for limited terms often produced strife, whilst the succession of a new lord, particularly one who was not the simple heir of the decedent, might also bring a flurry of conflicts.<sup>67</sup> Further study might confirm other hypotheses, for example as to whether disputes tended to arise over lands distant from a lord's centre of power.

In studies of the conduct of disputes, power, relationships, and honour have taken over the prominence enjoyed by rules and courts in Maitland's model. In particular, behaviour outside court is analysed.<sup>68</sup> Private war, or 'high level inter-personal violence', was not common in Anglo-Norman England, except during Stephen's reign, but instances from the decades soon after the Conquest continue to come to light. A saint's life of the first half of the twelfth-century recounted the following incident from 1086 × 1094. Two men living under the abbot of Burton's authority (*sub iure*) fled to a neighbouring village, to live under the power (*sub potestate*) of Count Roger the Poitevin. The abbot's first action was aimed against the men's goods. He ordered the seizure of the crops still in the men's barns, 'hoping in this way to induce them to return to their dwelling.' Such action merely led to an escalation of the dispute. The men looked to the count for protection, perhaps suggesting that an attack on them was now an affront to his honour. Roger threatened to kill the abbot wherever he was found.

Violently angry, the count gathered a great troop of peasants and knights with carts and weapons and sent them to the monks' barns at Stapenhill and had them seize by force all the crops stored there . . . Not content with this, Count Roger sent his men and knights to lay waste the abbey's fields at Blackpool, encouraging them especially to lure into battle the ten knights whom the abbot had recruited as a retinue from among his relatives.

The abbot tried to calm his men, and sought divine help. However, his more martially inclined relatives ignored his requests, and engaged the count's men in battle, 'few against many'. One of the count's knights had his leg broken, another was flung into a muddy stream, and the remainder took flight.<sup>69</sup> Military means, perhaps backed by divine help, brought this stage of the dispute to an end, but the subsequent finale lies more fully in the realm of the supernatural. The peasants who were the cause of the trouble died suddenly. On the day when they were

<sup>67</sup> See e.g. J. G. H. Hudson, *Land, Law, and Lordship in Anglo-Norman England* (Oxford, 1994), pp. 61–2 (Nigel d'Aubigny's actions as a new lord), 97–101, 116–17.

<sup>68</sup> Pollock and Maitland, ii 574 ff. generally plays down the role of self-help.

<sup>69</sup> Reference and translation courtesy of Professor Bartlett, whose edition and translation of the *Life* will appear in *Oxford Medieval Texts*. Maitland would have been pleased to find such an account; he wrote to Neilson concerning the Saints Lives attributed to Barbour that 'I often wish that in the *Vitae Sanctorum* we had fewer miracles and more mortgages'; *Letters*, ii no. 30.

buried, they appeared carrying their wooden coffins on their shoulders. Not surprisingly, this led the count to repent, and submit.

Such events, military and supernatural, were an infrequent element of disputes. However, the case also reveals more common ones, such as the importance of supporters, and appeal to higher authority not for judgment but for aid.<sup>70</sup> Gifts were made to officials for their help in future disputes.<sup>71</sup> When the abbot of Abingdon made a settlement with Nigel d'Oilly, the following condition was imposed: 'whenever the abbot has a plea in the king's court, Nigel will be present on the abbot's side, unless the plea is against the king, and when the abbot goes to that court, Nigel shall provide lodgings for him and if nothing appropriate can be found, he shall give up his own lodgings for his accommodation.'<sup>72</sup>

As for practice in court, compared with modern or even thirteenth-century law, a smaller proportion of Anglo-Norman cases may have been decided by rational evidence or knock-down argument. Criteria of relevance and proper procedure may have been laxer than those later enforced by royal justices who might well be strangers to local politics, and who were used to processing, even deciding, large numbers of cases.<sup>73</sup> The less clear the case or the more irreconcilable the parties, the more likely that other factors, power, friendship, eloquence and so on, would become involved.

However, there is a danger here of moving too far from Maitland's picture of more regular procedures. Many of the trials in vernacular literature are treason trials, wherein political elements were long to remain unusually prominent. Even other judicial hearings in literary texts, and perhaps a large proportion of those extensively recorded in more traditional sources, were in some sense hard cases: otherwise they would not have been worth writing about. Here too, the play of power, friendship, and eloquence may have enjoyed unusually wide scope. Generalising from such accounts may lead to a model which overemphasizes the play of power, friendship, and eloquence. Hearings could and did turn more narrowly on matters of fact or matters of law. In land cases, witnesses or documents might be brought, in cases of violence and theft, alibis stated, pleas of self-defence made, incriminating physical marks on the accused shown. Or arguments might rest on

<sup>70</sup> See e.g. *English Lawsuits*, no. 246. Later, the more plentiful sources give evidence of violence entering into land disputes, see e.g. *CRR*, i 101.

<sup>71</sup> See e.g. P. A. Brand, *The Origins of the English Legal Profession* (Oxford, 1992), pp. 9–10; note also *English Lawsuits*, no. 317. Twelfth-century perceptions of the distinctions between bribery and such grants merit extended study.

<sup>72</sup> *English Lawsuits*, no. 206.

<sup>73</sup> See Brand, *Legal Profession*, chs 1 and 2.

implicit or explicit appeal to norms, and their relationship to the facts of the dispute. Thus both parties might agree on the implications of certain classifications of land-holding, but disagree over the categorization of the disputed land.<sup>74</sup> Or if both parties accepted the existence of a norm, the defendant might choose to argue that the case was an exception to that norm.

If problems in deciding the case or reconciling the parties proved great, resort might be had to ordeal.<sup>75</sup> If it failed to scare the subjected party into confession, ordeal was meant to bring a supernatural and spectacular end to a dispute. Other aspects of settlement had similar purposes. For example, in a world where few offenders were caught and still fewer punished to the full, the rhetoric and ritual of execution must have played a large part, only occasionally hinted at in the sources.<sup>76</sup>

However, it is a preference for compromise which has gained most attention in studies of dispute settlement.<sup>77</sup> In the Anglo-Norman period, settlements are best studied in monastic charter chronicles, which combine documents and narrative. They reveal considerable variety. There are clear decisions, either following a court judgment or after one party had admitted that it was in the wrong.<sup>78</sup> There are also obvious compromises.<sup>79</sup> In other cases still, however, there is a clear judgment that one party is in the right, the opponent being allowed only a minor sweetener which in no way conceals that they had been defeated.<sup>80</sup> These three types of settlement mark points on a continuum, rather than being the sole discrete categories. Comparisons can be attempted between types of dispute: were compromises more common in land disputes than those involving offences against the person? Further comparisons can be made with other realms at the same period, or with other periods of English history. It seems increasingly likely that a prevalence of settlements involving at least an element of compromise remained common throughout the Middle

<sup>74</sup> See e.g. *English Lawsuits*, no. 226.

<sup>75</sup> See P. R. Hyams, 'Trial by ordeal: the key to proof in the early Common Law', in M. S. Arnold *et al.*, eds., *On the Laws and Customs of England* (Chapel Hill, NC, 1981), pp. 90–126; R. J. Bartlett, *Trial by Fire and Water: the Medieval Judicial Ordeal* (Oxford, 1986). Maitland's emphasis when dealing with early forms of proof is very much on the supernatural and ordeal; Pollock and Maitland, esp. i 74, ii 598–603.

<sup>76</sup> See e.g. *English Lawsuits*, no. 471.

<sup>77</sup> See e.g. M. T. Clanchy, 'Law and love in the middle ages', in J. Bossy, ed., *Disputes and Settlements: Law and Human Relations in the West* (Cambridge, 1983), pp. 47–67.

<sup>78</sup> E.g. *CMA*, ii 116 (concerning jurisdiction), 129, 206. Note also occasions when redress is unavailable, for examples against royal officials; *CMA*, ii 7.

<sup>79</sup> E.g. *CMA*, ii 18–19; 20; 166–8.

<sup>80</sup> E.g. *CMA*, ii 118, 140; 188–90 (receipt of friendship).

Ages. This has many implications, of which just two can be mentioned here. It warns against simple association of compromise with any one form of judicial or social organization. And it suggests that the wide range of methods of pursuing disputes discussed above were not just a feature of the pre-Common Law period.<sup>81</sup>

### *Law in Anglo-Norman England*

As Maitland argued, one of the main contributions of the Anglo-Norman reigns before 1135 to the formation of Common Law was the strength of kingship. Underlying this strength were Anglo-Saxon powers, particularly as it is now clear that Maitland exaggerated the Anglo-Saxon kings' dispersal of major jurisdictional rights.<sup>82</sup> The Conquest not only preserved such powers, but also countered some of the political weaknesses apparent particularly in the Confessor's reign by extending the landed base of monarchy and strengthening royal lordship.

Brunner was otherwise surely right to criticize the *History* for underestimating Norman influence after 1066.<sup>83</sup> Certainly there were similarities between Anglo-Saxon and Norman law, certainly William I and his successors confirmed the *Laga Edwardi*, and certainly their own legislative innovations were limited. However, by 1086 England had a new, French aristocracy. These men brought their customs with them to England not in writing but in their heads.<sup>84</sup>

Prominent therein were ideas concerning lordship. As Maitland argued, lordship was not absent from Anglo-Saxon England, but Norman ideas, together with the consequences of Conquest and settlement, gathered more closely the elements of personal lordship, landholding and jurisdiction.<sup>85</sup> The honour was one unit through which parties could pursue their aims and manage their affairs: 'Each feudal

<sup>81</sup> For a study which implies considerable similarities between Anglo-Norman and Common Law disputing, see M. T. Clanchy, 'A medieval realist: interpreting the rules at Barnwell Priory, Cambridge' in E. A. G. Attwooll, ed., *Perspectives in Jurisprudence* (Glasgow, 1977), pp. 176-94. Most civil cases still today, of course, are settled out of court.

<sup>82</sup> See e.g. N. D. Hurnard, 'The Anglo-Norman franchises', *EHR* 64 (1949), 289-327, 433-60; above, Wormald.

<sup>83</sup> *Political Science Quarterly*, 11 (1896), 534-44 at 535; see also above, p. 27. Maitland's treatment of Norman law had of course been limited, in part because of the scarcity of available sources.

<sup>84</sup> See esp. P. R. Hyams, 'The Common Law and the French connection', *ANS* 4 (1982), 77-92, 196-202; J. C. Holt, 'Feudal society and the family in early medieval England: (i) the revolution of 1066', *TRHS*, 5th Ser. 32 (1982), 193-212; also above, p. 28, for Maitland's opinion formulated in the manuscript of the *History*.

<sup>85</sup> For Maitland's views, see e.g. *Domesday Book and Beyond*, pp. 67, 294, 311.

group strives to be a little state; its ruler and his subjects alike have an interest in all that concerns its territory.<sup>86</sup>

However, like Stubbs and Bigelow, Maitland wrote little about lords' courts, except concerning their jurisdiction derived from royal grants of sake and soke. Yet seignorial courts clearly were very important in Anglo-Norman England. As well as dealing with a wide range of non-legal business, they were places in which grants were made and witnessed. Kings recognized their importance in litigation. In 1108 Henry I decreed that land disputes between the vassals of any baron of his honour should be dealt with in the court of their common lord. Likewise, in 1164, Henry II laid down that if a dispute arose between a layman and a cleric as to whether land was alms or lay fee, and both litigants vouched the same bishop or baron concerning the holding, the plea was to be held in the bishop or baron's court.<sup>87</sup> Accounts of disputes and private charters show even relatively unimportant lords holding courts. A mid-twelfth-century grant by Walter of Bolbec to the abbot of Ramsey is peculiarly revealing since it seeks to spell out the obligations of a lay fee:

If the abbot does wrong in any matter towards lord Walter so that Walter wishes to implead him, the abbot shall come to his court and shall do him right as for a lay fee . . . And if the lord, Walter of Bolbec, shall hold a plea in his court and shall desire the abbot to attend, the abbot shall come if he can, or send worthy representatives of his men in the aforesaid shires, and this by the usual summons and without dispute.<sup>88</sup>

Nevertheless, even if seignorial groups strove to be little states, this did not mean that they always resisted outside contact. Lords' courts were not just composed of their tenants, or even of their men. The presence of neighbours, sheriffs, or even royal justices is not uncommon in recorded instances of meetings of lords' courts.<sup>89</sup> The more powerful and prestigious those attending the court, the more effective it would be, the greater the honour which the lord assimilated. Effectiveness not autonomy was the essential aim.

Moreover, seignorial courts did not replace the local courts of Anglo-Saxon England, the hundred and the shire. The survival of these was a vital legacy to later legal development. Whilst, as suggested

<sup>86</sup> Pollock and Maitland, i 346.

<sup>87</sup> Stubbs, *Charters*, pp. 122, 166 (Constitutions of Clarendon, c. 9). See also e.g. *English Lawsuits*, no. 227.

<sup>88</sup> *Chronicon Abbatiae Ramesiensis*, ed. W. D. Macray (London, 1886), p. 275.

<sup>89</sup> See e.g. *English Lawsuits*, no. 164. Overlords' courts may also have had an important role, as places where grants might be made, or for the hearing of cases, including cases already heard in a lesser lord's court; see e.g. Stenton, *First Century*, no. 41; Hudson, *Land, Law, and Lordship*, pp. 35, 38, 140-1.

above, the process of Conquest and settlement strengthened the influence of lordship, scattered patterns of settlement restricted the numbers of areas dominated by one lord. A county such as Oxfordshire lacked one dominant magnate, and the most influential people in the county court might be men of very limited national significance.<sup>90</sup> This also meant that in the county court Englishmen and English practices continued to have some important influence, for example upon procedure. Changes in practice were likely to be gradual rather than revolutionary. This was still more true of the hundred court. The lower down one passes in society, the more limited may have been the impact of Conquest upon law.

Does this multiplicity of courts indicate confusion, as Maitland suggested? There is little sign that contemporaries were confused. In fact, in matters of law as well as others, lords and king can often be seen to cooperate. Lords' courts were part of the Norman regime for ruling a conquered country. Moreover, if one takes the view-point of disputants, the existence of a choice between a variety of courts, lacking strict jurisdictional boundaries, may have created not confusion but distinct advantages. If conflicts over jurisdiction did arise, or if one party felt that it had suffered a wrongful decision which it could reverse, the king's courts sometimes heard cases of 'defect of justice'.<sup>91</sup> When Henry II looked back to his grandfather's reign, he surely did not see it as a time of confusion, but as one of justice, closely connected to strong kingship and good lordship.

A complicated mixture of clear change and continuing developments can also be seen with regard to land-holding. Again, lordship entered more fully into the creation and conceptualization of land-holding relationships. Most Anglo-Norman charters chose the lord's officers, barons, and men as the appropriate audience to which to announce his grants. A ceremony of seising of the man by the lord initiated the tenurial relationship, and lordship continued to play a noteworthy part especially between the two initial parties to the relationship.<sup>92</sup> A single piece of land might descend by a series of grants

<sup>90</sup> R. V. Lennard, *Rural England* (Oxford, 1959), ch. 3, esp. pp. 61-2.

<sup>91</sup> M. G. Cheney, 'A decree of King Henry II on defect of justice', in D. E. Greenway *et al.*, eds, *Tradition and Change* (Cambridge, 1985), pp. 183-93; on Henry I see also Hudson, *Land, Law, and Lordship*, e.g. pp. 136-8, and more generally J. A. Green, *The Government of England under Henry I* (Cambridge, 1986), esp. chs 4 and 5.

<sup>92</sup> Milsom, *Legal Framework*, goes furthest in integrating lordship and land-holding. See also Hudson, *Land, Law and Lordship*, esp. pp. 16-21, chs 5, 7. Cf. Maitland, 'Mystery of seisin', *Collected Papers*, i 365, 'unless we are to suppose a time when seisin meant not mere possession but possession given, or at least recognized, by the lord of the fee. But for imagining any such time we have no warrant.'

through various levels of lord and tenant, and the very arrangement of Domesday Book reflects such a hierarchy of land-holding relationships.<sup>93</sup>

Change in the form of land-holding was clearest in the upper levels of society. Terminological evidence here supports a conclusion which might be reached *a priori* from the replacement of an Anglo-Saxon aristocracy with a French one. The word *feudum* — fief or fee — achieved predominance. In the period 1066–1100 it came to be used not only to mean the actual tenement, but also to classify certain lands as held 'in fee', that is heritably and by secular service, often, but not always, military.<sup>94</sup> The Anglo-Saxon word *bocland*, meanwhile, all but disappeared. When, during the first half of the twelfth century, men sought to translate *bocland*, they adopted a variety of words. They knew that *bocland* and *feudum* were not easy alternatives, for the terminological shift reflected changes in substantive law.<sup>95</sup>

Since Maitland's time, there has been a considerable increase in the number of charters available for the study of land law.<sup>96</sup> In particular, there are more complete collections, and more documents relating to lay grantees. These, taken with other evidence, allow a more complete, more nuanced assessment.<sup>97</sup> Various perceptions of rights in land

<sup>93</sup> Reynolds, *Fiefs and Vassals*, pp. 336–7, 345–6, where it is suggested that Domesday Book itself may have greatly sharpened perceptions of such a hierarchy.

<sup>94</sup> Hudson, *Land, Law, and Lordship*, pp. 94–7; see also Pollock and Maitland, i 234–5.

<sup>95</sup> Cf. the arguments of D. Roffe, 'From thegnage to barony', *ANS*, 12 (1990), 157–76, and Reynolds, *Fiefs and Vassals*, ch. 8.

<sup>96</sup> On Maitland's desire for the editing of such charters, see E. J. King, 'John Horace Round and the *Calendar of Documents preserved in France*', *ANS*, 4 (1982), 93–103, 202–4.

<sup>97</sup> For this paragraph, see Hudson, *Land, Law, and Lordship*; also White, 'Raoul de Cambrai', and J. G. H. Hudson, 'The origins of property', in Garnett and Hudson, eds, *Law and Government*, pp. 198–222. Maitland's treatment e.g. of alienability reflects in part the sources available to him. (For other factors, see below, White, pp. 101–12). The lack of complete charter collections, except some ecclesiastical cartularies, helps to explain why Maitland did not adopt a statistical approach. His statements concerning the frequency of appearance of certain phrases in charters are sometimes vague and not always trustworthy; inevitably he tended to cite charters which did use a certain phrase, and not to deal with those which omitted it: e.g. ii 309 'the charters of the twelfth century afford numerous examples of expectant heirs joining in the gifts of their ancestors', and he took this as supporting 'the necessity for the heir's concurrence.' Cf. his treatment of lords' consent (i 340–1): 'For the period between 1066 and 1217 we have hundreds of English charters, and at first sight they seem to go the full length of proving that from the Conquest onward no tenant could alienate his land without his lord's consent . . . . But considerable care is necessary in drawing inferences from these documents. [For example, m]ost of the very early charters that we possess relate to gifts in frankalmoin, and, when examined, they will often appear to be confirmations and something more.' In fact, it is simply not the case that most charters recording grants even to the Church record either the lord's or the heir's consent to the donation. Various explanations are possible, some specific, some general. Each transaction involves a piece of land with its own history, and if it was the donor's own acquisition not

co-existed in Anglo-Norman England, differing for example with the order of those concerned — lay or ecclesiastical — or their position in a relationship — lord or tenant. The variety of perceptions could produce disputes, but also helped to sharpen thinking about land-holding. At least by 1135, the tenant in fee, particularly if he had inherited his lands rather than recently acquired them from a lord, generally enjoyed a position approaching that of a tenant in *Bracton's* England. He had considerable security of tenure within his life-time, provided he fulfilled the services which he owed his lord. His heir, particularly if a close relative, would normally succeed him.<sup>98</sup> The tenant could also make grants from his lands, although his family or lord might challenge his actions on the grounds that they were unreasonable; their success in so doing would depend on a court's view of what constituted a reasonable grant. He himself, his heirs, and his grantees all enjoyed protection from a variety of sources. Royal intervention was at least a possibility which needed to be considered by lords when dealing with their tenants. Clearly the situation was not identical to that in the thirteenth century. In the Anglo-Norman period, a greater variety of non-legal factors might more seriously affect land-holding relationships, the hard cases which custom might allow to arise were more numerous, reliance on royal remedies was less. However, particularly because tenure in fee spread down society, Anglo-Norman land law made a notable contribution to later Common Law, both in its apparent lack of regional variation and in the very substance of its customs.

Land tenures other than holding in fee may owe much to Anglo-Saxon practice, and many tenants would have been of English descent.<sup>99</sup> Socage, which was to be the great residuary tenure of later Common Law, may well have preserved characteristics of some of the tenures which Domesday Book simply described as 'holding freely'. Lands which in the Anglo-Saxon period were thegnages may quite

his inheritance, his heir's consent may not have been necessary; even now, let alone in Maitland's day, it is often very hard to discover whether land was inheritance or acquisition, and hence to interpret the absence of consents from land grants. Also, silence may be a sign that consent was so necessary that it was assumed, or may indicate a real lack of consent. It is indeed over the interpretation of silences, and the assumptions they hide and reveal, that Professor Milsom has diverged furthest from Maitland.

<sup>98</sup> Cf. Maitland's views on the development of primogeniture, Pollock and Maitland, ii esp. 266, 274, 309, and White, below, pp. 108–10.

<sup>99</sup> There may also have been greater continuity in the forms of holding lands from churches, notably by lease; see e.g. Roffe, 'Thegnage', 172. One reason why there may have been greater continuity with regard to land-holding lower in society and offences against the person and moveables as opposed to aristocratic land-holding is that matters concerning the former would have been dealt with largely in the local shire or hundred courts.

often have re-emerged later in sergeancies. Connections can rarely be proved, but they receive strong support when one necessarily adopts Maitland's method of working backwards to the scraps of pre-Conquest information.<sup>100</sup>

Likewise, there was probably considerable continuity across the Conquest in law dealing with wrong-doing against the person or moveable goods.<sup>101</sup> Pollock and Maitland saw the Anglo-Saxon response to such offences as characterized by fixed monetary scales of payments to the king (*wites*) and compensations to the victim or kin (*wer and bót*). The death penalty was largely reserved for those unable to make such payments, and for a few, very serious, 'unmendable' offences. Maitland believed such a system continued beyond the Conquest.<sup>102</sup> Here, as elsewhere in Anglo-Norman sections of the *History*, he relied heavily on the *Leges*: 'the writer of the *Leges Henrici* represents the criminal law of his time as being in the main the old law, and we have no reason to doubt the truth of what he tells us.'<sup>103</sup> In general, Maitland was willing to treat the *Leges* with some trust if they were not contradicted by other evidence. However, there are signs in the second edition of the *History* that Maitland's distrust of at least some of the *Leges* was growing, encouraged by Liebermann's recent work.<sup>104</sup> Such caution is no doubt justified. Take the *Leges Henrici Primi*. Certain sections reveal what to us is one of the author's greatest weaknesses.

<sup>100</sup> See J. Campbell, 'Some agents and agencies of the late Anglo-Saxon state', in J. C. Holt, ed., *Domesday Studies* (Woodbridge, 1987), 210–12; Roffe, 'Thegnage', 171–2; note also F. W. Maitland, 'Northumbrian Tenures', in his *Collected Papers*, ii 96–109; G. W. S. Barrow, 'Northern English society in the twelfth and thirteenth centuries', *Northern History* 4 (1969), 1–28. Note also the social relegation of the heriot, owed by the aristocracy in Anglo-Saxon England, but only by the peasantry in thirteenth-century Common Law.

<sup>101</sup> See also Wormald, above.

<sup>102</sup> See Pollock and Maitland, i 105–7, ii 449–62, 514.

<sup>103</sup> Pollock and Maitland, ii 457; see also i 97ff., 300, cf. i 312, and also 'The law of real property', *Collected Papers*, i 176–7, which stated with reference to land law that the compiler's 'work is bad and untrustworthy'. Apart from Domesday Book itself, the *Leges* are the main source for Essay I in *Domesday Book and Beyond*. However, in the Anglo-Saxon chapter of the *History* it is stated, presumably by Pollock, that 'some details we find on the subject [of kinship] in the so-called laws of Henry I. fall under grave suspicion, not merely of an antiquary's pedantic exaggeration, but of deliberate copying from other Germanic law-texts', Pollock and Maitland, i 32.

<sup>104</sup> See Pollock and Maitland, i 100 n. 1 ('literary vanity'), cf. (1895) i 78 n. 1. In the second edition, i 104, the man responsible for the *Leges Edwardi* was called a 'romancer', in the first edition, i 81, he was the 'writer'. Note also the change made at i 27 where the *Leges Willelmi/Leis Willelmi* are demoted from a position at the end of the tradition of Anglo-Saxon laws — (1895) i 3 — to a 'second class of documents, namely, compilations of customs and formulas which are not known ever to have had any positive authority.' The change presumably was made by Maitland. The manuscript of the *History* shows Maitland already struggling with the *Leges* in the early 1890s: *Cambridge University Library*, Add. MS 6987, f. 101 (= 1st ed., i 79), displays an almost unique amount of re-adjustment on the fair copy.

He drew on books, and he drew on personal experience. However, when written sources and personal experience clashed, his inclination was always to go by the book. This must reduce our willingness to use his text whenever it rests upon, or seeks to take into account, a written text. Like his inclusion of reliefs based upon Cnut's laws, his inclusion of *wergilds* and *bóts* based upon Alfred's tells us very little about the law of his own day.<sup>105</sup>

Other historians have contrasted the Anglo-Saxon period, characterised by a system of fixed *wer*, *bót*, and *wite*, with the Norman period, characterized by arbitrary amercements to the king and wider use of the death penalty and mutilation.<sup>106</sup> However, the distinctions are perhaps too sharp. Use of the death penalty and mutilation for serious offences were characteristic of Anglo-Saxon as well as Anglo-Norman law.<sup>107</sup> In addition, *wites* and amercements may have been very similar. Presumably it was the desire to avoid punishment which lay behind the payment of *wite*. As to their fixed amounts, it may be a peculiarity of the relevant sources that emphasizes precision. What the Anglo-Saxon laws, the post-Conquest *Leges*, and the Domesday customs may intend to indicate by their scales of payment is good practice, the equivalent of post-Conquest statements that the emendation or amercement should fit the offence.<sup>108</sup> Other evidence, for example relating to heriots, shows that scales of payment provided by law-codes were not rigidly followed in practice in Anglo-Saxon England. And whilst *wites* were less fixed than the codes suggest, readers of the plea rolls will know how standardised the supposedly arbitrary amercement could become.

The codes' precise statements of *wers* and *bóts* should be treated with the same caution as those of *wites*. Compensations may have been negotiated according to circumstances. For serious and intentional offences, any regular use of compensations enforced in court — as opposed to negotiated in out-of-court settlements — may have been disappearing by Henry I's reign at the latest, if not already in the Anglo-Saxon period. For lesser offences, such flexible payments of compensation survived into thirteenth-century law regarding trespass.<sup>109</sup>

Assessment of the Anglo-Norman period, both its innovations and

<sup>105</sup> *LHP*, 14, 93, Downer, pp. 118, 292–8. See also e.g. *LHP*, 70.20, Downer, p. 224 on parents inheriting; comment in Hudson, *Land, Law, and Lordship*, p. 115.

<sup>106</sup> Note esp. J. Goebel, *Felony and Misdemeanor* (New York, 1937).

<sup>107</sup> See above, Wormald, p. 14.

<sup>108</sup> See e.g. Magna Carta, c. 20. I take Henry I Coronation Charter, c. 8, to be such a statement, not a restoration of an old system of absolutely fixed *wites*; cf. e.g. Goebel, *Felony*, p. 384.

<sup>109</sup> Cf. Pollock and Maitland, ii 523. Likewise, proof by oath continued for lesser offences.

its continuations from the Anglo-Saxon past, thus suggests a more gradualist explanation of the formation of the Common Law than might be gained from some readings of Maitland, and especially from his chapter on the 'Age of Glanvill'. However, Maitland's main distinction between Anglo-Norman law and early Common Law was not concerned, for example, with the substance of inheritance patterns. Rather, it emphasized Common Law's widespread use of standardized royal remedies, the forms of action characterized by their writs and their juries. Such a distinction, now framed in terms of classification, routinization, and bureaucratization, still largely holds good. Developments were certainly under way before 1135, and a wide range of underlying factors, for example increasingly literate government, continued to work in this direction. However — paradoxically perhaps — it is in relation to the timing and speed of the shift towards new administrative forms that the events of Stephen's reign provided a great stimulus to Common Law's development. They brought an end to an extremely powerful regime, dating back into the Anglo-Saxon period, a regime notable for its simplicity, in which royal contact tended to be with areas and key local officials, not the great mass of individual subjects.<sup>110</sup> The accession of Henry II was accompanied by the need for reconstruction. In some cases, this took the form of more routine royal enforcement of existing customs and procedures. It is in this context that many requirements in the Assizes of Clarendon and Northampton can best be understood.<sup>111</sup> At the same time, royal government took new directions, notably in the extent of its contact with individuals in the localities, particularly through the eyre. The combination and inter-reaction of such administration with existing customs and practices produced Maitland and *Bracton's* Common Law.

<sup>110</sup> See generally J. Campbell, 'Observations on English government from the tenth to the twelfth century', *TRHS*, 5th Ser. 25 (1975), 39–54.

<sup>111</sup> In this sense, royal perceptions of good custom would underlie the assizes just as they explicitly appear in the Constitutions of Clarendon. For further discussion, see e.g. Hudson, *Land, Law, and Lordship*, p. 69 on Assize of Northampton, c. 4; cf. e.g. Pollock and Maitland, i 571 on presentment by frankpledge as an innovation from the Assize of Clarendon. I would like to thank Rob Bartlett, George Garnett, and Patrick Wormald for their help with this essay.

# Abbreviations

- ANS — *Proceedings of the Battle Conference on Anglo-Norman Studies*.  
ASC — *Anglo-Saxon Chronicle*.  
ASE — *Anglo-Saxon England*.  
(BI)HR — (*Bulletin of the Institute of Historical Research*).  
BL — British Library  
BN — Bibliothèque Nationale.  
Bracton, Thorne — *Bracton De Legibus et Consuetudinibus Angliae*, ed. & trans S. E. Thorne (4 vols, Cambridge, Mass., 1968–77).  
BNB — *Bracton's Note Book*, ed. F. W. Maitland (3 vols, London, 1887).  
CLJ — *Cambridge Law Journal*  
CMA — *Chronicon Monasterii de Abingdon*, ed. J. Stevenson (2 vols, London, 1858).  
*Collected Papers* — H. A. L. Fisher, ed., *The Collected Papers of Frederic William Maitland* (3 vols, Cambridge, 1911).  
CRR — *Curia Regis Rolls* (HMSO, 1922–).  
DB — *Domesday Book seu Liber Censualis Wilhelmi Primi Regis Angliae*, ed. A. Farley and H. Ellis (4 vols, London, 1783, 1816).  
*Dialogus* — Richard FitzNigel, *Dialogus de Scaccario*, ed. & trans C. Johnson, rev. F. E. L. Carter & D. E. Greenway (Oxford, 1983).  
*Domesday Book and Beyond* — F. W. Maitland, *Domesday Book and Beyond* (repr. with Foreword by J. C. Holt, Cambridge, 1987).  
EHR — *English Historical Review*  
Elton, Maitland — G. R. Elton, *F. W. Maitland* (London, 1985)  
*English Lawsuits* — *English Lawsuits from William I to Richard I*, ed. R. C. van Caenegem (2 vols, Selden Soc., 106, 107, 1990–1).  
EYC — *Early Yorkshire Charters*, vols. I–III, ed. W. Farrer (Edinburgh, 1914–16); index to vols. I–III, ed. C. T. & E. M. Clay; vols. IV–XII, ed. C. T. Clay (Yorks. Arch. Soc. Rec. Ser. Extra Ser., 1935–65).  
Fauroux, *Recueil* — *Recueil des actes des ducs de Normandie*, ed. M. Fauroux (Mémoires de la société des antiquaires de Normandie, 26, Caen, 1961).  
Fifoot, *Life* — C. H. S. Fifoot, *Frederic William Maitland: a Life* (Cambridge, Mass., 1971).  
Garnett and Hudson, *Law and Government* — G. S. Garnett and J. G. H. Hudson, eds, *Law and Government in Medieval England and Normandy: Essays in Honour of Sir James Holt* (Cambridge, 1994).  
Gervase — Gervase of Canterbury, *The Historical Works of Gervase of Canterbury*, ed. W. Stubbs (2 vols, London, 1879–80).  
*Gesetze* — *Die Gesetze der Angelsachsen*, ed. F. Liebermann, (3 vols, Halle, 1903–16).

- Gierke* — F. W. Maitland, trans, *Political Theories of the Middle Age*, by Otto Gierke (Cambridge, 1900).
- Glanvill*, Hall — *Tractatus de Legibus et Consuetudinibus Regni Anglie qui Glanvilla vocatur*, ed. and trans G. D. G. Hall (Edinburgh, 1965).
- Holt, *Magna Carta* — J. C. Holt, *Magna Carta* (2nd edn, Cambridge, 1992).
- JMH — *Journal of Medieval History*.
- Letters*, i — C. H. S. Fifoot, ed., *The Letters of Frederic William Maitland*, vol. i (Selden Soc., Supplementary Ser., 1, 1965).
- Letters*, ii — P. N. R. Zutshi, ed., *The Letters of Frederic William Maitland*, vol. ii (Selden Soc., Supplementary Ser., 11, 1995).
- Letters to George Neilson* — F. W. Maitland. *Letters to George Neilson*, ed. E. L. G. Stones (Glasgow, 1976).
- LHP, Downer — *Leges Henrici Primi*, ed. & trans L. J. Downer (Oxford, 1972).
- LQR — *Law Quarterly Review*
- Maitland, *Constitutional History* — F. W. Maitland, *The Constitutional History of England* (Cambridge, 1908).
- MGH — *Monumenta Germaniae Historica*.
- Milsom, *Legal Framework* — S. F. C. Milsom, *The Legal Framework of English Feudalism* (Cambridge, 1976).
- ns — New Series
- PBA — *Proceedings of the British Academy*.
- PKJ — *Pleas before the King or his Justices, 1198–1202*, ed. D. M. Stenton (4 vols, Selden Soc., 67, 68, 83, 84, 1952–67).
- Pollock and Maitland — Sir Frederick Pollock and F. W. Maitland, *The History of English Law before the Time of Edward I* (2 vols, 2nd edn reissued with a new introduction and select bibliography by S. F. C. Milsom, Cambridge, 1968).
- PP — *Past and Present*.
- PR — *Pipe Rolls*
- PRO — Public Record Office
- PRS — Pipe Roll Society
- RCR — *Rotuli Curiae Regis. Rolls and Records of the Court held before the King's Justiciars or Justices*, ed. F. Palgrave (2 vols, Record Commission, 1835).
- Reading Cartularies* — *Reading Abbey Cartularies*, ed. B. R. Kemp, (2 vols, Camden Soc., 4th Ser. 31, 33, 1986, 1987).
- Reg. Ant. Linc.* — *The Registrum Antiquissimum of the Cathedral Church of Lincoln*, ed. C. W. Foster and K. Major (10 vols, Lincoln Rec. Soc., 1931–73).
- RRAN — *Regesta Regum Anglo-Normannorum, 1066–1154*, ed. H. W. C. Davis et al. (4 vols, Oxford, 1913–69).
- S — P. H. Sawyer, *Anglo-Saxon Charters: an Annotated List and Bibliography* (London, 1968).
- Stenton, *English Feudalism* — F. M. Stenton, *The First Century of English Feudalism 1066–1166* (2nd edn, Oxford, 1961).
- Stubbs, *Charters* — *Select Charters and other Illustrations of English Constitutional History*, ed. W. Stubbs (9th edn, Oxford, 1913).
- TRHS — *Transactions of the Royal Historical Society*
- VCH — *Victoria County History*