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The Punishment Fits the Crime: Ownership, Gift-Giving, and Theft in Anglo-Saxon England

Jill Diane Hamilton
Western Michigan University

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THE PUNISHMENT FITS THE CRIME: OWNERSHIP, GIFT-GIVING, AND THEFT IN ANGLO-SAXON ENGLAND

by

Jill Diane Hamilton

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Jill Diane Hamilton
From the calls for the execution of thieves in the Anglo-Saxon laws to the thrall’s fateful pilfering of the dragon’s cup in Beowulf, the Anglo-Saxon textual corpus is far from silent on the problem and consequences of theft. The fact that theft is both the most frequently mentioned crime in the laws and one of the few punishable by death forces us to question the impact of illegal taking in Anglo-Saxon culture. Drawing on legal and literary evidence, including heroic and didactic poetry and homiletic texts, this study offers an explanation for the Anglo-Saxon preoccupation with theft. I argue that the severe punishment of thieves in the Anglo-Saxon laws is the direct result of the cultural weight of theft’s two-fold opposite: ownership and gift-giving.

In a material culture such as that of Anglo-Saxon England, the right to possess an object affords one both economic power—that is, to use, trade, or barter one’s possessions—as well as social potential—that is, to give away goods as gifts and thus establish a bond with the receiver. By removing goods without the owner’s consent, the thief jeopardizes the owner’s prerogatives and thereby commits an offense serious enough to warrant his death. The laws of the Anglo-Saxons demonstrate the importance of ownership to both king and commoner alike by allowing and even encouraging the execution of thieves throughout the Anglo-Saxon period.
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CHAPTER I
INTRODUCTION

In a 2005 study of medieval law and literature in Ireland and Wales, Robin Chapman Stacey remarks that “One of the most interesting trends in contemporary legal scholarship has been the increasing tendency of specialists to treat law and literature as related, or even inter-related, genres.”¹ The popularity of such “law ands” has emerged from the view that studying the law in tandem with other disciplines and genres will provide fresh approaches to both ancient and modern law-producing cultures. This popularity is visible in both the recent interdisciplinary research of legal scholars as well as the curricular requirements of well-rounded law students.² The Law and Literature branch of this larger movement has generated an ongoing debate among scholars regarding the ideological correlation between law and literature and how one reads these two textual genres side-by-side. The debate centers on such questions as: Are legal and literary texts both narrative sources? Can literary theories and methodologies be appropriately applied to laws? Does law lack a sense of “humanity” that literature fulfills?³ For those scholars studying the Middle Ages—especially early medieval cultures, where the textual sources are both limited and less confidently dated—such questions are critical since the laws are often among the body of written sources that have

³ Baron notes that one of the more sensitive trends in the “law-and-literature enterprise” holds that “literature is a source of values otherwise missing from the law” (1078).
survived the centuries. Chapman observes that medievalists joining this conversation about law and literature are in some cases drawing on literature to enlarge their understanding of practices glimpsed only dimly in the legal documents, in others using law to resolve cruxes of plot or motivation. To date, their studies have been predicated on the idea that law and literature share a common cultural background and can therefore be used to elucidate or expand upon one another.⁴

Working from this notion of a “common cultural background,” the present study reads medieval laws alongside contemporary literary texts in order to understand better certain aspects of the community that collectively produced these writings. This research uses texts from an exclusive geographic region (England) and period of time (ca. 500 CE to 1066 CE) in order to expand our present understanding of specific cultural concepts (theft, ownership, and gift-giving) that are amply treated in each textual genre. When examined side-by-side, these medieval texts are for the modern researcher mutual cultural informants regarding the deeply-rooted value and defense of material culture in Anglo-Saxon society. In essence, these texts reveal the public concerns and troubles of the Anglo-Saxons as well as their long-held values, including the significance of object ownership and transfer as a cornerstone of their social relationships.

According to the corpus of extant legal texts, the Anglo-Saxons reserved capital punishment for crimes considered heinous enough to require the elimination of the perpetrator from society. Generally speaking, these crimes were limited to cases of treason, fighting or drawing a sword in the king’s house, absconding from penal slavery, practicing witchcraft or sorcery, wandering off the highway unannounced, and, finally, involvement in theft—including the thief himself and, in some cases, anyone who

⁴ Stacey 65.
harbored, rescued, or avenged him. Not only was theft among the most severely punished crimes in the laws of the Anglo-Saxons, it was also the most pervasive: as Dorothy Whitelock notes, “theft is the crime that occupies the biggest place in the codes.” Moreover, the laws are not the only texts that demonstrate the overt concern in the Anglo-Saxon mind regarding theft: from the gnomic “Maxims” to the thrall’s ill-fated theft of the dragon’s cup in Beowulf, the Anglo-Saxon literary corpus is far from silent on the subject and consequences of theft.

Based on its recurrence in these texts, theft is a major theme in both the laws and the literature of the Anglo-Saxons. The aim of my research is to explore a possible reason for the Anglo-Saxons’ emphasis on, or perhaps their preoccupation with, theft and its punishment. I argue that the concern for theft demonstrated in both the volume and severity of the laws is the direct result of the cultural weight of theft’s two-fold opposite: ownership and gift-giving.

Theft is essentially a violation of ownership: a thief takes that which is neither in his possession nor bestowed upon him voluntarily. As one of the few crimes deserving of capital punishment in Anglo-Saxon law, theft forces us to question both the social and economic impact of all acts that undermine the ownership of an object. In a material culture such as that of Anglo-Saxon England, the right to possess an object affords one economic power—that is, to trade or barter with one’s possessions—as well as social potential—that is, to give away an object as a gift and thus establish or maintain a bond with the receiver. Whether one owns costly armor and heirloom swords, surplus crops that could be distributed to someone in need, or mundane household tools that were necessary for everyday life, material ownership stands at the very core of both social

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relationships and simple survival in Anglo-Saxon society. Since one must first own an object before offering it as a gift, gift-giving is practiced only by those with the privilege of ownership. As one dimension of ownership, then, giving is an act through which the economic value of the owned object is transformed into social value, as the object becomes a symbol of the relationship between the giver and the receiver. The cultural currency of gift-giving—an act that for centuries was practically synonymous with lordship in Anglo-Saxon poetry—makes rightful ownership all the more important to protect. I argue that the laws testify to the importance of ownership by addressing theft more than any other crime and consistently issuing the most severe punishments for thieves.

While many pages have been devoted to separate treatments of the crime of theft and the act of gift-giving, scholars of the Middle Ages have only peripherally explored the relationship between theft and gift-giving and what it reveals about the significance of object transfer within medieval societies. Nida Louise Surber-Meyer discusses theft's relationship to other criminal categories with respect to both gift and exchange in Anglo-Saxon poetry, using as evidence Philip Grierson's work on the breadth of medieval exchange. In “Commerce in the Dark Ages,” Grierson argues against the view that trade was the primary means by which goods changed hands in the Middle Ages. Grierson suggests, instead, that goods were transferred primarily through giving and thieving; he designates “‘theft’ to include all unilateral transfers of property which take place involuntarily—plunder in war would be the commonest type—and ‘gift’ to cover all

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those which take place with the free consent of the donor.” Thus, while Grierson brings to light the distinction between giving and theft and Surber-Meyer discusses theft as “the reverse side of gift and exchange,” neither explores the degree of difference between the socially-strengthening act of giving and the socially-destructive act of thieving.

To date, William Ian Miller’s 1986 study of exchange in medieval Iceland remains one of the only investigations that suggests a correlation between receiving goods via gift-giving and acquiring them by thievery or raid. In a series of case studies drawn from Icelandic sagas, Miller presents a spectrum of modes of exchange that ranges from a socially neutral mercantile exchange, such as trade, to an act of extreme social implications, rán, which is an openly executed, hostile taking of goods. Miller’s study, which will be discussed in Chapter 2, explores Icelandic sources that offer an interesting and irresistible parallel to the spectrum of object exchange in Anglo-Saxon sources.

The present study will use Icelandic sources to suggest further possibilities for the Anglo-Saxon approach to theft and giving where the Old English corpus remains silent. The viability of comparing Anglo-Saxon and Icelandic sources to understand better these concepts is certainly not unfounded; a number of studies have explored the cultural, narrative, and linguistic ties that bind the speakers of Old English and Old Norse, through both shared Germanic cultural and linguistic roots and through later contact as neighbors in England from the ninth century onwards. As Paul Beekman Taylor remarks, “the

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8 Surber-Meyer 38.
hypothesis that extant Old English literary records contain narrative material analogous to Old Norse literature, and that the two literatures share to some extent a common Germanic stock lore, is not in doubt.” While Taylor goes on to acknowledge that asserting the exact direction of influence between Old Norse and Old English texts “is complicated by the fact that written Norse analogues postdate the Old English material which they are often thought to inform,” the narrative and linguistic parallels between them are unmistakable. In fact, many of the attitudes and practices regarding object transfer among the Anglo-Saxons were commonplace among their Germanic ancestors and contemporaries. As noted in the following chapters, this Germanic parallelism is observable in social practices from the significance of gift-giving to the title given to a person who steals; the word *peof* (Modern English “thief”), which is commonly used in the Anglo-Saxon laws to indicate a person who has seized another’s property, is the equivalent of *þófr* in Old Norse, *thiaf* in Old Frisian, *thiof* in Old Saxon, and *thiob* in Old High German. Although the present study is focused on Anglo-Saxon sources, exploring gift-giving and theft in Germanic societies by analogy will foster a more comprehensive grasp on how these practices resonated in early medieval England. By working from the spectrum of object transfer constructed by Miller and others, the relationship between the social importance of object ownership and giving among the

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13. Winfred P. Lehmann, *A Gothic Etymological Dictionary* (Leiden: Brill, 1986) 362. According to Lehmann, the primary definition in each of these languages is “thief” or “robber.” Lehmann notes that the etymology of the word is obscure and examples noted above probably demonstrate “a Gmc [Germanic] innovation accompanying new ideas on property and theft,” forming part of the remarkable “variety of terms for ‘steal’ and ‘thief’ in the IE [Indo-European] languages” (362).
Anglo-Saxons and the brutal punitive consequences for theft found throughout their laws becomes apparent.

The primary reason for choosing to look at theft and ownership in Anglo-Saxon England as opposed to a contemporary Germanic culture, such as the Merovingian kingdom, is that the majority of Anglo-Saxon law and literature was produced in Old English. Unlike the contemporary Franks, whose laws were written in Latin, the kings and poets of Anglo-Saxon England consistently used the vernacular.14 This shared language, which is also a feature of Icelandic laws and literature, allows us to cross-check certain key words, such as peaf [thief], and also to determine how these terms were used by Anglo-Saxons over the course of several centuries of legal promulgation and literary production. Furthermore, as Eugene Green posits in Anglo-Saxon Audiences, “one advantage that these texts in Old English provide [...] is that unlike a text in Latin they convey an immediacy associated with one’s native tongue. Anglo-Saxons listening in their own language to homilists and to poets enjoyed a familiarity of expression that Latin, learned in schools, rarely supplies.”15 Identifying with that which was familiar to the Anglo-Saxons is problematic for the modern researcher, but we can analyze the usage of certain words, phrases, or scenarios and allow the various contexts, whether legal, literary, or homiletic, to reveal how they were understood by this society.

14 See Katherine Fischer Drew, ed. and trans., The Laws of the Salian Franks (Philadelphia: U of Pennsylvania P, 1991). On the difference in legal language between the Franks and Anglo-Saxons, Drew remarks that “since many more of the Romanized Romano-Britons retreated before the Anglo-Saxon advance, there was no need to retain Roman-law courts or Roman law in Germanic Britain and therefore Roman legal ideas (except those associated with the church) seem to have had little if any influence on Anglo-Saxon law. So the Anglo-Saxon kings issued no laws for their Roman population, and in issuing laws for their Germanic population, the Anglo-Saxon rulers alone of the early Germanic kings employed their native Germanic tongue rather than Latin” (25).
In addition to looking at the entire legal history in England from the seventh to the eleventh centuries, relying on editions by Felix Liebermann, F. L. Attenborough, A. J. Robertson, and Lisi Oliver, this study will concentrate on certain genres of texts in the Anglo-Saxon corpus, including heroic and didactic poetry and homiletic texts. Along with the laws, these categories of writing provide perspectives on ideals specific to Anglo-Saxon society: how people ought to interact, what they ought not do, and how public conduct, social bonds, and customary activities were viewed. Many of these texts rely on past conventions by working from extant legal or biblical traditions and by including deliberate poetic archaisms, but they are also infused with instructions on how people ought to behave in the future. As Green notes, this aspect of futurity provides common ground for textual evidence: “If legal codes envision an orderly England for a reformed, orderly people, and homilies exhort communicants to look faithfully to God’s mercy, the poems invoke the future as unfathomed narrative.” All of these genres envision the behavior of society and perpetuate values common to—though perhaps not always eagerly followed by—Anglo-Saxon society and its authorities. The primary texts selected here reveal how the Anglo-Saxons conceived of material culture, specifically their shared regard for object ownership and mutual disgust for acts that destabilized both the economic value and social potential of an object.

Furthermore, while serving different purposes for society, the legal promulgations, literary endeavors, and the homilies of the Anglo-Saxons were not created

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17 Green 9.
in a vacuum. Whether for entertainment or education, these texts all emerged from the same culture and therefore provide social commentary on the issues that vexed that society. Of course, the ideals themselves shift slightly depending on who was writing, when, and for whom, but the essential result remains intact: each primary text analyzed in this study demonstrates either the value of object ownership and the entitlements of the owner—including gift-giving—or the fate assigned to anyone who undermines ownership. In looking at how these values are presented in ideal or juridical contexts, this study is concerned with the cultural ideologies that both empower these texts and communicate the values that were common to both the authors and the audience. The scope of legal texts will be limited to the Anglo-Saxon laws, though the relevant charters, which document “real” instances of crime and legal proceedings, will be footnoted throughout. Charters illustrate how legal practices were executed in specific circumstances, usually discussing criminal activity only as it relates to the larger issue of the “transfer and grant of property and privilege.”

The references to theft in the Anglo-Saxon charters are remarkably scarce compared to the frequent mention of theft in the Anglo-Saxon laws. In conjunction with the other primary texts on which this study will focus, the laws communicate the conditions for right behavior in Anglo-Saxon society.

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18 J. R. Schwyter, *Old English Legal Language: The Lexical Field of Theft* (Odense: Odense UP, 1996), remarks that “charters, by definition, deal with transfer and grant of property and privilege, and therefore seem at first sight thematically and linguistically much too restricted for a comparison with the law-codes. Many charters, however, contain more or less detailed accounts of crimes [...]. By describing the crimes committed by the previous owner of a certain estate, these accounts helped the beneficiary of a once forfeited estate to pre-empt or successfully challenge any further claims from the previous owner (or his family) who, due to criminal activity, had had to forfeit the land to the king” (23). Theft in the charters appears almost exclusively in situations where a landowner who is a proven thief must forfeit his property, and the charters’ focus is the transfer or granting of this property to another person.

19 Schwyter remarks that the laws contain a total of 38 theft lexemes [vocabulary units of which there are various forms] and 208 theft tokens [actual occurrences of the word-forms] (42). By contrast, “theft-lexemes occur in only 16 out of 39 charters in Old English (or chapters of the [Anglo-Saxon Chronicle]) containing any lawsuits” for a total of 37 actual occurrences of theft words (51-52). Furthermore, none of these lawsuits “has more than five tokens” in each (53).
In order to investigate the connection between punishing theft and protecting ownership, this study begins with an exploration of material culture among the Anglo-Saxons before investigating the legal consequences faced by anyone who undermined another's ownership of an object. Chapter 2 relies on anthropological and archaeological evidence to bolster the chapter's central study of the cultural importance of ownership and its prerogatives (namely gift-giving) in Anglo-Saxon literature. As further evidence for the significance and essentiality of ownership to this culture, Chapter 3 explores the treatment of theft and the punishment for thieves throughout four centuries of Anglo-Saxon law. This chapter aims to demonstrate the sustained preoccupation with a crime that directly challenges both the economic and social currency of ownership. Chapter 4 builds on the previous chapter as it analyzes the usage of the word *peaf* [thief] and circumstances of illegal taking in literary and homiletic texts. By demonstrating the evaluation of the act of theft as one with a distinct and repeated social stigma, this chapter explores specific cases in both poems and homilies in which stealing and giving are placed in direct opposition. Chapter 5 draws together the evidence of the previous three chapters and suggests the possibility of a comparative study on the treatment of thieves in other Germanic cultures. This chapter posits that the cultural significance assigned both to ownership and to gift-giving accounts for the ever-severe treatment of thieves in the Anglo-Saxon laws. Through placing evidence for the invariable centrality of wealth and its transfer among the Anglo-Saxons in conversation with contemporary laws against theft, the present study contributes to our current knowledge of how social bonds, material culture, and legal authority were interrelated in Anglo-Saxon society.
CHAPTER II

THE IMPORTANCE OF OWNERSHIP AND GIFT-GIVING IN ANGLO-SAXON SOCIETY

The importance of material wealth in Germanic culture has been asserted and reworked by literary scholars, historical anthropologists, and archaeologists alike. To date, scholars from each of these fields have variously demonstrated the degree to which Germanic people from antiquity through the Middle Ages were invested socially in wealth and its transfer. Although drawing on a wide range of texts and objects to make their cases, these specialists have treated the concepts of ownership and gift-giving with complementary insight, collectively affirming the importance of the gift, as an owned and deliberately transferred object, within medieval Germanic societies.

The major anthropological studies on the gift tend to focus on island cultures such as Oceania, whose practices are yet visible today. Thus, it is necessary to demonstrate how the premises of these anthropological studies are evident in—and thus applicable to—a culture as geographically and chronologically far removed as that of medieval Germanic peoples, including the Anglo-Saxons, on whom the present study focuses. In her review of gift-giving in Anglo-Saxon poetry, Surber-Meyer remarks that “there may well be resistance to the apparent linking of the Anglo-Saxons with the Papuan peoples,” but their similar treatments of wealth make such a “link” worth investigating. To explore how wealth and gift-giving functioned in Anglo-Saxon society, we must read these anthropological concepts through the lens of archaeological and textual evidence from Anglo-Saxon England. This chapter reviews the anthropological studies on the gift

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20 Surber-Meyer 16.
and then explores the Anglo-Saxon treatment of wealth and gift-giving in furnished
graves and poetry, which unequivocally support the claim that wealth and its protection
were deeply-rooted in Anglo-Saxon culture.

A discussion of material exchange and its function in society cannot avoid the
foundational work of sociologist Marcel Mauss, *The Gift: The Form and Reason for
Exchange in Archaic Societies.*\(^{21}\) As noted by Arnoud-Jan Bijsterveld in his
historiographical sketch of medieval gift-giving to churches and monasteries, Mauss’
universal study of archaic societies is a work “on which all who have dealt with the
subject of gift exchange since have drawn.”\(^{22}\) With *The Gift*, Mauss produced a positivist
investigation of gift-giving from ethnographic, historic, and sociological perspectives,
drawing chiefly on his research into the “primitive” cultures of Oceania and the
American Northwest, where the institution of potlatch (the tribal leader’s agonistic giving
of all he owns)\(^{23}\) was one of the principle means of transferring goods. Bijsterveld
summarizes Mauss’ assertion, stating that
gift exchange is defined as a transaction to create, maintain, or restore
relations between individuals or groups of people. The reciprocity of the
gift is an essential element of this exchange. A gift has the capacity of
creating those relationships, because the initial gift obliges the recipient to
return the same or another gift in the short or long term.\(^{24}\)

According to Mauss, gift-giving is done with a specific interest in the giver’s relationship
with the receiver, a relationship which both the object itself and its transfer represent.
The object’s movement is not one-sided, but is a transfer that obliges the receiver to


\(^{22}\) Arnoud-Jan Bijsterveld, “The Medieval Gift as Agent of Social Bonding and Political Power: A

\(^{23}\) See Mauss 6-7 for a comprehensive introduction to the term “potlatch.”

\(^{24}\) Bijsterveld 124.
produce a counter-gift in the form of another object or a service. For Mauss, whose work on the motivation for counter-gifts grew into a critical dialogue with a contemporary Oceanic anthropologist, Bronislaw Malinowski, the notion of obligation penetrated the act of giving from all sides: “to refuse to give, to fail to invite, just as to refuse to accept, is tantamount to declaring war; it is to reject the bond of alliance and commonality.”

Thus, the receiver’s giving of a counter-gift does not occur out of a desire to compensate for the material value of the object—which would liken this transaction to trade—but rather out of a desire to participate in the exchange and therefore solidify his or her relationship to the giver. The material value of an object given as a gift is superseded by its “capacity of creating [...] relationships”—a capacity that hinges on the receiver’s response with a counter-gift, which meets the obligation that is imbedded in the act itself.

Remarking on how this theory of gift and counter-gift can be applied to wealth in the Anglo-Saxon poetic corpus—a subject to which we shall return at length below—Surber-Meyer notes that the “exchange of objects between two or more people is the visible part of the exchange. The symbolic exchange taking place in a parallel way while the social outward event of exchange happens, [sic] is less visible.”

symbolic exchange fashions the object into a social catalyst; that is, it rouses the receiver

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26 Mauss 13.
27 In “Commerce in the Dark Ages,” Grierson describes trade as a form of object exchange “characterized by the demand for equilibrium,” where both parties must agree that the material value of the objects being exchanged were equivalent (126). Since both parties are at once the giver and the receiver, the crux of trade was in the material equality of the goods, rather than the relationship between the people.
28 Bijsterveld 124.
29 Some scholars have argued that fulfilling the obligation with a counter-gift is not possible: Constantin V. Boundas, “Exchange, Gift, and Theft,” Angelaki 6.2 (2001): 101-12, argues that “something is a gift when something in it (or of it) cannot be ‘paid back’ by means of reciprocation,” which creates an “inability to reach a ‘zero sum’” (102). According to Boundas, the receiver is compelled to “out give” his benefactor, and the giver-receiver relationship is perpetuated by this lack of equilibrium.
30 Surber-Meyer 97-98.
to respond with a counter-gift, thereby endowing the physical object with the power to “create, maintain, or restore” relationships.

The socially strengthening quality of gift-giving also sets this mode of object transfer in opposition to theft, which has the reverse effect on relationships. An act of illegal taking, in which goods are removed from the owner’s possession without the owner’s consent, does not generate friendship between the owner and the current possessor of the goods. Since the thief acquires an object by his own doing and not the owner’s volition or initiation, he becomes the subject of the retaliation of the owner, who is left without the use of the object or the option of giving it as a gift. Scholars such as Marshall D. Sahlins and William Ian Miller have argued that theft demands the “negative reciprocity” of the owner in the same way that gift-giving demands a counter-gift from the recipient. As Ross Samson remarks, “negative reciprocity, as much as the giving of gifts, creates a binding social relationship, one of feud and vendetta. [...] It is the natural opposition to friendship.” In this light, theft becomes the social antithesis of

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31 Drawing on evidence from Icelandic sagas, Miller notes that whether one unexpectedly petitions for goods or steals them outright, the fact that the owner did not initiate the transfer signals social friction: “When transfers of goods were sought which were not already regularized by well-defined norms or habit, and especially when they were not initiated by the present possessor, tensions and uncertainties surfaced” (22).


33 See Miller, “Gift, Sale, Payment, Raid” 24 and 28.

34 Miller notes that open seizure (Icelandic ráðn), “like gift exchange, admitted reciprocity and defined social relations. But it inverted the movement of property as against the duty to make return. It was now the prior possessor who owed a response, not the raider; and it was the raider who achieved social dominance from the transfer, not the prior possessor” (24). Miller goes on to state that the previous owner’s retaliation may not be possible in the case of a successful theft: “Because a secret crime with the thief unknown, theft, unlike ráðn, by not inviting reprisal denies all social retaliation” (31). If, however, the thief is caught in the act or found out after the fact, the owner may seek revenge.

gift-giving, as the relationship resulting from theft is one of discord and aggression, rather than the "bond of alliance and commonality"\textsuperscript{36} perpetuated by gift and counter-gift.

Reexamining the anthropological approaches to gift-giving by Mauss and Malinowski, as well as Claude Lévi-Strauss' response to both, Annette B. Weiner posits that certain objects are imbued with the identity of the owner or the owning culture to such a degree that the owner retains particular rights to them even after they have changed hands.\textsuperscript{37} She amplifies Mauss' claim that the given object is endowed with the "individuality of the donor"\textsuperscript{38} by making a distinction between alienable possessions (items for which a counter-gift would suffice) and inalienable possessions (items whose value was incomparable and irreplaceable).\textsuperscript{39} On this distinction, Weiner remarks that "whereas other alienable properties are exchanged against each other, inalienable possessions are symbolic repositories of genealogies and historical events, their unique, subjective identity gives them absolute value placing them above the exchangeability of one thing for another."\textsuperscript{40} Thus, some objects become "inalienable" since they can never shed the identity of the person, family, or community by which they were produced.

From the Trobriand kula shells to the Elgin marbles and crown jewels, Weiner claims

\begin{itemize}
\item \textsuperscript{36} Mauss 13.
\item \textsuperscript{38} Mauss 62.
\item \textsuperscript{39} Bijsterveld comments that the most common form of "inalienable possessions" in the Middle Ages was landed property, which was subject to numerous ownership disputes especially after such land had been given to a religious house (see 125-26). On the subject of gifts to saints and the spiritual benefits of donating property to a religious house, see Stephen White, \textit{Custom, Kingship, and Gifts to Saints: The Laudatio Parentum in Western France, 1050-1150} (Chapel Hill, NC: U of North Carolina P, 1988) and Barbara H. Rosenwein, \textit{To Be the Neighbor of Saint Peter: The Social Meaning of Cluny's Property, 909-1049} (Ithaca, NY: Cornell UP, 1989).
\item \textsuperscript{40} Weiner 33.
\end{itemize}
that inalienable possessions are priceless receptacles of memory and culture whose value could not be reciprocated: no counter-gifts would suitably replace them.

These major anthropological studies on object exchange focus on cultures whose gift-giving customs are still in practice today, permitting fieldwork and first-hand investigations into the treatment of wealth and exchange. While these studies have given considerably less attention to the West—let alone the European Middle Ages—many of the aforementioned scholars have advocated the application of their “primitive” gift-giving theories to societies of the Middle Ages, in some cases even including a peripheral case study on medieval cultures in their research.\(^{41}\) Among the most relevant to the present study is Mauss’ nod to Germanic culture in *The Gift*, which has inspired a number of more specific studies on medieval Germanic societies.

Mauss famously opens the introduction of his study with an epigraph that includes eight stanzas from *Hávamál*, or “Sayings of the High One,” preserved in the Poetic Edda, which provides a Scandinavian view of gifts and reciprocated generosity: “[... ] Those who exchange presents with one another / Remain friends the longest / If things turn out successfully.”\(^{42}\) Mauss does not, however, return to a Germanic subject until the penultimate chapter, in which he discusses Germanic civilization in very broad terms. Having discussed the survival of gift-giving principles in various Indo-European legal systems, Mauss notes that Germanic peoples “had a system of exchanges of gifts, given, received, and reciprocated either voluntarily or obligatorily, so clearly defined and well

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\(^{41}\) For example, Weiner posits that inalienable possessions maintained a presence in medieval Europe: “throughout medieval times, keeping inalienable possessions intact was so vital that landed estates were protected by extensive legal codes, decreeing that blood kin had the right to repurchase land that had once passed from the hereditary line” (33).

\(^{42}\) Quoted in Mauss 1.
developed that there are few systems so typical." Mauss digests the uniqueness of the Germanic system in a lexical examination of words derived from *geben* and *gaben*, which he prefaces with a summary of early Germanic social structure:

> The clans within tribes, the large undivided families within the clans, the tribes one with another, the chiefs among themselves, and even the kings among themselves—all lived to a fairly large extent morally and economically outside the closed confines of the family group. Thus, it was by the form of the gift and alliance, by pledges and hostages, by feasts and presents that were as generous as possible, that they communicated, helped, and allied themselves to one another.\(^{44}\)

One of the key building blocks of Germanic society was the exchange of objects, by which the giver and the receiver were drawn together into a bond that obliged them to one another outside ties of kinship. In Mauss' précis for gift-giving in Germanic culture, a gift is given either to maintain a social bond with the receiver or in expectation of the receiver's future loyalty. Mauss supports his claims with the earliest evidence of Germanic social institutions, as observed and written ca. 100 CE by Tacitus.\(^{45}\) Although Mauss discusses Germanic culture through a series of generalizations—mentioning in the same breath the first-century Continental Germanic peoples and the Icelandic culture of the Poetic Edda written nearly a millennium later—he nonetheless provides a necessary starting point for both anthropologists and historians to investigate the uniquely Germanic aspects of gift-giving.

In his review of gift-giving in Tacitus' *Germania*, Mauss remarks that “if these customs have been preserved long enough for us to be able to uncover such traces, it was because they were solidly based and had put down strong roots in the Germanic...”

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\(^{43}\) Mauss 60.

\(^{44}\) Mauss 60.

\(^{45}\) Mauss 151 n. 104.
The task of finding these traces was taken up by Aaron Gurevich, a historian of the Middle Ages who used methodologies from anthropology to investigate Germanic social institutions such as gift-giving. Gurevich begins by assessing land ownership and the Norwegian ódal, as well as the broader transfer of property in "primitive" societies. Prefacing his discussion of the Scandinavians, Gurevich states that

moveable property in so-called archaic communities did not represent wealth in the modern understanding of the word—neither was it a means of accumulating economic power. A most important aspect of property ownership in this connection was the question of transfer. All property, apart from items essential to everyday existence, had to pass constantly from one owner to another. Wealth primarily fulfilled a social function in that the transfer of possessions contributed to the acquisition and increase of social prestige and respect, and sometimes the handing-over of property could involve greater prestige than its retention and accumulation.

The significance of owning an object is not the material value of the metal or woven cloth from which it was made, but rather the intangible value it acquires through its transfer from one person to another. Given a gift’s potential to affect the “increase of social prestige and respect,” an object is literally worth more to the owner when placed in the hands of another as a gift than it is when kept. In “A Gift Awaits an Answer,” Gurevich further remarks that “relations between individuals and groups were not impersonal, and gifts assisted the establishment and maintenance not only of friendship and sworn brotherhood between individual persons or families, but of peaceful neighborly life and

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46 Mauss 151 n. 104.
47 Aaron Gurevich, “Wealth and Gift Bestowal among the Ancient Scandinavians,” Historical Anthropology of the Middle Ages, ed. Jana Howlett (Chicago: U of Chicago P, 1992) 177-89. Gurevich states that the Norwegian ódal was property that “belonged inalienably to its owners” (178), a statement in accord with Weiner’s later study of “inalienable possessions.”
alliances between tribes and political unions." When given by one person or group to another, a gift supersedes its economic value by creating a bond—or reinforcing an existing bond—between giver and receiver. Since the importance of the gift is this social bond, "the material value of a gift in such a system of interpersonal relations could be quite insignificant," which means that the consequential aspect of gift-giving is not so much what is being given, but who is giving it and to whom. Gurevich comments that this transfer "was a way of ensuring social contact between the exchanging parties: in the exchange of objects, and also of marriageable women between groups, definite, fixed human relationships were established and were given dramatic and emotional content." The act of giving ultimately demonstrates the giver and receiver’s relationship of mutual respect while amplifying the reputations of both parties. Thus, perhaps paradoxically, it is through the owner’s giving of an object that ownership reaches its full potential: when an object becomes a gift, its worth is extended beyond monetary value, as it becomes a tangible agent of the alliances that form the core of a society.

Gurevich’s study is central to understanding wealth and gift-giving in Germanic cultures as it extends the giver-receiver relationship observable in “the ‘primitive’ tribes studied by ethnologists […] to cover barbarian communities in the Europe of the early medieval period,” specifically the Scandinavians. Looking to Mauss’ quotation of Hávamál, Gurevich notes that the concepts of gifts, reciprocity, and friendship evident in the aphoristic statements of Hávamál are especially significant since “these maxims are

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repeated in Norwegian and Swedish regional laws, where they are quoted as representing standard legal practice.\textsuperscript{53} The fact that the laws dictate the obligation of a receiver to produce a counter-gift demonstrates the degree to which ownership and the transfer of wealth was imbedded in Scandinavian culture. Even in the period of Viking expeditions, plundered gold and silver were viewed "as forms of wealth capable of giving material expression to the good fortune and prosperity of a man and his family or tribe. [...] [The gold and silver] came to comprise an inherent part of the qualities of their owner; they, as it were, 'absorbed' the prosperity of the person who owned them [...]."\textsuperscript{54} Thus, instead of having a purely economic value, precious metals embodied the owner's blessing, which the owner could share out to create social alliances and increase his prestige and that of the receiver.

The importance of material possession outlined by the anthropological studies discussed above, particularly Gurevich's study of Scandinavian society, is translatable to Anglo-Saxon England. One such area in which the concern for wealth and its transfer is brought into vivid focus is the Anglo-Saxon practice of burying grave goods, which attests to the material interests of the community who committed the body to the earth.

To date, thousands of Anglo-Saxon burials have been discovered\textsuperscript{55} and roughly half of all inhumations include grave goods, among which are items such as weapons, clothes,

\textsuperscript{53} Gurevich, "Wealth and Gift" 181. Gurevich points out that the Norwegian Gulabingslov, for example, states that the bestowal of gifts requires compensation, or an "anti-gift." He remarks that "the word laun, used to signify this compensation in both Norwegian and Swedish laws and in Icelandic sagas and poetry, signified 'recompense,' 'compensation for a gift'" (181).

\textsuperscript{54} Gurevich, "Wealth and Gift" 183.

\textsuperscript{55} Christina Lee, "Grave Matters: Anglo-Saxon Textiles and Their Cultural Significance," Bulletin of the John Rylands University Library of Manchester 86.2 (2004): 203-21, notes that "more than 26,000 graves from [the period before 600 AD] have now been excavated" (203). See also Christopher Arnold, An Archaeology of the Early Anglo-Saxon Kingdoms, 2\textsuperscript{nd} rev. ed. (London: Routledge, 1997) 177.
jewelry, tools, food, and, in rare cases, horses and ships. Studies of grave goods are largely limited to metalwork simply because organic items such as woven clothing and goods made of wood, leather, or bone rarely survive. Furthermore, grave goods are specific to the gender of the deceased and the region of the burial, and also indicate social repute, though “we cannot know whether that status derived from military prowess, wealth, religious function or ancestry.” The burial of an object with a person does not, however, necessarily signify his or her ownership of that object, but could perhaps indicate the reverence of those who buried the body. Gale R. Owen-Crocker remarks that “we must question what [ownership] meant in contemporary terms,” since it is unknown whether, for example, a woman who is buried with a costly brooch could earn her own jewelry through bartering or whether such a thing would be a gift of her kin.

Perhaps the significance of an object’s placement in a grave is not whether or not it belonged to the deceased, but the fact that it was buried with the body in the first place. Given the degree of ceremony and preparation involved in these furnished burials, we can

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58 Daniell and Thompson 66. They remark that “women may be buried with brooches, beads and weaving tools; men with weapons, ranging from a knife or spear in the poorer graves to shields and swords in the richer ones. There are also regional differences which show up most clearly in women’s jewellery and may represent ethnic affiliation” (66). Audrey Meaney, “Anglo-Saxon Attitudes to the Dead,” The Cross Goes North: The Processes of Conversion in Northern Europe, AD 300-1300, ed. Martin Carver (York: York Medieval P, 2003), notes that “the quantity and quality of grave-goods seems to have been regulated by both wealth and age: the youthful and the elderly usually have a more restricted kit than those who died in the prime of life, and small children seldom have anything recognizable with them” (240).
59 Daniell and Thompson 66.
60 Owen-Crocker 17.
hardly assume that a grave was assembled nonchalantly or that an object was included without consequence. Martin Carver remarks that

Archaeologists have claimed various of their approaches to interpretation as ‘structuralism,’ but the common idea that it has inspired is that material culture, like any other sort of culture, can be used actively and have a meaning beyond its apparent function. This is particularly obvious in the case of a grave, since bodies and grave goods were not absent-mindedly dropped into holes, like broken pottery into a rubbish pit. The dead do not bury themselves, the grave assemblage has to be chosen by someone else; and if chosen, it is constructed, and if constructed it becomes a creative or an active assemblage intended to have meaning.

As an example of this constructed meaning, Carver remarks that the objects buried with the young man in Mound 17 at Sutton Hoo “were selected, or composed, by the family to give the dead man an appropriate identity, for the edification of the funeral guests and for the gods.” Thus, a burial cannot be “read” strictly through the lens of the material value of the entombed objects; rather, the very appearance of the objects in a grave and their composition must be considered, as the survivors deliberately transferred those objects from their own society into the tomb of their kin. The objects themselves represent far more than the pocketbook of the deceased or his family: just as objects given as gifts have a worth beyond their economic value, so too are goods placed within a grave...

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61 Helen Geake, “The Control of Burial Practice in Anglo-Saxon England,” The Cross Goes North: Processes of Conversion in Northern Europe, AD 300-1300, ed. Martin Carver (York: York Medieval P, 2003), notes the degree of calculation and preparation that went into Anglo-Saxon burials: “the focus of funerals today is the lowering of the body into the grave, but in the early Anglo-Saxon period it seems to have been the viewing of the tableau; the body laid out in the grave or on the pyre, with its jewellery or weapons and other accoutrements. [...] In the case of inhumation burials, the dead body would have had to be carefully laid out in the bottom of the grave. If it had simply been lowered in, necklaces would have slipped round the back, pots would have fallen on their sides, swords and spears would have ended up across the body” (260). The family member or mourner in charge of the laying-out had to be aware of both the goods’ significance as well as their precise arrangement within the grave.


63 Carver, “Context of Treasure” 42.
imbued with meaning as a symbol of the survivors' veneration of the dead. Although
the most widely discussed grave goods tend to be objects of decorated, high-quality
metalwork found within the more ostentatious Anglo-Saxon burials, the functional goods,
such as bowls, tweezers, and combs, are even more prevalent. However mundane an
object may seem, everything included—from fine swords and brooches to stones and
buckets—is significant to understanding the circumstances of the burial. Objects may
reveal major political trends that influenced the kind of grave goods included, as well as
the social status of the deceased and the sentiment of the surviving kin who placed the
objects in the grave. In other words, objects were critical to Anglo-Saxon expression:
they were the medium through which status was communicated in life—through such
acts as gift-giving—as well as in death—through grave goods.

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64 Carver, speaking of the famous ship burial uncovered in Mound 1 at Sutton Hoo, notes that “[...] grave
goods do not represent capital assets and were never intended to. The coins in the purse, the gold fittings,
and the cauldrons do not necessarily represent all, or indeed any of the dead man’s possessions” (“Context
of Treasure” 32).
65 Even objects of simple utility required access to raw materials and a staggering amount of time for a
craftsperson to produce. For a discussion of the value of the full range of goods and materials in the Sutton
Hoo burial, from the iron rivets to the Anastasius Dish, see Edward Schoenfeld and Jana Schulman, “Sutton
Hoo: An Economic Assessment,” Voyage to the Other World: The Legacy of Sutton Hoo, ed. Calvin B.
from the sixth to the seventh century—namely “the advent of kingship and the Church”—brought about
changes in the burial goods, such as the waning popularity of brooches and increasing number of both
shorter necklaces and functional items such as small iron tools (203). Geake suggests that as the early
kingdoms attempted to assert their power, the “kings deliberately looked back to the last time that there was
a supreme leader in Britain—the Roman period” (212). This attempt to fabricate continuity with the
Romans, which was assisted by the Church’s presence in England, resulted in the “strong classical
influence in seventh- and early eighth-century grave-goods” and a “distinct contrast [...] between the old
Germanic-style jewellery and the newer classical-style jewellery,” which is almost uniformly evident
across the island (209).
67 See Daniell and Thompson 69: “While the object’s function is often obvious, its meaning is debatable.
Such artifacts may have been buried for the use of the dead person, or as a showy gesture by the mourners,
or to indicate ethnicity, rank or social function.” In Gold and Gilt, Pots and Pins: Possessions and People in
Medieval Britain (Oxford: Oxford UP, 2006), David A. Hinton remarks that grave goods may have been
included to appease the deceased: “some parallel spirit world may be envisaged, in which the dead might
transmute into invisible presences within the visible and tangible world, capable of causing harm if upset.
[...] Disposing of tokens with the dead might mean that they would not resent seeing things that they had
owned in the human world still being used or worn” (31).
Furnished graves in England “were virtually non-existent after the first quarter of the eighth century,” arguably owing to the arrival and spread of Christianity in England that exacerbated an already declining trend in the use of grave goods. While burials with grave goods do not necessarily signify that the person interred was pagan, “churchyard burials in England are virtually devoid of grave-goods,” with only a few noted exceptions in Kent. Geake remarks that “historical sources seem to indicate that the Church did not particularly interest itself in whether or not grave-goods were used, yet the archaeological evidence from the churchyards appears to suggest the opposite, and the two cannot yet be reconciled.” Regardless of the exact cause, “grave-good usage—and with it, apparently, the use of cemeteries containing furnished burial—stops suddenly at this point [ca. 730 CE] all over England.” The disappearance of grave goods does not, however, signal the end of the interest in material culture in Anglo-Saxon England: the diverse corpus of poetry, sermons, wills, charters, and laws demonstrate that wealth and its transfer continued to be a prominent feature of Anglo-Saxon culture. In particular, the poetry reveals the degree to which objects—mainly the owning, giving, and hoarding of them—remained central to the Anglo-Saxon imagination throughout the post-conversion period.

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68 Geake, “Invisible Kingdoms” 214.
69 Owen-Crocker notes that “the conversion to Christianity has traditionally been seen as the impetus for the change but other, or co-existent, reasons are now identified, economic […] and social, in that tribal society was transforming into kingdoms” (18 n. 9). See Christopher J. Arnold, “Wealth and Social Structure: A Matter of Life and Death,” Anglo-Saxon Cemeteries, ed. P. A. Rahtz, T. M. Dickinson and L. Watts (Oxford: BAR British Series [82], 1980) 81-142, and Martin Carver, “Kingship and Material Culture in Early Anglo-Saxon East Anglia,” The Origins of Anglo-Saxon Kingdoms, ed. S. Bassett (Leicester: Leicester UP, 1989) 141-58.
71 Geake, “Invisible Kingdoms” 214.
72 Geake, “Invisible Kingdoms” 214.
The objects given as gifts in Old English poetry are often ornate metal objects and invaluable heirlooms usually described as being of gold or silver, many of which—such as armor or swords—have a function indicating the service-as-counter-gift the giver expected in return. The valuation of lavishly decorated metal objects, whether of gold or iron, over practical metal objects is a tendency of modern archaeologists and Anglo-
Saxon poets alike. Owen-Crocker, citing the “Lay of the Last Survivor” in Beowulf, points out that poets “inevitably focus on the most skilled and showy of iron products, the weapons and armor which were central to the heroic world; but the awesome metamorphosis of ore into artifact was a process shared even by more mundane metal objects [...]” The poets’ focus on goods of extraordinary material value owes much to the fact that the poetry focuses not on the Anglo-Saxon people as a whole, but on the nobility. The poems center on high-ranking warriors and their lords, which gives us a view of gift-giving that engages only a portion of Anglo-Saxon society. We should not, however, ignore the time expended on creating everyday objects, whether a commonplace bucket or a custom-made byrnie, lest we misjudge the actual value of these objects. Although the warrior-nobles of Anglo-Saxon poetry are not shown giving away such mundane objects, we should not too hastily dismiss the possibility of common goods being given as gifts with equal potential for building social alliances. The “items essential to everyday existence,” which Gurevich deemed unlikely to change hands, yet had the capacity of fulfilling the social function Gurevich described.

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73 Elizabeth Tyler, Old English Poetics: The Aesthetics of the Familiar in Anglo-Saxon England (York: York Medieval P, 2006), remarks on the frequency of gold over silver in the poetry: “silver occurs only twenty-eight times in the corpus of some 30,000 lines while gold occurs 184 times” (19).
74 Owen-Crocker 26.
One possible source of contemporary evidence for the giving of everyday commodities as gifts comes from the Icelandic sagas, in which the main characters are often common farmers, rather than the armor-clad warriors of Anglo-Saxon poetry. In “Gift, Sale, Payment, Raid,” Miller provides concrete evidence of this phenomenon, outlining a formal sequence by which one acquired goods in the Icelandic sagas: first one asks to buy the desired goods, then inquires whether the owner means to give the goods as a gift, and finally takes the goods outright if both sale and gift are rejected. This complex system of haggling is not wholly financially-driven; Miller comments that “there were regular exchanges of tangibles between households, but these exchanges were submerged in social relations rather than undertaken for purely economic reasons.”

From invitations to feasts and parting gifts for guests, to giving away surplus crops during a famine, gifts did not have to be heirloom-quality objects of decorated metal. Miller cites an example from Njáls Saga, in which Gunnar, having run out of food and hay, approaches Otkel to buy these items. Otkel refuses, stating, “there’s both, but I will sell you neither.” Gunnar assumes that Otkel’s refusal is “a hint to ask for a gift” rather than a statement of defiance, and he immediately requests the goods as a gift. Regarding this interchange, Miller notes that “the shift from the idiom of buying and selling to the language of gift exchange is not a euphemistic way of discreetly...
haggling over price. It is an attempt to define the social significance of the transfer by negotiating the mode of exchange,”80 meaning that it is not the material value over which Gunnar and Otkel are haggling, but rather the condition of their relationship (which, in this case, proves not especially promising). In her survey of the social impact of gift exchange in the Viking Age, Elisabeth Vestergaard comments that “exchange is social communication, and what is important is that an exchange is going, not what is exchanged. [...] Anything may be exchanged: objects, livestock, food, women, courtesy, moral obligations, and so on, but in each specific case precisely what is to be exchanged and for what will be socially defined.”81 Despite the attention garnered by the lavishly decorated objects of metal and inlaid gems, it is important to remember that even everyday commodities have the potential to define the relationship between the giver and receiver. While the costliness of the gift itself depends on the affluence of the giver, the feature of greatest significance is not this material value, but the transfer of the object from the possession of one person to the possession of another.

Given the importance of the gift in Germanic societies, one need not look far in the Germanic textual corpus to find wealth and its social significance perpetuated in verse. Gurevich notes that the Scandinavian gift-giving system is evident in the poetic endeavors of the culture:

the link between the donor of wealth and its recipient is one of the leading motifs in the poetry of the skalds, who extolled the generosity of the kings and the loyalty of those retainers who served them in exchange for a distribution of gold, weapons and other valuables. Such favours bound the latter to their overlord in inseverable bonds and imposed upon them the obligation of preserving their loyalty up to and including death.82

80 Miller 28.
82 Gurevich, “Wealth and Gift” 182.
Gurevich’s description of the treatment of wealth in skaldic poetry is directly translatable to the poetic corpus of Anglo-Saxon England, in which one can scarcely find a poem that does not mention wealth. Its prevalence, as Elizabeth Tyler remarks, has made wealth in the form of treasure “a theme and image of central importance for the interpretation of Old English verse.” Indeed, wealth in Anglo-Saxon poetry appears in a variety of social contexts, from the trademark gift-giving of kings to God’s bestowal of gifts to humanity, all of which, given the number of occurrences, must have piqued the interest of the poems’ audiences. As was mentioned in Chapter 1, the use of poetry to examine the social attitude towards wealth is deliberate because of poetry’s “invoking of the future” through conveying contemporary behavioral ideals in didactic, entertaining, or historical contexts. Although poetry does not necessarily preserve historical reality—and at times even appears to be intentionally ahistorical—it does provide a glimpse into the attitudes that shaped the expression of proper behavior. The discussion that follows reviews a sample of the many references to wealth and gift-giving in Anglo-Saxon poetry, from heroic and elegiac verse to gnomic and religious works. These exempla support the application of Mauss and Gurevich’s observations about gift-giving and its social effects to Anglo-Saxon England, demonstrating the unmistakable importance of wealth in this culture.

One can hardly overlook wealth—particularly in the form of treasure—in Anglo-Saxon poetry; as Tyler comments, it “is almost ubiquitous across the corpus, whether

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83 Tyler notes that there are “very few poems not mentioning treasure in one form or another” (9).
84 Tyler 9.
85 Green 9.
mentioned simply in passing or developed for thematic purpose." While it is "hard to historicize poems which lack dates and locations," the poetry's resulting quality of timelessness—a "historical phenomenon, created and maintained by specific people at specific points in history"—allows us to examine the topics that continued to appeal to Anglo-Saxon audiences, including the treatment of wealth.

Perhaps nowhere else in the Old English poetic corpus is the mention of wealth more concentrated than Beowulf, in which the notion of treasure-as-gift is found at every turn in the narrative, establishing relationships and perpetuating social alliances. In this literary perspective, an Anglo-Saxon warlord's gifts of treasure prior to combat form a bond between him and the receiving retainer, a bond which is then—in theory—manifested on the battlefield through the retainer's steadfastness. In his discussion of gifts as vehicles for the Danish dynastic succession in Beowulf, John M. Hill comments on the consequences of the transfer of an object in this context:

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86 Tyler 18. Tyler cites several examples from over fifty years of scholarship that attest to the scholarly attention paid to the theme of treasure in Beowulf; see 9 n. 1.
87 Tyler 7-8.
88 Tyler 7.
89 Tyler 3.
90 Robert E. Bjork, "Speech as Gift in Beowulf," Speculum 69 (1994): 993-1022, applies gift-giving theories to his analysis of the speech-acts that frequently accompany the giving of gifts in Beowulf. Bjork argues that "the gift-based nature of Anglo-Saxon society is what largely accounts for the prominence of speech in Old English narrative poems," as the "mechanism of material exchange coincides with and is illuminated by [...] the mechanism of linguistic exchange" (995, 996).
Gift giving establishes an important reciprocity: gifts, trust and honor on the lord’s part for service, honor and loyalty on the retainer’s part. In turn the lord rewards or repays service by gifts, through which he ever affirms the heroic contract (his relationship between himself and his retainers.) More than a bond, that affirmation underlines an entire system of reciprocal relationships between equals and unequals. Moreover, the lord’s generosity may indicate either the value of services performed or the quality of service looked for.\footnote{John M. Hill, “Beowulf and the Danish Succession: Gift Giving as an Occasion for Complex Gesture,” Medievalia et Humanistica 11 (1982): 177.}

The social obligation that is imbedded in a transfer of wealth, as Mauss asserts in The Gift, is readily found in the martial relationships at the center of Beowulf and other Anglo-Saxon heroic poems. The gift from a lord to his retainer has a coercive quality, manifested in the object’s power to motivate the receiver to produce a counter-gift, which, in the case of the retainer, is his dedicated service as a soldier. In this way, gift-giving becomes not only a means of strengthening relationships, but also, as Florin Curta argues, “a category of power and political strategy.”\footnote{Florin Curta, “Merovingian and Carolingian Gift Giving,” Speculum 81 (2006): 677. Curta analyzes textual evidence for gift-giving as a political phenomenon among the Franks under Merovingian and Carolingian rule (ca. 500-900). Curta draws a hard line for the function of the gift in Frankish society, arguing that “gift giving was not about social bonds or glue; it was a form of surrogate warfare in which assertive aristocrats engaged when competing with each other for power. As a consequence, gifts circulated within a restricted circle of individuals in Merovingian and Carolingian societies; gift giving was not part of a general production or distribution network” (698).} Through giving, a lord may express his power because his generosity is reciprocated in the receiver’s loyal service: instead of giving an object to the lord in return, the Anglo-Saxon thegn is most often seen pledging his obedience and battle-readiness, given obligingly as a response to his lord’s favor. Heinrich Hárke remarks that in return for the lord’s gifts, the warriors “are expected to ‘earn their mead’ over which they have boastfully declared their readiness to fight and, if necessary, die for their lord.”\footnote{Heinrich Hárke, “The Circulation of Weapons in Anglo-Saxon Society,” Rituals of Power from Late Antiquity to the Early Middle Ages, ed. Frans Theuws and Janet L. Nelson (Leiden: Brill, 2000) 379.} The gifts to these warriors are often war related and Hárke, looking to evidence in Beowulf, remarks that “weapons appear in
more than half of all cases of gift-giving with named recipients." Charles Donahue, who argues that the Native American system of competitive gift-exchange (potlatch) is "a useful speculative instrument for the investigation of Beowulf," notes that "heroic munificence is incumbent on the dryhten [lord]. [...] The arms and rings he distributes ceremoniously at feasts are of practical use to his warriors and they convey status (weorþ). The warrior is bound in honor to make a counter-gift of his military services and all that they bring," including the counter-gift of his own life, should it be taken in battle.

Through the reciprocity of the receiver, the power of the object is demonstrated: the gift itself compels the receiver to action, either in object or deed, to the benefit of the object’s original owner. In Beowulf, one instance of such a pledge fulfillment occurs just before the death of Beowulf, when the hero’s kinsman and retainer, Wiglaf, urges the other warriors to step forward and face the dragon that Beowulf is battling. His words recap the nature of their pledge, to which they were bound in the prior acceptance of Beowulf’s gifts:

Ic ðæt mæl geman, þær we medu þegun,
þonne we geheton ussum hlaforde
in biorsele, ðe us ðas beagas geaf,
þær we him ða guðgetawa gyldan woldon
gif him þyslicu þearf gelumpe,
helmas ond heard s既ord. De he usic on herge geceas
to ðyssum sŏfate sylifes willum,

94 Härke 380. Härke also suggests that, in the ritual deposition of weapons in a burial, “there may have even existed a conceptual link between the gifts a person received in life (or at the beginning of his active life), and the offerings accompanying him to his grave” (386). Thus, the warrior’s weapons take on an added symbolic value, as they are given to him a second time when he (presumably) becomes a casualty of war and is laid to rest.
96 Donahue 24.
onmunde usic mæða, ond me þas mæðas geaf,
þe he usic garwigend gode tealde,
hwate helmerend,— þeah ðe hla ford us
þis ellenweorc ana aðohte
to gefremmanne, folces hyrde,
for ðam he manna mæst mæða gefremede,
dæda dollicra. Nu is se dæg cumen
þæt ure mandryhten mægenes behofað,
godra guðrinca; wutun gongan to,
helpan hildfruman, þenden hyt sy,
gledegesa grim! 

[I remember that time, where we received mead,
when in the beer hall we promised our lord,
he who gave to us these treasures,
that we would repay the war-equipment to him,
if such a need befell him,
helmets and hard swords. Then he chose us in an army
of his own will for this expedition,
considered us worthy of glories, and gave me the treasures;
he then considered us spear-fighters, reckoned us good,
valiant, helmet-bearing men—though our lord
intended this work of bravery
to be done alone, guardian of the folk,
because he, greatest of men, accomplished glories,
the most foolhardy deeds. Now the day is come
that our lord has need of strength,
of good battle-men; let us go to him,
to help the war-chief, while the heat continues,
the grim fire-terror!] 

As king and gift-giver, Beowulf invested in men whom he already deemed worthy
warriors, so that gifts of “guðgetawa” [war-equipment] would not, at least theoretically,

98 All translations are mine, unless otherwise noted.
fall to idle hands. Furthermore, he gave to them treasure in the form of weaponry with
the expectation that if a battle ensued in the future, they would be physically equipped
and primed by their promises to fight beside him. Thus, for Wiglaf the impetus to aid
Beowulf is not grounded in merely helping a kinsman and lord on account of their social
connection; rather, Wiglaf immediately recalls the vows made to Beowulf at the moment
they received “ōas beagas” [these treasures], referring to the very gear worn by the
reluctant retainers he addresses. In this way, the physical object serves as an insistent
reminder to the receivers regarding the declarations they made at the time their lord
bestowed gifts upon them—an event that rouses Wiglaf, at least, to fulfill his vow. The
events in this section of Beowulf revolve exclusively around the nature of the objects
given: they were a seal to and a physical reminder of the pledges and, in the end, the
source of motivation for any action taken by Wiglaf. The punishment of Beowulf’s other
retainers for their lack of response, which will be discussed in Chapter 4, demonstrates
the consequences faced by the receiver who neglects his responsibility to the giver and
causes the bond that the object represents to fail.

In Beowulf we see that the idea of rulership and the act of giving are
fundamentally interwoven as a leader takes on the responsibility of sustaining his people
through gifts as well as protection. This notion of sustenance is imbedded in the Old
English word hlaiford [lord], which is derived from hlaif-weard, literally “loaf guardian.”

At a very basic level, lordship implies that one is the steward of the people’s bread, the
nourishment they require to survive. Although the poetry does not show lords doling out
actual loaves of bread, but rather the more aristocratic provisions of rings, weapons, and
treasure, it is important to note that effective lordship is repeatedly associated with

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99 See entry for Gothic hlaif’s, Lehmann 185, and entry for Gothic witoph, Lehmann 407.
generosity and lords are consistently shown in their role as public dispensers of wealth. The references in Beowulf to Scyld Scefing as "beaga bryttan" [giver of rings], Hrothgar as "goldwine gumena" [gold-friend of men], and Beowulf as "hringa fengel" [lord of rings] demonstrate that these kings did not simply own treasure, but—as the narrative reveals their actions—they possessed it in order to distribute it.

A correlation between kingship and giving is also echoed in the "Exeter Maxims" ("Maxims I") and the "Cotton Maxims" ("Maxims II"), which pithily convey moral affirmations and folk wisdom in verse. As Hill notes, "when commenting on gifts, the Old English 'Maxims I' and 'Maxims II' focus on aristocratic liberality as an unalloyed good—a necessary and proper state of things." For example, "Maxims II" state that "Cyning sceal on healle / beagas drelan" [A king shall distribute rings in the hall]. Appearing in a long list of individuals and objects and the places where they ought to be, this excerpt indicates that the ruler belongs in his hall, and more specifically, in the position of dealing out treasure. The king is only mentioned twice in the sixty-six line "Maxims II," which open with the statement, "Cyning sceal rice healdan" [A king shall rule the kingdom], essentially informing the audience that a king's principle duties are ruling and distributing treasure. Similarly, "Maxims I" states that it is through wealth that a king shall acquire his queen and, furthermore, that their mutual responsibility is to

100 Beowulf, I. 35.
101 Beowulf, I. 1602.
102 Beowulf, I. 2345.
103 I am citing according to the standard of referring to these poems as "Maxims I" and "Maxims II," rather than by association with the manuscript in which each is preserved.
104 Hill 178.
106 "Maxims II," I. 1a.
be mindful of gift-giving: “bu sceolon ærest / geofum god wesan”\textsuperscript{107} [both should first be good with gifts]. Hill states that from these maxims, “we can conclude that liberality is expected of Anglo-Saxon kings and queens. Liberality is good and natural, a part of their role—in the exercise of which they confirm their worthiness.”\textsuperscript{108} Their liberality, however, is not seen as a one-way movement of wealth. “Maxims I” makes it clear that even as the king is responsible for doling out wealth, the recipients of his gifts must respond:

Hond sceal heofod inwyrca, hord in streonum bidan,  
Gifstol gegierwed stondan, hwonne hine guman gedælen.  
Gifre bïp se þam golde onfehô, guma þæs on heahsetle geneah;  
Lean sceal, gif we leogan nellæð, þam þe us þas lisse geteode.\textsuperscript{109}

[The hand shall influence the head, the hoard shall endure in treasures, the gift-seat shall stand ready for when men share it out. Desirous is he who accepts the gold, which the man in the high-seat has in abundance; a return shall be made, if we do not wish to deceive, to him who bestowed these favors on us.]

Just as the one on the “giftstol” [gift-seat] is obliged to share his wealth with his people, those who receive these gifts are expected to respond with counter-gifts, presumably either objects or services valued by the king, lest they be considered deceivers. The gift demands a counter-gift and if someone takes a gift without returning the favor, he is literally regarded as one who breaks his word or speaks falsely.\textsuperscript{110} Thus, by accepting a gift, one implicitly agrees to make a lean [return] to the giver. Several lines later in “Maxims I,” this notion that a gift requires a response is restated: “Maþhum òpres weorô,

\textsuperscript{108}Hill 179.
\textsuperscript{109}“Maxims I,” II. 67-70.
/ gold mon sceal gifan"¹¹¹ [A costly gift¹¹² occasions another, gold shall be given]. Both of these passages reinforce the view that wealth is, in the first place, intended for distribution; for the gifstol-sitter, these gifts of treasure sustain both his ideological presence as a leader—as giving is proper to kingly behavior—and his relationship with those who benefit from his generosity.

The appropriate treatment of wealth is often imbedded in the description of kings, because it is, in many ways, critical to their rulership: the solidification of social bonds via gift-giving protected the kings’ people, generally, as well as the livelihood of those who were recipients of the kings’ largesse. Regarding the function of royal treasure in the poetry, Tyler comments that

The evolution over the six-hundred years of Anglo-Saxon history from the rulership of small areas by war-leaders who rewarded their followers with treasure acquired as plunder, to the rulership of England by one king whose revenues derived from sources such as taxation and the control of the silver coinage, and who interacted with his subjects through a nascent administrative bureaucracy, takes the kings far away from the ring-givers and hoard-guardians of verse, despite the fact that such figures appear even in late Old English verse.¹¹³

Arguing that “treasure was not simply a common motif but rather part of the fabric of poetic discourse”—a convention likened to poetic formulae and kennings—Tyler claims that at the time these poems were being written down, the kings of England were unlikely to have mirrored the poetic standards in their conduct.¹¹⁴ Nonetheless, the appearance of this convention in works such as Beowulf, “The Battle of Brunanburh,” and even the

¹¹¹ “Maxims I,” ll. 154b-55a.
¹¹² See entry for madum, Bosworth-Toller 671.
¹¹³ Tyler 22.
¹¹⁴ Tyler 18.
epithets for King Alfred in The Metrical Preface to Gregory's Dialogues\textsuperscript{115} demonstrates that "control of the nation's hoard becomes almost a shorthand for kingship" in Anglo-Saxon literature throughout the period\textsuperscript{116}.

The significance of wealth and its distribution also figures prominently in elegiac poetry, where a lord's gift-giving is mentioned because the speaker is regretfully living without it. For the narrator of the "The Wanderer," who "goldwine minne / hrusan heolstre biwrah"\textsuperscript{117} [covered [his] gold-friend in the darkness of the earth] and is now forced to drift alone, the loss of his lord's generosity is an explicit feature of his apparent exile. In his lamentations, the speaker reveals what he has lost by noting what he is looking for while traveling over the waves:

\begin{quote}
sohte sele dreorig sinces bryttan  
hwær ic feorr oppe neah finda meahte  
ðone þe in meduhealle min mine wisse  
oppe mec freondleasne frefran wolde,  
woman mid wynnum.\textsuperscript{118}
\end{quote}

[I, hall-sorrowful, sought a giver of treasure, 
where I, far or near, might find 
him in the mead-hall who might know of my people, 
or who would console me, friendless, 
attract me with joys.]

No matter how far he must travel, the speaker's aim is to find a "sinces bryttan" [giver of treasure], a goal that he equates with attaining a place of comfort and friendship. This desire is echoed in his vivid recollection of fond memories of his former life: "Gemon he selesecgas ond sincpege / hu hine on geoguoe his goldwine / wenede to wiste. Wyn eal ...

\textsuperscript{115} Alfred is called a "beahgifan" [ring-giver] and "selesða sinc [...] britta" [best of treasure-givers] (quoted in Tyler 23).
\textsuperscript{116} Tyler 22.
\textsuperscript{118} "The Wanderer," II. 25-29a.
[He remembers the men of the hall and the receiving of treasure, how in youth, his generous lord accustomed him to feasting. Joy entirely failed!]. For someone who finds himself lordless, the feature of hall-life that immediately comes to mind is the giving of treasure and the camaraderie and goodwill such an act signified. Furthermore, not only did the personal comfort of the narrator of "The Wanderer" hinge on finding a gift-giving lord, but so too did his very survival: his state of solitude leaves him vulnerable to every sort of life-threatening condition, from hungry predators to severe weather. The narrator, in spite of his abrupt conclusion that only God is immutable in this transient life, remains alone and sea-bound, ultimately unable to keep himself from longing for the generosity and protection of a lord.

The characterization of kings as benevolent treasure-givers may not reflect historical reality throughout the Anglo-Saxon period, but it should certainly not be written off as an unqualified vestige of "tribal" kingship. As Tyler argues, the power of treasure's image in poetry is rooted in its "familiarity," meaning that these deliberate archaisms must have spoken to the poem's contemporary audience. For example, David A. Hinton comments that "Beowulf implies that gift-giving and feasting were still understood as social mechanisms," even if the Anglo-Saxon kings in power during the composition of Beowulf did not heap gold upon their subjects as the poem suggests.

Likewise, Leslie Webster remarks that while "Beowulf gives us a picture of the past, [...] the reality of [the descriptions of ancestral legend, heirlooms, and ancient treasure] has

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120 Tyler 18. Tyler remarks that the strength of treasure as an archaic, poetic convention is seen in its ability to "accommodate changing circumstances: the introduction of Christianity and the development of a single English nation, for instance. [...] [It] was maintained in the face of the enormous religious, social, political and, [sic] economic changes which occurred over the course of six hundred years of Anglo-Saxon history" (24).
121 Hinton 107.
more to do with the culture of the audience (whether eighth-, ninth- or tenth-century [or eleventh?]) for whom this version was composed, than with the realities of the distant past.”

Certainly, a king’s treatment of wealth is directly linked in the poetry with his quality as a ruler, as a king who does not give gifts is associated with being ruthless and cruel. For example, in Hrothgar’s so-called sermon to Beowulf following the killing of Grendel’s mother, he warns Beowulf against becoming corrupt and greedy, using the legendary Danish king, Heremod, as an example. Heremod became a destructive king who murdered even his own “beodgeneatas, eaxlgesteallan” [table companions, shoulder companions], although he was once a promising ruler: “hine mihtig God mægenes wynnum, / eafeðum stepte, ofer ealle men / forð gefremede” [Almighty God exalted him with joys of strength and power, placed him over all men]. Heremod did not live up to his honorable lineage and his heart grew “blodreow; nallas beagas geaf / Denum æfter dome” [bloodthirsty; not at all did he give rings to the Danes, striving after glory]. Heremod’s corruption is exemplified by the ill-treatment of his people, through murder and stinginess with his wealth. Hrothgar continues in his advice to Beowulf, commenting that a corrupt king “gytsað gromhydig, / nallas on gylp seleð / fætte beagas” [is closefisted, angry-minded, not at all proudly gives ornamented rings]. Poor kingship is thus closely connected with niggardliness, as withholding wealth keeps

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123 Beowulf, I. 1713.
124 Beowulf, II. 1716-18a.
125 Beowulf, II. 1719-20a.
126 Beowulf, II. 1749-50a.
it out of circulation, which inhibits the king from securing alliances and leaves both his retainers and his people without the aid that the wealth could provide.\textsuperscript{127}

Hoard\ing wealth out of avarice is not limited to kings in Anglo-Saxon poetry and is considered a disreputable act in every level of society. According to “Maxims II,” hoarding is improper for humans as it is the task of dragons: “Draca sceal on hlæwe, / fród, ðæt wulcscæl”\textsuperscript{128} [the dragon shall [sit] on the mound, aged and proud on the treasures]. Unlike the king in “Maxims II,” who distributes wealth to the people, dragons are predisposed to guarding a treasure hoard and making sure that no part of it is ever circulated. Likewise, the dragon in \textit{Beowulf} watches over his own mound: “He gescecean sceall / [ho]r[d on] hrusan, þær he hæðan gold / wæran w æðud frød; ne byð him wihtē ðý sel.”\textsuperscript{129} [he shall seek the hoard in the earth, where he, wise with years, shall guard the heathen gold; he will not be a bit improved for it]. Watching over a hoard that was buried by the so-called “last survivor”—he who was left “an æfter eallum”\textsuperscript{130} [alone after everyone]—the dragon guards a treasure that is “cursed […] because the last possessor of it would keep it from its intended use in the occupation of men.”\textsuperscript{131} The consigning of amassed wealth to the earth for the purpose of keeping it from other people is viewed as a waste since wealth is intended to be used, that is, circulated.\textsuperscript{132} Thus, the \textit{Beowulf}-poet remarks that for hoarding the treasures the dragon “ne byð him wihtē ðý sel” [will not be

\textsuperscript{127} For example, a dying Beowulf claims the dragon’s treasure for the protection of his people, whom he must leave behind and therefore vulnerable to the inevitable Swedish onslaught. See \textit{Beowulf}, II, 2794-2801.

\textsuperscript{128} “Maxims II,” ll. 26b-27a.

\textsuperscript{129} \textit{Beowulf}, II, 2276-77.

\textsuperscript{130} \textit{Beowulf}, ll. 2268a.


\textsuperscript{132} The aforementioned practice of burying grave-goods with a body does not, however, qualify as a “waste” according to this definition: grave-goods were meant to accompany the deceased as both a tribute from the surviving kin and, perhaps, as necessary cargo for his or her journey to the afterlife. Thus, goods buried with a body cease to be circulated in the mortal world, but remain in circulation, so to speak, in the next world.
a bit improved for it]. As Vestergaard comments regarding evidence of hoarding in Icelandic sagas and skaldic poetry, "one has to hoard to be able to give, for the social use of wealth is to exchange it lest social relations wither away. [...] But when hoarding becomes a goal in itself it is most disgraceful. Avarice and stinginess were, together with cowardice, the most disdainful and ridiculed vices a man could possess."\(^{133}\) While hoarding is necessary in so far as one must accumulate wealth in order to have something to distribute, hoarding ought to be only a means to an end. By collecting goods out of a desire to keep them for oneself, a person effectively dodges gift-giving, but will also inevitably forgo the invaluable social payoff of friendship and increased reputation that comes along with open-handedness. To reiterate Gurevich's observations, "the handing-over of property could involve greater prestige than its retention and accumulation."\(^{134}\)

While the aforementioned examples have demonstrated the shaping of gift-giving in largely secular contexts, we find an analogous treatment of wealth and its distribution in religious poems, such as "The Gifts of Men." In this work, God is described as a great distributor, envisioned similarly to a king in the hall, but the receiving retainers include every person in the world: "[...] her weoruda god, / meotud meahtum swið, monnum dæleð, / syleð sundorgiefe, sendeð wide / agne spede, þara æghwylc mot / dryhtwuniendra dæl onfon"\(^{135}\) [Here the God of the multitudes, the Creator strong with powers, deals out to men, gives special gifts, dispatches far and wide his own prosperity, of which each of those dwelling among the people may receive a portion]. In order to provide mankind with a mix of skills that help the society function collectively, God

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\(^{133}\) Vestergaard 102.

\(^{134}\) Gurevich, "Wealth and Gift" 178.

deals out various abilities that are each expected to be used fully and for His own glory.

J. E. Cross argues that “Gifts of Men” relates specifically to the biblical parable of the talents found in Matthew 25:14-20, in which talents were given out to three servants with the expectation that they would be used and invested profitably for their Master. Thus, God in “The Gifts of Men” is not dealing out tangible treasures, such as the rings and swords so typical of Anglo-Saxon poetry, but rather gifts of skill, strength, and status for which the receiving human is expected to be a good steward. Given that some people are granted “woruldgestreona” [worldly treasures] and others are “wonspedig” [poor], generosity is an expectation not simply of the kings of heroic poetry, but of all mankind blessed with wealth in this world. As the poem “Alms-Giving” begins, “Wel bið þam eorle þe him on innan hafðað, / reþeþygdig wer, rume heortan” [It is well for the man, the right-minded man, who has within him a generous heart]. The generous person receives God’s “doma selast” [best judgment] because openhandedness has within it the power of salvation: “mid ælmesan ealle toscufeð / synna wunde, sawla lacnað” [with alms he shall remove the wounds of all sins and heal souls]. Gifts of alms to the poor, facilitated by the Church, do not yield tangible counter-gifts or services, but spiritual healing. Thus, using one’s wealth properly reaches its pinnacle in the context of Christian charity, as the repercussions of the gift extend beyond this life into the next.

136 J. E. Cross, “The Old English Poetic Theme of the Gifts of Men,” Neophilologus 46 (1962): 66-70. As a further argument against hoarding—at least from a Christian perspective—the third servant in this parable, who safeguarded his talents by burying and not using them, was seen as a lazy waster and was cast into hell.


140 “Alms-Giving,” l. 4b.

141 “Alms-Giving,” ll. 8-9.
The vital position of wealth and its transfer in the culture of the Anglo-Saxons is expressed everywhere from the final resting place of the dead to their battle tales and proverbs. The centrality of material possession—of both the supplies for day-to-day life and the gifts one gives to build social alliances—makes rightful ownership critical to survival, and thus important to protect. Weiner remarks that in ideal circumstances, objects considered irreplaceable, and thus inalienable, are "kept by their owners from one generation to the next within the closed context of family, descent group, or dynasty. The loss of such an inalienable possession diminishes the self and by extension, the group to which the person belongs."142 Perhaps in a perfect world, goods of cultural significance would be forever held by those for whom that meaning was most vivid; as Weiner acknowledges, however, "it is not always this way. Theft, physical decay, the failure of memory, and political maneuvers are among the irrevocable forces that work to separate an inalienable possession from its owner."143 Although Weiner prioritizes inalienable possessions above everyday commodities—which she remarks are "easy to give,"144 and therefore, presumably, not grievously lost—the laws of the Anglo-Saxons make provisions to protect any possession, whether an heirloom sword or the cattle in one's pasture. Given the cultural import of ownership and gift-giving, it follows that severe punishments must be laid out in the laws of Anglo-Saxon kings in order to protect such fundamental social values.

142 Weiner 6.
143 Weiner 6.
144 Weiner 6.
CHAPTER III

THEFT AND ITS PUNISHMENT IN THE LAWS OF THE ANGLO-SAXONS

The written legal tradition of the Anglo-Saxons emerged shortly after Augustine's late sixth-century arrival to Kent and spanned the next four centuries as the kings of Anglo-Saxon England issued laws to govern their people. The Anglo-Saxon legal corpus, although often misleadingly treated as a cohesive whole, was not codified until the "days of the Norman legists" and has survived in a diverse assortment of Church archive manuscripts, ranging from full sets to fragments of laws. From the earliest written laws issued by King Æthelbert of Kent (r. ca. 590-616) to those of King Cnut (r. 1016-35), Anglo-Saxon legislation is the product of conventions, variations, and external influences in legal practice. Mary P. Richards comments that "whereas there remains uncertainty as to the exact models for the earliest Anglo-Saxon legislation—Roman law, Frankish codes (especially the Lex Salica), [etc.]—there is no question that the Old English legal codes transcend those influences and forge their own tradition from the outset." Perhaps the most visible evidence of this tradition is that the laws "are written in English and reflect insular customs and terminology," which provided consistency and commonality between the Anglo-Saxon kingdoms and ultimately, Richards claims, "allowed for the laws to reflect a growing national identity." Issuing

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145 Whitelock, Beginnings 135.
146 The official law-books of the Anglo-Saxon kings did not survive (Whitelock, Beginnings 137).
147 The dates for the reign, conversion, and legal promulgation of Æthelbert of Kent are frequently disputed. See Oliver 9-20, who outlines the debate regarding Æthelbert's dates.
149 Richards, "Anglo-Saxonism" 43.
laws became a royal duty and the kings of Anglo-Saxon England "promulgated laws, when there was occasion either to add new statutes or modify existing ones, or to re-state old law that was being disregarded." By committing the laws to writing as opposed to the long-standing Germanic practice of issuing laws orally, the Anglo-Saxon kings—as well as their Continental Germanic counterparts—"made laws, first and foremost, partly in order to emulate the literary legal culture of the Roman and Judaeo-Christian civilization to which they were heirs, and partly in order to reinforce the links that bound a king or dynasty to their people." Thus, as Green suggests, the laws of Anglo-Saxon kings had a specific impact on their audience as they reminded the local officials "of what kings and their advisors expected," and also "communicated to the great body of Anglo-Saxon participants a sense of governance." Thus, the laws reflect the values of society and provide the king with ideological strength by establishing him as a figure of authority who seeks to govern the conduct of the people in his kingdom.

150 Richards notes that "there seems to have been an expectation that Anglo-Saxon royal authority would assert itself periodically through legal decrees, even if those decrees had little new legislation to offer. What they do show is a development away from particular crimes and punishments to larger issues of widespread concern, and an ever more active royal role in determining social policy and collecting the proceeds from violations thereof" ("Anglo-Saxonism" 42).
151 Whitelock, Beginnings 134.
152 Patrick Wormald addresses the issues of oral-to-written law in early Germanic cultures in Legal Culture in the Early Medieval West (London: Hambledon, 1999) 1-43. Although the written laws often reflected the new or altered laws for the people they governed, it is important to note that the beginning of written law did not preclude the making of law orally. As Wormald remarks, "a moment's reflection should suffice to show us that barbarian peoples must have been able to produce some new law before the resource of writing was first made available to them, and are unlikely to have abandoned overnight what had suited them for millennia" (197). On the subject of oral tradition in Anglo-Saxon legislation, Richards asserts that "the legal statements employ a body of Old English formulas and legal terms, some without Latin equivalents. Whereas the language of the codes evolved over time, it continued to preserve this special vocabulary, giving evidence not only of oral influences on the laws but also of a conscious effort to preserve these materials in traditional form. [...] The choice of Old English as the written medium [...] sustained the connection to royal law, while at the same time providing means for continuous renewal in response to contemporary demands" ("Anglo-Saxonism" 43).
154 Green 30.
The function of royal legislation is implicit in the laws themselves and is especially interwoven in the prologues to the laws, such as that of Wihtred of Kent (r. 690-725), issued at Berghamstyte in 695 before an assembly of clerics and laypeople:

"Pær ða eadigan fundon mid ealra gemedum ðas domas 7 Cantwara rihtum þeawum æcton, swa hit hyr efter segeþ 7 cwyþ"\[^{155}\] [there the blessed people, with the consent of all, devised these decrees and added them to the just customs of the Kentish people, as it here after says and declares]. Recognizing both the extant practices of the people of Kent as well as the general consent of the assembly, Wihtred put forth decrees to extend his own authority by augmenting what had already been preserved by his law-making predecessors. As one of the earliest law-making kings of England, Wihtred’s prologue indicates the primary purpose of royal laws: to be mindful of custom, and therefore also consensus, and to exert royal authority through issuing laws that dictate the behavior and interactions of his people.

The laws of the Anglo-Saxons, whether customary or innovative, thus reveal which practices were prescribed as improper (that is, illegal) in Anglo-Saxon society at the time the laws were issued. In order to protect common cultural values, such as material ownership and gift-giving, the laws establish that certain crimes are serious enough to warrant death, as in the case of theft. Speaking of theft in medieval society at large, Grierson comments that “life in the early middle ages [sic] was insecure in the extreme, and plundering raids, highway robbery and theft in the narrow sense were everywhere a frequent occurrence.”\[^{156}\] Grierson’s observations are certainly supported by the number of Anglo-Saxon laws regarding the illegal removal of goods, as theft is the

\[^{155}\] Wihtred Pro!. (Liebmann, Gesetze I 12).
\[^{156}\] Grierson 131.
most pervasive of all the crimes mentioned in the laws and is addressed repeatedly from
the laws of Æthelbert to those of Cnut.\textsuperscript{157} Given the recurrent mention of theft in roughly
four centuries of legislation, it comes as no surprise that the words and phrases used to
indicate an act of "illegal taking"\textsuperscript{158} display a great deal of variety. J. R. Schwyter took
on the herculean task of cataloguing the meaning, patterns, and distribution of words
signifying theft in Anglo-Saxon laws and lawsuits, explaining that the "lexical field of
theft comprises all lexemes that cover the concept of theft and robbery and share the
sense-component of illegal taking (away)."\textsuperscript{159} Schwyter collected all the words "referring
to persons, properties, acts, activities, and processes connected with theft, robbery,
abduction, etc.," finding over 200 occurrences of words related to illegal taking in the
laws.\textsuperscript{160} Schwyter has charted the entire range of compounds for both the noun and verb
forms of theft lexemes and the most common are the noun \textit{peof} [thief] and forms of the
verb \textit{forstelan} [to steal].\textsuperscript{161} Regarding this frequency, Schwyter notes that "the popularity
of \textit{peof} - nouns and \textit{stel} - verbs in Anglo-Saxon times may well be why the [Modern
English] lexicon makes use of only the verb \textit{to steal} but is lacking the corresponding
\textit{nomen actionis}, and why [Modern English] frequently uses \textit{thief} and \textit{theft}, but rarely the
corresponding verb, \textit{to t\textit{hieve}}."\textsuperscript{162}

\textsuperscript{157} See Whitelock, \textit{Beginnings} 146.
\textsuperscript{158} Schwyter 42.
\textsuperscript{159} Schwyter 42. While Schwyter focuses on the Old English words for illegal taking in the Anglo-Saxon
laws, one could also explore their Latin equivalents in the twelfth-century collection of Anglo-Saxon laws
known as Quadripartitus. A quick survey of Liebermann’s edition suggests that the most frequently used
Latin words for illegal taking are forms of the noun \textit{fur} [thief] and the verb \textit{furor} [to steal or plunder].
Occasionally, the noun \textit{latro} [robber] is substituted for \textit{fur}, but it is clear that \textit{fur} is viewed as the Latin
equivalent to Old English \textit{peof}, as II Cnut 26 in Quadripartitus contains the phrase and gloss "abere \textit{peof}
(fur probates)" [notorious thief].
\textsuperscript{160} Schwyter 42. See n. 19 above.
\textsuperscript{161} See the complete chart of theft lexemes found in the so-called “Royal Laws” in Schwyter 43.
\textsuperscript{162} Schwyter 46.
This collective attention to theft in the legal system is a rare point of consistency, given that the laws were modified and promulgated by individual kings over an extended period of time. Likely indicating that Anglo-Saxon society was often plagued with theft, the focus on this crime in the laws also coincides with the call for capital punishment for thieves from the early eighth century onward. Death remained a likely punishment for theft even after the Church became deeply involved in royal legislation in the tenth century and encouraged mitigated punishments to spare the soul of the criminal. Accordingly, theft must not have been merely a widespread crime, but one that was socially devastating and threatened core values of the culture in such a way that the laws deem death an appropriate penalty for anyone caught stealing.

It is important to note that nowhere in the laws of the Anglo-Saxons is the crime of theft explicitly defined beyond a description of the circumstances of the act, such as house-breaking or highway robbery. On one level, this lack of definition implies that words such as *peof* must have been in common use among the audience. As Surber-Meyer points out, however, theft is often associated with treachery in the laws and we must consider “that if theft is treated with harshness, it is also because *peof* carries much of a certain criminality for the Anglo-Saxons that we no longer attach to it.”\(^{163}\) Citing Felix Liebermann’s remark that “Das Wort *peof* hat auch allgemeineren Sinn ‘Verbrecher’,”\(^{164}\) Surber-Meyer suggests that the *peof* is a criminal in a deeper sense—one that the Modern English word “thief” does not convey. Since in the laws the word *peof* is constantly linked to the illegal taking of another person’s goods, perhaps this aspect of undermining ownership, thereby inhibiting gift-giving, contributed to the added

\(^{163}\) Surber-Meyer 34.

\(^{164}\) [the word “thief” also has a more general sense, “criminal”]; see Liebermann, *Gesetze* II 2:
sense of criminality and social alterity. The manner in which theft was legally handled and punished demonstrates the kings’ attempt to control and possibly to prevent an act that, by its very nature, undermined the cultural value of wealth and its proper transfer. By circumventing the accepted routes for transferring wealth, such as trade or gift-giving, the thief strips the owner of his right to use the object or to give it as a token of friendship. These rights were important enough to the livelihood and social bonds of king and commoner alike, as was discussed in Chapter 2, to justify the death of anyone who dared to undercut them. In order to explore the basis for theft’s classification as a capital crime, this chapter surveys the breadth of circumstances for theft addressed throughout the laws as well as the punitive consequences for theft from Æthelbert to Cnut.

Before we look to the laws, it is important to note that the legal procedures and punishments dictated in them were not always carried out as the laws decree, as is clear from evidence found in Anglo-Saxon lawsuits. One example of significance to the present study is the notorious thief, Helmstan, whose string of court cases in the late-ninth and early-tenth centuries involved both King Alfred and his son, Edward the Elder. The extant documents indicate that Helmstan’s earliest recorded encounter with the law occurred when he was accused and convicted of stealing a belt, an act which may have greater cultural implications than one might assume at first glance. Hinton remarks that on the Continent, belts “were becoming a mark of nobility,” an association visible in seventh-century England through the gold buckles such as those found at Sutton Hoo,
Although belts in the eighth and ninth centuries “are small and few,” Hinton notes that the charge against Helmstan during Alfred’s reign “may have been more of an insult than a financial injury […] [I]f belts were already reacquiring some kind of symbolic status, it would help to explain why the theft of this one caused so much fuss.” Helmstan’s conviction for the theft of the belt was immediately followed by his infamous engagement in a dispute over land at Fonthill, after which stolen oxen were discovered in Helmstan’s possession, resulting in the forfeiture of his property and his outlawry. Helmstan was pardoned ca. 900, however, by Edward the Elder. The case of Helmstan essentially “brings us face to face with one of those ‘often-accused’ persons so much mentioned in the laws, and suggests that they were not always dealt with in accordance with the full rigour of the law.” Seeing cases such as that of Helmstan in Anglo-Saxon lawsuits, one might argue that the royal laws that punish theft through death or mutilation are merely empty threats. As Wormald notes regarding early Germanic legal texts, “we are faced with a paradox in that we have a considerable quantity of legislation, much of it implying its relevance to the preservation of law and order; yet the texts themselves have features which, taken together, do argue against their applicability, and there is remarkably little evidence of their application.” We must bear in mind, however, that issuing written laws represents, as Wormald further notes, “an aspiration

167 Hinton 132.
168 Hinton 132.
170 Sawyer 1445. Although it does not appear that Helmstan was ever sentenced to death, the punishment of forfeiture and outlawry should not be downplayed. For any land-owning individual, forfeiture was a virtual sentence of exile: bereft of moveable property and land, one would be forced into a homeless and an ultimately disreputable existence.
171 Sawyer 1445.
172 Whitelock, Beginnings 149.
173 Wormald, Legal Culture 22.
on the part of kings and their advisors” for which “the inspiration could be ideological rather than practical in origin.”

Thus, the laws offer us a look at both the image-building of a “king-as-law-giver” and the ideological values of the people whom the laws aim both to govern and to protect by stipulating terms for compensation and punishment.

In the case of theft, the laws make it clear that violating the material ownership of another person was a crime deserving of death, which sets it apart from almost every other offense addressed in the laws, including crimes as widely varied as seizing a nun, working on Sunday, or lying with another man’s wife. Whether or not the stated punishments for theft—or any of the other capital offenses—were carried out does not make the laws invalid sources for understanding how seriously these crimes were regarded in Anglo-Saxon society. Exploring the nature and development of the laws on theft allows us to connect this particular crime and its severe repercussions with the cultural values theft fundamentally undermines: ownership and gift-giving.

Writing in the 730s, the Venerable Bede described the emergence of written law among the Anglo-Saxons as owing to the coming of Christianity and, along with conversion, the contact with the Roman tradition of written records. He writes,

Defunctus uero est rex Aedilberet die XXIII mensis Februarii post XX et unum annos acceptae fidei [...] Qui inter cetera bona quae genti suae consulendo conferebat, etiam decreta illi iudiciorum iuxta exempla Romanorum cum consilio sapientium constituit; quae conscripta Anglorum sermone hactenus habentur et obseruantur ab ea. In quibus primitus posuit, qualiter id emendare deberet, qui aliquid rerum uel ecclesiae uel episcopo uel reliquorum ordinum furto auferret, uolens

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174 Wormald, Legal Culture 25.
175 See, for example, Alfred 8 (Liebermann, Gesetze I 54) and Alfred 18 (Liebermann, Gesetze I 58).
176 See, for example, Ine 3 (Liebermann, Gesetze I 90).
177 See, for example, Æthelbert 31 (Liebermann, Gesetze I 5).
178 Other capital crimes include fighting or drawing a sword in the king’s house (Ine 6, Alfred 7), absconding from penal slavery (Ine 24), plotting against one’s king or lord (Alfred 4§2; II Athelstan 4), and practicing witchcraft or sorcery (II Athelstan 6).
[King Æthelbert died on the 24th of the month of February twenty-one years after he accepted the faith [...] Among the other good things which he bestowed upon his people whom he tended, he, along with the discretion of his counselors, instituted decrees of laws after the example of the Romans; these are written in the English language and are yet held and observed by the people. Within these laws, he first laid out in what manner someone ought to make restitution if he takes something by means of theft from the church or a bishop or the rest of the ordained, desiring, certainly, to provide protection to those people—and their doctrine—which he had accepted.]

As Oliver notes, the general scholarly consensus is that “Æthelbert’s conversion to Christianity provided the impetus for the recording of these laws.” Bede’s observations also indicate the impact of the first Anglo-Saxon legal texts: in Bede’s lifetime, roughly a century after Æthelbert’s promulgation, his laws remained in common use among the gens. On this point, Wormald remarks that “by codifying some of his people’s law, [Æthelbert] acknowledged the sort of royal responsibility for good order which had become central by Bede’s day even if it had been marginal in Æthelbert’s own.” Thus, Æthelbert compiled the customs already in practice among his people, such as the compensations for physical injury, along with the innovative laws concerning the Church, and arranged them into a systematic collection that would safeguard the people and discipline social deviants. On the subject of deviants, it is important to note that the only offense mentioned by Bede here—and also the first addressed by Æthelbert’s laws—concerns anyone who “furto auferret” [takes by means

180 Oliver 16.
181 Wormald, Legal Culture 197.
182 See Æthelbert 33-72§1 (Liebermann, Gesetze I 5-7) for the list of compensation for physical injuries. Wormald discusses the long-standing system of compensation for crimes such as killing, wounding, rape, insult, or theft in Germanic cultures in Legal Culture 8.
of theft] the possessions of a clergyman. Although Bede's description serves his purpose of showing how the Church's protection was at the heart of Æthelbert's laws, his words also illuminate the fact that theft was a crime from which the Church, as well as the common citizen, needed protection.

The treatment of theft in the laws and the consequences assigned to it were typically determined by the social status of the perpetrator as well as the victim, the number of people in the thieving party, and, in the later laws, the age of the perpetrator and value of the stolen goods. In the early seventh-century Kentish laws of Æthelbert, the punishments for illegally taking goods are a multiple of the material value of the stolen object, which is calculated in consideration of the status of both the perpetrator and the victim. As mentioned above, Æthelbert begins by addressing the violation\(^\text{183}\) of "Godes feoh"\(^\text{184}\) [God's property], which must be compensated twelve-fold, followed by the property of a bishop (eleven-fold), a priest (nine-fold), a deacon (six-fold), and a clerk (three-fold). Regardless of the perpetrator's social station, the punishment for stealing Church-related property is the same, perhaps implying that in crimes against the Church all thieves are on equal footing. The next mention of theft addresses freemen, who must pay nine-fold if they steal from the king,\(^\text{185}\) or three-fold if they steal from another freeman.\(^\text{186}\) Again the compensation is figured by multiplying the material value of the stolen goods by the status of both the perpetrator and the victim. The final social category for theft that Æthelbert's laws address is the \textit{peow} [slave], who must only pay

\(^{183}\) A word for "theft" does not appear in Æthelbert 1; the notion that the \textit{feoh} is being stolen is implied. See Oliver 61.

\(^{184}\) Æthelbert 1 (Liebermann, \textit{Gesetze} I 3).

\(^{185}\) Æthelbert 4 (Liebermann, \textit{Gesetze} I 3). Interestingly, the nine-fold compensation for a freeman's theft of royal property puts stealing from the king on the same level as a priest in terms of compensation, perhaps demonstrating the clear priority of Church protection in Æthelbert's laws.

\(^{186}\) Æthelbert 89 (Liebermann, \textit{Gesetze} I 8).
two-fold compensation for stealing from anyone.\textsuperscript{187} Given the slave’s reduced penalty, the law appears to recognize the slave’s inability to afford the compensation for his crime and scales the compensation accordingly. In addition to addressing social status, Æthelbert’s laws also address theft in specific circumstances: for example, if a man supplies weapons to another, the lender is liable to compensate for the damage inflicted by the weapon-holder, including cases of highway robbery committed with borrowed weapons.\textsuperscript{188} Furthermore, if a freeman breaks into another man’s home, the forced entry alone requires compensation; however, if he also seizes property after entering, he must pay three-fold the property’s value.\textsuperscript{189}

Æthelbert’s laws clearly hold monetary reimbursement to be satisfactory for an act of theft, a punishment that is increased to capital and corporal punishment in the later Anglo-Saxon laws. Æthelbert’s laws nonetheless provide an important perspective on the seriousness of theft: in most of the circumstances his laws describe, stealing an object cannot be sufficiently compensated with an amount equivalent to the object’s material value, but requires instead a multiple of that amount. For what, one might ask, does this additional reparation compensate? Perhaps the monetary compensation is rendered in this way to account for both the material value of the object and for having violated the possession-rights of the owner, which explains the scale of compensation according to the owner’s social status. In no case is simply returning the object or supplying its monetary worth adequate, demonstrating that object ownership in Anglo-Saxon culture

\textsuperscript{187} Æthelbert 60 (Liebermann, Gesetze I 6). Oliver remarks that “the first of the two Æthelbert slave clauses has no agent, and the second has no overt subject for the verb of recompense: it was perhaps axiomatic that the one who pays is the master and not the slave” (94).

\textsuperscript{188} Æthelbert 19 (Liebermann, Gesetze I 4): “Gif wegireaf sy gedon, VI scillingum gebete” [If highway robbery is committed, he [the weapon’s owner] shall pay six shillings].

\textsuperscript{189} Æthelbert 28 (Liebermann, Gesetze I 5).
must have greater than simply economic significance. Since theft undermines material ownership, and ownership—along with its potential for gift-giving—is directly linked to social status, the legal response aims to compensate for the owner’s intangible loss of reputation. Furthermore, given that the owner’s reaction may be to reciprocate this loss with vengeance, engaging the “negative reciprocity” discussed in Chapter 2, the laws are inlaid with a system that quells such violence by requiring the thief to pay an amount that is several-fold the stolen object’s material worth. This monetary compensation counters the owner’s physical loss of the object while acknowledging the social damage caused by the thief’s deed—a legal gesture echoed in the later laws in which the “price” for theft is increased to the thief’s own life.¹⁹⁰

Æthelbert’s laws also appear to function based on the assumption that the identity of the thief is always known, likely through catching the thief in the act. In some cases, however, the successful thief could remain anonymous as the owner was deprived of his property unawares, leaving the authorities without a definite subject for prosecution. In the eighth-century laws, we see the kings of both Kent and Wessex taking measures to address such uncertainty through distinguishing between manifest seizure of goods and non-manifest theft of goods. Simply, this distinction divides the broader category of “illegal taking” based on the manner in which the act actually took place. In the case of manifest seizure, goods are taken in the plain view of the owner as an intentionally open crime, thus making the perpetrator’s identity known. In the case of non-manifest theft, which is the category most often addressed in the Anglo-Saxon laws, goods are taken

¹⁹⁰ The control of “negative reciprocity” in the laws is also extended in circumstances in which the thief is killed, as the thief’s kinsmen are prevented from declaring a vendetta against the thief’s killer. See, for example, Wihtred 25 (Liebermann, Gesetze I 14), Ine 21 (Liebermann, Gesetze I 98), Ine 35 (Liebermann, Gesetze I 104), and II Æthelstan 20§7 (Liebermann, Gesetze I 160).
furtively in an act done deliberately without the owner’s knowledge. Starting in the eighth century, the laws include procedures by which one may accuse and convict someone of non-manifest theft if he or she successfully absconds with goods without being caught. The element of secrecy in non-manifest theft, which will be discussed further in Chapter 4, is rooted in the desire to conceal one’s deeds and therefore has connotations of shame, leading scholars to link secretive, non-manifest theft with concealed killing (murder) and open, manifest seizure with the less-deplorable announced killing.¹⁹¹ In noting the distinction between seizure and theft in the Icelandic law book Grágás, Theodore M. Andersson remarks that “the first was felt to be more or less honorable as crime goes, but the latter entailed moral censure. If a man took something by force and used it openly, his conduct was less reprehensible in the eyes of the law than if he took it in secret and continued to hide it.”¹⁹² This “moral censure” associated with theft for its secrecy and disregard for the proper means of object transfer explains why the non-manifest thief, when caught red-handed, is subject to the full force of the law.

In cases where the stolen property happens to be human, the thief’s successful getaway is undermined by the stolen person’s testimony, as is noted in the laws of Hlothhere and Eadric.¹⁹³ Unlike the earlier laws of Æthelbert, Hlothhere and Eadric, who jointly ruled Kent from 679-685, focused more on the legal procedures, such as the handling of fines, bringing charges against someone, and the provisions for oath supporters, which shows a shift towards producing laws that account for a wider range of

¹⁹² Andersson 497.
¹⁹³ Hlothhere and Eadric 5 (Liebermann, Gesetze I 9): “Gif frigman mannan forstele, gif’ he eft suma stermelda, sege an andweardne; gecenne hine, gif’ he màeg [...]” [If a freeman steals a man, if he [the stolen man] comes as an informant, he shall declare in [his] presence. Let him [the thief] clear himself, if he can].
criminal circumstances. The next set of Kentish laws—those of Wihtred (r. 690-725)—reveal development in the handling of theft, specifically:

\[\text{Gif man leud ofslea an þeofde, liege buton wyrgelde.}\]
\[\text{Gif man frigne man æt hæbbendre handa gefo, þanne wealde se cyning ðreora anes: ðeðe hine man cwelle oþþe ofer sæ selle oþþe hine his wergelde alesæ.}\]
\[\text{Se þe hine gefo 7 gegange, healþne hine age; gif hine man cwelle, geselle heom man LXX scell'.}\]
\[\text{Gif þeow stele 7 hi man alesæ: LXX scell’, swa hweder swa cyning wille; gif hine man acwelle, þam agende hi man healþne agelde.}\]
\[\text{Gif feorran cumen man oþþe fræmde buton wege gange 7 he þone nawðer ne hryme ne he horn ne blawe, for ðeof he bið to profianne: oþþe to sleanne oþþe to alyssenne.}\]

[If someone kills a layman in [the act of] theft, let him lie without wergild.]

If someone captures a freeman having [the goods] in hand, then the king shall determine one of three courses: either someone should kill him, or sell [him] overseas, or release him for his wergild. He who captures and delivers him, owns him half; if someone kills him, 70 shillings shall be paid to them [the captors]. If a slave steals and someone lets him loose, 70 shillings, whichever the king desires; if someone kills him, then someone shall pay the possessor half his [the slave’s] worth. If someone having come from afar or a foreigner goes off of the road, and then he neither shouts nor blows a horn, he shall be regarded as a thief, either to be slain or to be released.]

In Wihtred’s laws, promulgated in 695, we find more detail for the rules of engagement with thieves than in the laws of his predecessors, as well as a number of elements that point to the stigmatization of theft in Anglo-Saxon society. First, these

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194 See Oliver’s commentary on the laws of Hlothhere and Eadric, 134-46.
195 Wihtred 25-28 (Liebermann, Gesetze I 14).
196 See Oliver 163 note a: “Presumably half the value of the stolen goods. […] It is possible that this might either mean half the thief’s possessions or half his labour as an esne, although in the latter case one might expect the time period to be stipulated.”
197 See Dorothy Whitelock, ed., English Historical Documents, Vol. I: c. 500-1042 (London: Eyre and Spottiswoode, 1955) 398: “His capturers, who would otherwise lose by the king’s choice of the death-penalty. But if heom is a mistake for the singular him, it could mean ‘for him’ and the situation envisaged might be if the capturer took the law into his own hands, killed the thief, and thus robbed the king of his choice. He would have to compensate for it.”
198 See Oliver 163 note d. The word agende could refer to the slave’s owner or the person in whose possession the slave is currently (that is, the person who caught him in the act of stealing).
199 See Oliver 148.
clauses, which appear at the end of Wihtred’s laws, present the earliest evidence for death as a punishment for theft. Anyone who catches a thief in the act is legally permitted to kill him without fear of retribution. Although these clauses account for situations in which one defends himself by killing someone breaking and entering into his home, it also indicates that kings were interested in excising thieves from society through offering incentives for their capture and killing: if someone is found stealing and is killed, the typical consequences that befall a killer—that is, paying wergild to the kinsmen for the life he took—are annulled. Furthermore, the phrase in Wihtred 25 “liege buton wyrgelde” [let him lie without wergild] may not only indicate that the thief’s killer does not owe wergild for the thief’s death, but also that the thief may literally lie where the killer left him and be denied proper burial. Second, the captor/killer is also given 70 shillings, which, although framed as compensation, takes on the guise of reward for the killer’s vigilantism. In this light, it appears that the late-seventh-century laws condone and even encourage the outright extermination of thieves.

Wihtred’s laws also establish benefits for anyone who catches and secures a “hand-having” thief—that is, a thief caught in the act of stealing—and lets him live. If the captor gives him to the king, who decides the thief’s fate, the captor is entitled to “healfne him” [half him]. This phrase can be taken a number of ways: the recompense could be half the thief’s wergild, which is 50 shillings in Wihtred’s laws, or, as Oliver suggests, since “[Æthelbert’s law] sets the recompense for theft at threefold the value of the goods—perhaps both fines are payable, in which case the captor(s) receive(s) 50

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200 In Æthelred, discussed below, are more specific laws regarding allowing the body of a dead thief to remain where it lies.
shillings plus one and a half times the worth of the purloined property.”

While these laws pertain to everyone in general, similar laws apply specifically to a thieving slave as well as to a stranger who goes off the main road and fails to shout or blow a horn to announce it. This clause indicates the degree to which people were suspicious of behavior that involved secrecy, which augments the aforementioned claim that the word peof signified a criminal “otherness” that extended beyond—or was imbedded in—perpetrating an act that undermines ownership.

The treatment of theft outlined by Wihtred is both echoed and amplified in the laws of his contemporary, Ine of Wessex (r. 688-725). Richards remarks that “although Ine’s code does not acknowledge influences external to his kingdom, his laws clearly draw upon a common fund of legal tradition and address issues related to those considered by his neighboring ruler [Wihtred].” Ine’s laws, which appear in each extant manuscript as an appendix to those issued some two-hundred years later by Alfred, are unlike the majority of the Kentish laws in that they appear to be “laws inspired by particular circumstances.” As Wormald remarks, in Ine’s laws we distinctly see that the use of writing has left its mark: “where Æthelbert’s laws reproduced pre-existing observance, Ine’s were new laws in their own right: law was actually being made in

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201 Oliver 178.
202 Wihtred 27 (Liebermann, Gesetze I 14). The thieving slave is unlikely to be sold overseas, as Oliver remarks that “Being sold across the water is hardly a punishment for someone who is enslaved already, and who may well have originally come from the continent, won as a prize in battle or perhaps even sold across the sea for slavery in a geographic reversal of §21 [Attenborough 26]” (Oliver 179).
203 Wihtred 28 (Liebermann, Gesetze I 14). Any foreigner who does not keep to the main road who “nawðer ne hryme ne he horn ne blawe, for ðæof he bið to profianne: ðæs to sleanne ðæs to alyssenne” [neither calls out nor blows a horn shall be assumed a thief, and either slain or ransomed]. Thus, simply having the guise of a thief—wandering off the road, presumably to conceal one’s deeds or cargo—is reason enough to enact capital punishment.
204 The date of Ine’s laws likely falls between 688 and 694. See Attenborough 34.
205 Richards, “Anglo-Saxonism” 47.
206 Wormald, Legal Culture 188.
writing." Ine’s laws display a lot of repetition, particularly concerning theft, which Wormald remarks is “the clearest possible indication that law-makers were not plucking suitable subjects for treatment out of the air, but that these were situations coming up from the ground and forcing themselves on the legislator’s attention.” Theft, it appears, was one of the most urgent social maladies, as Ine’s laws are literally brimming with clauses on the illegal taking of goods. Schwyter’s analysis reveals that Ine’s laws contain a total of 39 theft lexemes—roughly twice as many as any other king’s laws—including fourteen occurrences of the noun peof [thief] and eight occurrences of the verb forstelan [to steal]. Among these are statements identical to the laws of Wihtred, particularly in treating strangers who go off of the road unannounced as thieves, as well as several innovations in the laws on theft, two of which contribute to our understanding of how thieves were classified. The first of these is Ine 13§1: “Deofas we hatað oð VII men; from VII hloð oð XXXV; siððan bið here” [Up to seven men we call “thieves;” from seven to thirty-five, a “gang;” after that, it is an “army”]. Although this clause does not itself indicate what thieves, gangs, and armies do, it sets the parameters for the dozen clauses that follow regarding how one ought to proceed if accused of belonging to one of these groups, or if one kills a thief, finds stolen meat, or has companions accused of theft. With a number of seven or less, presumably the secretive nature of the act of theft is preserved, while the larger operations of gangs or armies, who might also be involved in the illegal taking of goods, are less likely to go

207 Wormald, Legal Culture 188, his emphasis.
208 Wormald, Legal Culture 189.
209 Schwyter 43.
210 Ine 20-21 (Liebermann, Gesetze I 98). As in Wihtred 28, a stranger who leaves the road is presumed a thief if he “ne hrieme ne horn blawe” [does not call out or blow a horn].
211 Ine 13§1 (Liebermann, Gesetze I 94).
unnoticed. The second clause in Ine's laws that provides a partial definition of theft is Ine 43, which demands a full fine for burning a tree in the woods “forpamþe fyr bið þeof”\(^{212}\) [because fire is a thief]. This assertion causes us to question the qualities of fire that would liken it to theft, especially given that this clause is followed by Ine 43§1, in which felling trees in the woods garners only a half-fine for each of three trees “forþon sio æsc bið melda, nalles þeof”\(^{213}\) [because an axe\(^{214}\) is an informer, not a thief]. Presumably, the chopping noise of the axe would give away the perpetrator, whereas burning a tree could be accomplished more quietly.\(^{215}\) This distinction makes it clear that the furtive aspect of theft is rooted in the perpetrator's intention to not be caught since he aims to take that which does not belong to him and slip away without notice. The emphasis on secrecy sets theft apart from the open crime of publicly seizing property with no intention of hiding the action, which receives the far less severe punishment seen in Ine 10.\(^{216}\)

In addition to classifying theft by both the numbers of the perpetrating party and the secretive nature of the act, Ine's laws discuss at length circumstances in which a person is caught in the act of theft. The consequences of being caught red-handed are

\(^{212}\) Ine 43 (Liebermann, Gesetze I 108): “Donne mon beam on wuda forba:rne, 7 weorþe yppe on þone de hit dyde, gielde he fulwite: geselle LX scill; forpamþe fyr bið þeof’ [When a man causes a tree in the woods to burn, and it becomes manifest who did it, he shall yield the full fine: he shall pay 60 shillings, because fire is a thief].

\(^{213}\) Ine 43§1 (Liebermann, Gesetze I 108).

\(^{214}\) While æsc, which appears in MS Corpus Christi College 173, is usually translated as “spear,” the sense here must be “axe.” The less ambiguous terms “æx” and “eax” are used in Corpus Christi College 183 and Textus Roffensis, respectively (see Attenborough 50 n. 13). See also the gloss of this line in the entry for melda, Bosworth-Toller 677.

\(^{215}\) See Andersson 497 n. 13. This explanation of “furtive destruction of trees” versus the “open felling with a clanging axe” is provided by Torsten Wennström, Tjuvnad och fornæmi: Rättsfilologiska studier i svenska landskapslagar (Lund: Gleerups, 1936) 70-71 and Liebermann, Gesetze I 109. The image of theft’s quiet destructiveness, as in Ine 43, will be discussed further in Chapter 4.

\(^{216}\) Ine 10 (Liebermann, Gesetze I 94): “Gif hwa binnan þam gemærum ures rice: reaflac 7 niednæme do, agife he ðone reaflac 7 geselle LX scill. to wite” [If anyone within the boundaries of our kingdom robs and does so with force, he shall give back the plundered goods and pay 60 shillings as a fine].
potentially deadly for the perpetrator: “Gif þe þeof æfge, swelte he þeadæ, oððæ his lif be his were man aliesæ”\textsuperscript{217} [If a thief is captured, he shall perish by death, unless his life be spared through his wergild]. It appears, then, that a thief can be ransomed for his wergild, but once captured and turned over to the king, the thief is also unable to exculpate himself: “Deof, siððan he bið on cyninges bende, nah he þa swincæ”\textsuperscript{218} [A thief, after he is in the king’s bonds, is not allowed to clear himself by oath]. Thus, someone who is caught in his attempt to abscond with another’s property is liable to be killed, and even if the captor chooses to spare him, it is unlikely that the king will do the same. It is important to note that the thieves in Ine’s law are first and foremost classified by their act of thieving—and thus called \textit{þeof}—rather than by their social status.

Although there are occasional provisions for specific social groups, such as a “ciere þeof mon” [churl or commoner], on the whole, the laws on theft after Æthelbert ignore social rank and equally punish anyone who secretly takes property belonging to another person.

The person who catches and/or kills a thief also has specific rights and responsibilities according to Ine’s laws, which appear to encourage civil assistance in dealing with thieves: “Se ðe ðeof ofslīðhîð, se mot gecyðan mid æðe, þæt he hine synnigne ofsloge, nalles ða gegildan”\textsuperscript{219} [He who kills a thief must declare with an oath that the person he slew was guilty, and he does not have to compensate them [the thief’s kin]]. Thus, by announcing the killing and declaring an oath that the slain man was a thief—an act repeated three times in the course of Ine’s laws\textsuperscript{220}—the thief’s killer exculpates...

\textsuperscript{217} Ine 12 (Liebermann, \textit{Gesetze} I 94).
\textsuperscript{218} Ine 15§2 (Liebermann, \textit{Gesetze} I 96).
\textsuperscript{219} Ine 16 (Liebermann, \textit{Gesetze} I 96).
\textsuperscript{220} Ine 16, Ine 21, and Ine 35 (see Liebermann, \textit{Gesetze} I 96, 98, and 104). In British Library, MS Burney 277, the word choice of Ine 21 is slightly altered to state that the deceased was killed for \textit{theft}, rather than having been killed for being a \textit{thief}; “he mot gecyþan, þæt he hine for ðeððæ ofsloge” [he must declare that he killed him for theft]. Ine 35 adds urgency to the killer’s action, stating that the thief’s killer “mot æðe
himself from being accused of murder. The laws also check potential retaliation or feud by stating that the killer's oath that the slain man was guilty of theft prevents anyone from claiming the thief's wergild,\textsuperscript{221} or holding a quarrel with the killer.\textsuperscript{222} In order to be granted such immunity, however, the thief's killer cannot conceal the killing, or else he will have to yield to the thief's kinsmen and pay them accordingly.\textsuperscript{223} Thus, the killing of a thief is perfectly acceptable according to Ine's laws, so long as it is announced. Such cases treat theft on the assumption that the perpetrator is without excuse in his attempt to deprive the owner of his possessions and the thief is therefore vulnerable to the full force of the law. Regarding the killing of hand-having thieves, Richard Ireland notes that "to allow, as some of our early laws do, that a man taken in the act may be summarily killed is, indeed, to treat him as an outlaw, for that is in origin what the idea of outlawry means—the individual is put beyond the protection of the law."\textsuperscript{224} Since the perpetrator is stopped mid-theft, both his identity and his intentions are apparent and there is no need for a trial to determine either. Ireland goes on to point out that "the importance of the taking in the act is that the person so taken cannot deny his guilt,"\textsuperscript{225} and thus the punishment—death—may be exacted immediately.

\textsuperscript{221} Ine 21 (Liebermann, \textit{Gesetze} I 98).
\textsuperscript{222} Ine 35 (Liebermann, \textit{Gesetze} I 104): "[... ] þæs deadan mægas him swerian unceases að" [the kinsmen of the dead man shall swear an oath of inhostility]. See entry for \textit{unceas}, Bosworth-Toller 1094.
\textsuperscript{223} Ine 21§1 (Liebermann, \textit{Gesetze} I 98): "Gif he hit ðonne diermed, 7 weordæð ymb long yppe, ðonne rymede he ðam deadan to ðam æðæ þæt hine moton his mægas unsyngian" [If he then conceals it, and it long afterwards becomes known, then by such conduct he clears the way for an oath on behalf of the dead man, so that his kinsmen may exculpate him]. See entry for \textit{ryman}, Bosworth-Toller 805. The issue of concealing a slaying is also mentioned in Ine 35 (Liebermann, \textit{Gesetze} I 104): "Gif he hit þonne dierne, 7 sie eft yppe, þonne forgieldæ hine" [If he keeps it hidden and it is revealed afterwards, then he shall pay for him].
\textsuperscript{225} Ireland 315.
The thief’s captor also has the option of not killing the thief, but simply securing him and turning him over to the king for a reward of 10 shillings and the promise of no hostility from the thief’s kinsmen.\textsuperscript{226} Sparing the thief’s life, however, also comes with certain obligations as his escape or concealment will result in the captor’s culpability: “Se ðe þeof gefehð, oððe him mon gefongenne agifð, 7 he hine þonne ælæte, oððe þa ðieððe gedierne, forgielde þone þeof be his were”\textsuperscript{227} [If a man captures a thief or has been given a captured man and lets him go, or conceals the theft, he shall pay for the thief according to his wergild]. Thus, the law punishes not only the thief, but also anyone who assists him in any way, or harbors him as a fugitive.\textsuperscript{228} Even if the captors unintentionally allow the thief to escape, the captors must pay a full fine (60 shillings) if he is recaptured in the same day\textsuperscript{229} or, if a night has elapsed since the theft, they must make compensation according to the king’s terms.\textsuperscript{230} The secure custody of a thief, either dead or alive, was clearly a critical point of legislation for Ine and his advisors, given both the sheer number of laws pertaining to the killing and capturing of thieves as well as the details for procedure laid out in each clause. That the majority of these laws discuss the apprehension of thieves by civilians also demonstrates the expectation that the general public be aware of the laws and involved in their enforcement. Recognizing that thieves undermine both the economic welfare of all people—who naturally had a vested interest

\textsuperscript{226} Ine 28 (Liebermann, \textit{Gesetze} I 100): “Se ðeof gefehð, ah X scill, 7 se cyning ðone ðeof; 7 þa mægas him swerian aðas unfæhða” [He who captures a thief shall have ten shillings and the king shall have the thief; and the kinsmen [of the thief] shall swear oaths of inhostility to him]. See entry for unfæhða, Bosworth-Toller 1103.

\textsuperscript{227} Ine 36 (Liebermann, \textit{Gesetze} I 104). The law is even harsher to higher-ranked individuals, stating that an ealdorman shall forfeit his entire shire, unless the king wishes to spare him (see Ine 36§1).

\textsuperscript{228} Ine 30 (Liebermann, \textit{Gesetze} I 102).

\textsuperscript{229} Ine 72 (Liebermann, \textit{Gesetze} I 120).

\textsuperscript{230} Ine 73 (Liebermann, \textit{Gesetze} I 120).
in protecting their own property—as well as the cultural value of material wealth, Ine’s laws encourage all of society to participate in the elimination of thieves.

Ine’s laws also include provisions for those who are not caught while thieving, but are either accused of theft or are associated with a thief through kinship. The exoneration of the families of thieves appears in a number of forms, designed to guard against the conviction of people who are related to the thief but not involved in his criminal activity. For example, Ine’s laws protect the wife and children of a thieving husband, so long as they were unaware of his theft.231 Many of these laws concerning those indirectly involved in theft rely on oath-swearing as a means of clearing oneself of the misdeed, whether someone finds stolen meat,232 is in possession of stolen goods,233 or has tasted the stolen meat brought home by a husband.234 Oath-swearing is also involved when someone is accused of theft and attempts to deny the charges.235 In this case, the victim of a successful theft is left without an eyewitness account and must make a formal accusation. One of the most widespread examples of non-manifest theft is in the stealing of cattle, which could be tracked to the perpetrator’s land and in so doing satisfy the accusation of theft. In Carol Hough’s discussion of the tenth-century Fonthill letter and its description of tracking stolen cattle, she observes, “the gravity with which the offence

231 Ine 7-7§2 (Liebermann, Gesetze I 92). If the family members are aware of the theft, however, “gongen hie calle on ðeowor” [they shall all go into bondage] (7§1). The laws further state that a ten year old child “mæg bion ðieððe gewita” [may be blamed for theft] (Ine 7§2), which indicates that a child could be charged as an accomplice to theft or regarded as a thief himself.
232 Ine 17 (Liebermann, Gesetze I 96).
233 See Ine 53-53§1 (Liebermann, Gesetze I 112) regarding the possession of a stolen slave. See Ine 46-46§2, Ine 47, and Ine 75 (Liebermann, Gesetze I 110 and 122) regarding the possession of stolen ceap [cattle or chattel].
234 Ine 57 (Liebermann, Gesetze I 114).
235 See, for example, the law concerning the accusation of a recently-enslaved man for an incident of theft that took place while he was yet a free man, Ine 48 (Liebermann, Gesetze I 110).
was regarded as evident from Ine 46, where it is linked with homicide,”236 and requires the swearing of oaths to refute the charges. This section of Ine’s laws which Hough cites also addresses the discovery of lifted goods on someone else’s property, stating, “Ælc mon mot onsacan frympe 7 werfæhðe, gif he mæg oðde dear”237 [Every man may deny the charge of harboring [stolen property] or of homicide, if he is able and dare do so]. Thus, one may deny his possession of stolen goods in the same way one may refute accusations of “werfæhðe” [literally a slaying that requires the payment of wergild for the breach of peace],238 which places the theft of goods in the same legal arena as the stealing of life in both the seriousness of the crimes and the aim of the law to ensure an appropriate settlement.

In cases of successful non-manifest theft, the identity of the thief rests strictly on allegations, and the laws of Ine and his successors account for this lack of certainty with the “ordeal,” a trial through which a person could be either exonerated or proven guilty of the charges. The ordeal effectively left the determination of the accused thief’s innocence to the judgment of God by requiring the accused person to go through physical trials involving cold water, iron, or hot water, depending on the charges.239 The laws of Ine twice mention that if an oft-accused “cierlisc mon,” or freeman, is proven guilty by the ordeal, or if caught in the act of theft and not killed immediately, “slea mon hond oðde fot”240 [let his hand or foot be struck off]. As Whitelock notes and the later laws of

237 Ine 46§2 (Liebermann, Gesetze I 110).
238 See entry for werfæhðe, Bosworth-Toller 1206. Clearing oneself of werfæhðe through an oath is also mentioned in Ine 54-54§2 (Liebermann, Gesetze I 112 and 114).
239 Whitelock, Beginnings 142.
240 Ine 18 (Liebermann, Gesetze I 96) Although the word “theft” is missing from both Ine 18 and 19, which addresses theft committed by a member of the king’s household, the crime is implied in both as they appear in the middle of a section that deals exclusively with thieves and the punishment for various circumstances of theft. See also Ine 37 (Liebermann, Gesetze I 104): “Se cirlisca mon, se ðe oft betygen ware ðiefðe, 7
Athelstan confirm, “a man convicted of theft by the ordeal alone faces this extreme penalty only if he is a man frequently accused.” Thus, it appears that capital punishment is reserved for hand-having thieves and those who are often accused, while mutilation is substituted when guilt is determined by the ordeal alone.

Ine’s laws effectively bring theft to the forefront of legislation, indicating both the prevalence of the crime and the serious threat it presents to society. The next West Saxon king to produce laws is Alfred (r. 871-99), who acknowledges his debt to Ine, as well as Æthelbert and Offa of Mercia (whose laws are now lost), in the prologue. In Alfred’s laws, however, we find an almost complete dearth of laws regarding theft, which, Schwyter remarks, is “difficult to account for” given that Alfred’s laws were “such an important early medieval legal codification (referred to by later legislators as the dom-boc).” Instead of assuming that this lack indicates either Alfred’s disinterest in punishing thieves or that the theft problem of Ine’s day had been suddenly solved, Schwyter posits that perhaps “the Ine Appendix was meant to be complementary to the...”

bonne æt siðestan synnigne gefo in ceape oððe elles æt openre scylde, slea him mon bond of oððe fot” [If a commoner who is often accused of theft is at a later time proved guilty in trial or discovered, let his hand or foot be struck off].

241 Whitelock, Beginnings 143.

242 See Sawyer 443. This charter contains a case allegedly overseen by Ine’s successor, King Æthelheard (r. 726-740), which is noted in Sawyer 254, and demonstrates that the harsh laws regarding theft may have been carried out in full in eighth-century Wessex. In this legal case, thieves were required to forfeit their property and were condemned to death and executed. Dated to 938 AD, Sawyer 443 was allegedly produced during the reign of Æthelstan, whose laws are notoriously severe to thieves. Wormald remarks that “it may not be chance that it was in the reign of a king who was so set on capital punishment for theft that there occurs the earliest charter describing the execution as well as forfeiture of thieves. [... ] Whether the laws occasioned the charters or vice versa, the worlds of law and charter had met, as they rarely do in the Old English era.” (The Making of English Law: King Alfred to the Twelfth Century, Vol. 1 [Oxford: Blackwell, 1999] 306-7). See Wormald’s remarks on Sawyer 443 in “A Handlist of Anglo-Saxon Lawsuits,” Legal Culture 266 and Wormald, Making 307 n. 199.

243 Schwyter 47. Regarding the use of Alfred-Ine by Norman legists, Mary P. Richards, “Manuscript Contexts of the Old English Laws: Tradition and Innovation,” Studies in Earlier Old English Prose, ed. Paul E. Szarmach (Albany, NY: State U of New York P, 1986) 171-92, notes that “the early laws, particularly those of Alfred and Ine, remained a vital part of legal custom well into the period of Norman rule. So strong was their influence as sources of legal tradition, the codes of Alfred and Ine came to be known simply as seo domboc” (172).
Alfred code. [...] King Alfred may have found, in the process of collecting and evaluating earlier domas, that his kinsman Ine had covered theft so widely and so well that it seemed futile for him to go through the whole exercise once more. The presentation of the laws of Ine and Alfred in the Parker manuscript support Schwyter’s reading, as Richards remarks that the laws are organized as “joint codes” with Alfred’s laws taking priority and Ine’s “supplementing the later code in an integral way” to “form a single, continuous, complete and up-to-date collection.” Richards goes on to state that “this layout demonstrates paleographically the complementary statements in the royal codes.” In many cases, the content of Alfred’s laws builds on that of Ine’s laws. As a result, the few theft cases Alfred does address are specific circumstances not found in Ine’s laws, such as stealing on religious holidays and Sundays, which results in paying double compensation, and stealing in the church, which results in the payment of both compensation and a fine, and having the hand “ðe he hit mid stæl gedyde” [with which he stole] struck off. Alfred also sets a new fine for theft cases—except for the stealing of human beings—at 120 shillings, specifically naming the “goldðeofe 7 stodðeofe 7 beoðeofe” [gold-thief, horse-thief, and bee-thief]. Given the extremely limited scenarios for theft that Alfred includes, it is plausible that Ine’s laws, which were

244 Schwyter 47, 48.
245 Richards, “Manuscript Contexts” 173.
246 Richards, “Manuscript Contexts” 173.
247 Alfred 5§5 (Liebermann, Gesetze I 52). The holidays included are Gehhol [Christmas], Eastron [Easter], halgan Punresdceg [Holy Thursday], Gangdagas [Rogation Days], and Lenctenfcesten [Lent].
248 Alfred 6 (Liebermann, Gesetze I 52). One could prevent the loss of his hand, if allowed to do so, by paying “swa to his were belimpe” [as to his wergild], according to Alfred 6§1 (Liebermann, Gesetze I 52). The loss of a hand is also the punishment for a minter guilty of issuing below-standard coins in II Æthelstan 14§1 (Liebermann, Gesetze I 158), with the additional shame of having the severed limb displayed at his workshop.
249 Alfred 9§2 (Liebermann, Gesetze I 54). Alfred 16 (Liebermann, Gesetze I 58), however, stipulates that if anyone “cu oððe stodmyran forstele 7 folan oððe cealf ofadrife, forgelde mid scill 7 þa moder be hiora weorðe” [steals a cow or a broodmare and drives off the foal or calf, he shall pay with a shilling and pay for the mother by her worth]. Perhaps this latter fine applies on top of the 120 shillings outlined for a stodðeofe [horse-thief] in Alfred 9§2.
associated with Alfred’s such that they are preserved exclusively as an appendix to Alfred’s laws, continued to be circulated and used throughout the reign of Alfred.

The influence of Ine’s laws could also have extended into the reign of Alfred’s son, Edward the Elder (r. 899-924), whose laws are also remarkably thin on the topic of theft. The laws Alfred made with the Danish king Guthrum, which were also enacted by Edward, include provisions for theft, fighting, perjury, or adultery by a “gehadod man” [man in holy orders], stating that he must pay according to the nature of the crime and also “for Gode huru bete, swa canon tæce” [he shall certainly make amends to God, as the canon directs]. II Edward, promulgated at Exeter, further stipulates that if someone is accused of theft, he needs his lord or another friend to commend him lest he forfeit his property for a trial, and if someone is found guilty of theft through trial and no one will vouch for him, he shall be reduced to “œowweorces” [servile labor] without any restitution to his kinsmen.

The relative absence of new laws regarding theft following those of Ine is ended by Æthelstan of Wessex (r. 924-39), son of Edward the Elder. Richards remarks that Æthelstan, the ruler of a vast and newly-forged political realm, composed laws that “naturally address matters of broad concern to Anglo-Saxon England,” while also looking back to the legislation of his predecessors. In this period of expanding “national” perspectives, it is “through their bonds with Christianity and the language and customs of

250 The laws of Edward and Guthrum have been attributed to Wulfstan. See Dorothy Whitelock, “Wulfstan and the so-called Laws of Edward and Guthrum,” English Historical Review 56 (1941): 1-21.
251 Edward and Guthrum 3 (Liebermann, Gesetze I 130).
252 Edward and Guthrum 3 (Liebermann, Gesetze I 130).
253 II Edward 3-3§2 (Liebermann, Gesetze I 142).
254 II Edward 6 (Liebermann, Gesetze I 144).
255 Richards, “Anglo-Saxonism” 51. It is also possible that the influx of Scandinavians during the reigns of Æthelstan and his successors contributed to the additional attention to theft. This may have been an effort to exert social control over the Vikings, but the issue remains to be investigated.
the people [that] the royal codes persist as a major vehicle for national unity and the embodiment of the core values of the culture.”

Thus, Æthelstan repeatedly addresses the crimes that threaten these core values, bringing the suppression of thieves to the forefront. As Wormald notes, “more laws were preserved for Æthelstan than any other tenth-century king,” and although only three of his seven extant promulgations discuss theft in any capacity, Schwyter remarks that “two of these have higher frequencies [of theft words] than all the other law codes except [for Alfred-Ine and I-II Cnut].”

Beginning with II Æthelstan, the main preoccupation of Æthelstan’s laws was theft and, Wormald observes, “by the end of the series it had become almost an obsession. Æthelstan carried on where his father left off in demanding sureties against theft, in enlisting the resources of lordship to enforce rather than to obstruct justice, and in requiring supervised sale or purchase.” On the whole, Æthelstan’s laws reshape and reinforce Ine’s approach to theft set in place in the early eighth century. Echoing Wihtred and Ine’s provisions for the civil enforcement of such laws, the initial clause of II Æthelstan forbids that any thief go unpunished: “Ærest þæt mon ne sparige nærne þeof þe æt hæbbendre honda gefongen sy, ofer XII winter 7 ofer eahta peningas” [First, no thief shall be spared who is caught hand-having and is over twelve years old and [the goods are] over eight pence]. Æthelstan has revised Ine’s provision that a ten year old is

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256 Richards, “Anglo-Saxonism” 52.
257 Wormald, Making 290.
258 The official count is six (I Æthelstan to VI Æthelstan), though one is also right to count the Ordinance to Tithe and Charity as a separate law rather than a part of I Æthelstan or II Æthelstan. See Wormald, Making 290 n. 129.
259 Schwyter 48.
260 Wormald, Making 305.
261 II Æthelstan 1 (Liebermann, Gesetze I 150).
accountable for theft charges, stating that anyone over twelve is liable and that the stolen goods must be worth eight pence (a statement Æthelstan later emends to fifteen years old and twelve pence). Æthelstan makes it clear that loss of life is a fitting punishment for those who would take the property of another person; if caught, they are without excuse and are not to be spared. In II Æthelstan, the laws state that out of respect for the king’s will, at the very least, everyone “forga þyfðe be his feore 7 be eallum þam þe he age” [ought to abstain from theft by his life and all which he owns]; and in VI Æthelstan, which was promulgated as a supplement to Æthelstan’s earlier laws, this policy is restated: if someone is unable to deny an accusation of theft and is found guilty, “we hine ofslean 7 niman eall þæt he age” [we shall kill him and take all that he owns].

By stealing from another person, the thief effectively relinquishes his claim to his own
life and material belongings and is liable to forfeit both by law.\textsuperscript{268} As in the earlier laws of both Kent and Wessex, the mere return of the stolen goods is not payment enough since the transfer from owner to thief results in more than simply the owner’s economic loss: the thief has contravened the owner’s material possession, thus depriving him or her of goods that might contribute to his or her survival, as well as the social status and potential for gift-giving that ownership affords.

\textit{II} Æthelstan also adds detail to the legal procedures related to theft cases, stating that if a hand-having thief escapes, “ne sparige hine mon”\textsuperscript{269} [he ought not be spared], but if he is caught and imprisoned, he is to be released after 40 days with both the payment of 120 shillings and the promise of his kinsmen “dæt he æfre geswice”\textsuperscript{270} [that he shall cease\textsuperscript{271} forever]. A repeat offense will result in the payment of his wergild and his return to prison.\textsuperscript{272} \textit{VI} Æthelstan effectively increases the stakes of \textit{II} Æthelstan, stating that an often-accused thief proven guilty by the ordeal shall be slain unless he is ransomed by his wergild, and even then, a second offense will result in death.\textsuperscript{273} The aim of these laws was clearly to root out theft completely by eliminating repeat offenders, who, given Æthelstan’s provision for slaying hand-having thieves, are fortunate to have survived their first offense.

Given the importance placed on purging the communities of thieves, Æthelstan also offers the general public an incentive in the form of monetary compensation of

\textsuperscript{268} See Surber-Meyer 38, who comments that the loss of both life and property for theft also connect theft with an equally reprehensible crime of treachery against one’s lord, which incurs the same punishment. See also Alfred 4 (Liebermann, \textit{Gesetze} I 50).

\textsuperscript{269} \textit{II} Æthelstan 1§2 (Liebermann, \textit{Gesetze} I 150).

\textsuperscript{270} \textit{II} Æthelstan 1§3 (Liebermann, \textit{Gesetze} I 150).

\textsuperscript{271} See entry for \textit{geswican}, Bosworth-Toller 449.

\textsuperscript{272} \textit{II} Æthelstan 1§4 (Liebermann, \textit{Gesetze} I 150). \textit{II} Æthelstan 7 goes on to state that those who are “oft bethihtele” [often accused] of theft will be subject to the simple ordeal.

\textsuperscript{273} \textit{VI} Æthelstan 1§4 (Liebermann, \textit{Gesetze} I 174).
twelve pence for the service of killing a thief.\textsuperscript{274} Furthermore, public participation is not only encouraged if one catches a thief in the act, but required by law, lest the onlooker be accused of being an accessory to theft: anyone who spares a hand-having thief must pay the thief’s wergild or else swear an oath to clear himself of the accusation.\textsuperscript{275} The only respite available to a thief is seeking sanctuary within a church or with a bishop for nine days\textsuperscript{276} or with an ealdorman, abbot, or thegn for three days,\textsuperscript{277} and “his foeres wyrd, buta swa foela nihta swa we her beu fan cwædon”\textsuperscript{278} [his life shall endure only for as many nights as we declared here above]. Any other aid or support given to thieves is illegal, as Æthelstan’s laws also charge anyone who “forstonde”\textsuperscript{279} [defends] a thief, “midstande”\textsuperscript{280} [assists] him, “feormige”\textsuperscript{281} [harbors] him, “medsceat nime”\textsuperscript{282} [takes bribes] from him, seeks to “wrecen”\textsuperscript{283} [avenge] a slain thief, or unsuccessfully “scyldunga bæde”\textsuperscript{284} [asks for the charge] against the slain thief in order to refute it.

Some of these offenses are punished with fines in Æthelstan’s earlier laws, but in VI
Æthelstan, it is clear that any manner of help for a thief will result not in a fine, but death.  

The consequences of theft are severe not only to the person who committed the crime, but also to anyone who associates himself with the thief in order to prevent the law from punishing the thief for his crime. Fear of retribution by association would surely motivate people to root out and dissociate thieves from society. The punishment of the thieves' associates also reflects the notion that suppressing theft was in the best interest of all people, and the compliance of the general public was critical. 

Arguably, Æthelstan’s efforts to rein in the activity of thieves may have contributed to the apparent reprieve from theft during the reign of his brother, Edmund (r. 939-46). II Edmund addresses this improvement, stating, “ic þancie Gode 7 eow eallum, ðe me fylston, ðæs frīðes ðe we nu habbað æt ðam ðyðam”  

[I thank God and you all, who have helped me, for the security from theft that we now have]. This statement suggests that the general public has helped the king to purge society of thieves, and Edmund goes on to charge his people with the expectation that “[…] ge willan fylstan to ðyssum swa micle bet, swa us is eallum mare ðearf ðæt hit gehealden sy”  

[you want to help this [cause against theft] even more, as for us it is all the more a need that it be controlled]. Edmund’s request reveals that theft was prevalent in the tenth century, but could be curbed when the society was involved in enforcing the laws. According to Edmund’s laws, theft must be stopped because it threatens public “frīð” [security or peace]: a society plagued with a rash of missing goods is one in which trust and generosity amongst the people are replaced by brewing suspicion and accusations. 

Edmund appears to have maintained the iron-fisted laws of Æthelstan, threatening thieves

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285 VI Æthelstan 1§4-1§5 (Liebermann, Gesetze I 174).
286 II Edmund 5 (Liebermann, Gesetze I 188).
287 II Edmund 5 (Liebermann, Gesetze I 188).
with forfeiture and death if they are caught and urging his people to assist him in seizing such criminals.\textsuperscript{288}

In the laws of Edmund's son Edgar (r. 959-75), the motion towards public responsibility for suppressing thieves continues, demanding simply "\textit{Dæt men faran on cryd æfter ðeofan}"\textsuperscript{289} [that men go in haste after thieves]. Edgar appears to encourage vigilantism, calling local officials and commoners alike to action, and anyone who neglects this charge will be fined for not going after the thief.\textsuperscript{290} Furthermore, Edgar continues Æthelstan's no-holds-barred capital punishment policy, stating that for anyone proved an "æbæra ðeof" [notorious\textsuperscript{291} thief] or anyone found in "hlafordsearwe" [treason against a lord], "hi næfre feorh ne gesecan, buton se cyninge him feorhgeneres unne"\textsuperscript{292} [they shall never find life, unless the king consents to preserve their lives]. Asserting such authority over criminal activity also reinforces, in Edgar's own words, "mines cynescypes gerihta"\textsuperscript{293} [the right of my kingship]. Thus, he applies his laws on theft to "eallum leadscype, ægðer Englum ge Denum ge Bryttum, on ælcum ende mines anwealdes, to ðy ðæt earm 7 cadig mote agan ðæt hi mid rihte gestrynað, 7 ðeof nyte,

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\item \textsuperscript{288} Immediately after addressing theft, II Edmund forbids "mundbryce" [violating the king's protection] and "hamsocnum" [attacking a man in his own home], the latter of which may be tied to theft as someone who violently breaks and enters into one's home may have done so to acquire goods. If caught, the criminal must forfeit all that he owns and is subject to death at the king's discretion. See II Edmund 6 (Liebermann, \textit{Gesetze I} 188). In III Edmund, preserved in Quadripartitus, the king commands that "ubi fur pro certo cognoszetur, twelinhindi et twihindi conscient et exuperent eum vivum vael mortuam" [where a thief is known for certain, nobles and commoners shall come together and overpower him, alive or dead] (III Edmund 2; Liebermann, \textit{Gesetze I} 190). Furthermore, a slave who coordinates a theft shall be "capiatur et occidatur vel suspendatur" [seized and slain or hanged], and his cohorts brutally tortured (III Edmund 4; Liebermann, \textit{Gesetze I} 191).
\item \textsuperscript{289} I Edgar 2 (Liebermann, \textit{Gesetze I} 192).
\item \textsuperscript{290} I Edgar 3-3§1 (Liebermann, \textit{Gesetze I} 192).
\item \textsuperscript{291} See entry for æber, Bosworth-Toller 8. This word translates to "notorious," "clear and evident by proof," or "manifest." Thus, the "æbæra ðeof" in I Edgar could indicate that the thief—though intending his deed to be kept secret—was simply caught in the act and therefore without excuse.
\item \textsuperscript{292} III Edgar 7§3 (Liebermann, \textit{Gesetze I} 204). This law is repeated in II Cnut 26 (Liebermann, \textit{Gesetze I} 328).
\item \textsuperscript{293} IV Edgar 2a (Liebermann, \textit{Gesetze I} 208).
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hwær-he þeofte befæste, ðeah he hwæt stèle, 7 him swa geborgen sy heora unwilles, þæt heora to feola ne losien" 294 [all the people, either English or the Danes or the British, in each corner of my dominion, such that the poor and the rich may possess that which they acquire in accordance with the law; and the thief does not know where he may safely keep the stolen goods, although he steals them, and let them [thieves] so be delivered, against their will, that too many of them not escape]. Edgar’s aim is for no thief to be secure in any part of his land—a goal only achieved if all his leodscype [people] adhere to his desire that they acquire property mid rihte [by right] and also participate in the apprehension and eradication of thieves. In addition to demonstrating the far-reaching effects of theft in England, the laws against theft in IV Edgar serve as a barometer for “nationalism” by including the English, Danes, and Britons as part of the same leodscype. 295 These laws both indicate the extent of Edgar’s jurisdiction ca. 962-63 296 and also show that “the need to protect property drives the sense of nationhood,” as checking theft ultimately “promotes the security of the nation.” 297 Given that the safeguarding of property would have been a chief concern in every household, theft legislation became one means by which the king expressed the unity of his realm and his ultimate authority over it.

In the early laws of Æthelred (r. 978-1016), a new dimension is added to the social stigma of theft through addressing the treatment of a slain thief’s body. A person’s place of burial essentially forecasted his eternal destination, as one buried in a churchyard was a probable candidate for heaven while the hanged criminal, often buried near the

294 IV Edgar 2§2 (Liebermann, Gesetze I 210).
295 See Richards, “Anglo-Saxonism” 53.
296 This is the date assigned by Liebermann, Gesetze III 138, for the promulgation of IV Edgar.
297 Richards, “Anglo-Saxonism” 53.
execution site, would be hell-bound. Victoria Thompson notes that “written and archaeological evidence alike chart attempts not only to predict but to engineer both salvation and damnation through the location and structure of graves.” The laws’ denial of consecrated burial for certain criminals first appears in the laws of Athelstan, but it is not until Æthelred, promulgated ca. 1000, that “the death penalty and exclusion from consecrated ground coincide explicitly in the lawcodes.” In the specific case of theft, Æthelred states that anyone who seeks to clear a slain thief may take the matter to the “primfealdan ordale” [three-fold ordeal] after supplying a 100 shilling deposit. If the man proves that the slain thief is innocent, “nime upp his mæg” [he may take up his kinsman]—presumably from unconsecrated ground—but if he is found guilty, “licege þær he læg” [let him lie where he lay]. This clause in Æthelred’s laws is important as it first indicates that death remains a typical consequence for theft, whether the thief has been killed for his deed by a civilian who catches him or by being proven guilty at the

298 See Andrew Reynolds, “The Definition and Ideology of Anglo-Saxon Execution Sites and Cemeteries,” Death and Burial in Medieval Europe: Papers for the “Medieval Europe Brugge 1997” Conference 2 (1997): 33-41 and Andrew Reynolds, “Executions and Hard Anglo-Saxon Justice,” British Archaeology 31 (1998): 8-9. Daniell and Thompson also note that position of the body, in addition to the grave’s location, may indicate the moral quality of the deceased: for example, the prone, or face-down, burial “is so rare that occurrences have been seen as punishment burials for criminals or ‘evil’ people, the theory being that if they tried to dig themselves out, they would only bury themselves more deeply” (67-68).


300 See Thompson, Death and Dying 173-75.

301 Thompson, Death and Dying 175. Thompson here refers to I Æthelred 4-4§1, in which a person considered generally “ungetrywe” [untrue, or an oath-breaker] who “børh næbbe, slea man hine 7 hine on ful lece” [has no surety, let him be slain and laid in foulness] (Liebermann, Gesetze I 220). Thompson remarks that “ful may refer to literal filth, or to guilt, and it is ambiguous as to whether the man who has been killed is simply to lie in a foul place (such as a ditch?), or whether he is to have a marginally more formal burial among the graves of other people deemed as unacceptable as himself. Quadripartitus translates in ful lece as in damnnatis inhumentur (let him be buried amongst the damned), which shows that twelfth-century readers assumed it meant the latter” (175).

302 I Æthelred 7 (Liebermann, Gesetze I 230).

303 I Æthelred 7§1 (Liebermann, Gesetze I 230).
ordeal and beheaded.\textsuperscript{304} Second, this clause demonstrates the eternal consequences for theft, as the slain thief whose kinsmen cannot clear him is denied burial in consecrated ground, thus denying him entombment amongst the saved. Thompson remarks that “it seems that excluded burial could prove unbearable for the kin of the condemned man, and that new rituals had to be devised for those who were desperate to prove their relative’s innocence, or at least to have him reinterred and given the slightest chance of salvation,” which would also salvage the family’s reputation.\textsuperscript{305} Citing a charter from 995, Thompson provides evidence for the practice of denying consecrated burial to thieves.\textsuperscript{306} In this charter, a slave’s theft of a bridle results in the death of two of his master’s men. These men, according to the charter, should have been denied consecrated burial but were illegally allowed it by the reeve of Buckingham, Æthelwig, who was later acquitted of his crime. The issue of the thief’s burial shows an awareness of the spiritual repercussions for the criminal’s earthly deeds, but it also signals the thief’s identity as an outcast: in life, he acted outside the standard of behavior in Anglo-Saxon society by stealing that which is not rightfully his. Thus, after death, the status of the thief is preserved in his unholy state, laid to rest amongst the oath-breakers, murderers, and adulterers who shared his fate.\textsuperscript{307}

\textsuperscript{304} III Æthelred 4-4§1 (Liebermann, Gesetze I 228 and 230). Regarding men of ill reputation, if a lord and two good thegns are willing to swear that the man “næfre þeofgild ne guide” [has never been convicted of theft], he shall go to the one-fold ordeal or pay three-fold the value of the goods in question. If proven guilty at the ordeal, “slea man hine, þæt him forberste se sweora” [one shall strike him such that his neck bursts].

\textsuperscript{305} Thompson, Death and Dying 176.

\textsuperscript{306} Sawyer 886. See Thompson, Death and Dying 176.

\textsuperscript{307} Based on III Æthelred and Sawyer 886, Thompson notes that “these texts make it clear that thieves could be, and were, excluded from churchyards, and yet theft is not among the crimes which explicitly incur the penalty in the lawcodes. III Æthelred does not specify where thieves are to be buried, it merely assumes that they will have been buried somewhere their kinsmen find distressing. This may suggest a long-standing norm of burying thieves and other executed criminals in a separate site; when the references begin to appear in the lawcodes from the reign of [Æ]thelstan onwards, this represents not a new invention
The laws’ authorization of and preference for the execution of thieves caught in the act or proved guilty by ordeal shifted instead towards mutilation in the eleventh century in an effort to spare the thief’s life—a change attributable to the Church’s influence in law-making in late-Anglo-Saxon England. Whitelock states that “the Church favored the avoidance of the death penalty, preferring even the substitution of mutilation, as this gave the malefactor an opportunity of expatiating his crime in this world and thus saving his soul. This view was strongly expressed in the laws composed for [Æ]thelred and Cnut by Archbishop Wulfstan.”308 The participation of Wulfstan in the transmission of legal texts reveals a degree of concord between the aims of the laws and the purpose of the churchmen at this time: the laws provided a grim punishment through physically mutilating—though not directly killing—the criminal, which, in turn, provided an opportunity for his repentance and salvation. The laws issued by Æthelred in 1008 (V Æthelred) are “the first datable code bearing Archbishop Wulfstan’s mark” and also incorporate observable changes in the punitive response of the laws.309 Furthermore, Æthelred notes that his ordinance has been enacted by “pe Engla cynigc ægðer gehadode ge læwede witan”310 [the king of the English and both his ecclesiastical and lay councilors], including a clause advocating non-lethal punishment:

7 ures hlafordes geraednes 7 his witena is, þæt man Cristene men for ealles to litlum to deaðe ne fordemde. Ac elles geraedæ man friðlice steora

but an elaboration of existing practice, with additional categories of sinner and criminal now thought appropriate for this treatment” (Death and Dying 177).


310 V Æthelred Prol. (Liebermann, Gesetze I 237).
Thus, the crimes that warranted death in the earlier laws—including and perhaps specifically referring to theft—must now be punished in a way that promotes the survival of the criminal. Regarding this attempt to curb capital punishment, O’Brien O’Keeffe states that, unlike the laws of Æthelstan that encourage execution, “V Æthelred specifies that punishments are to be devised which spare the lives of thieves specifically in the interest of their salvation.” While the vagueness of the “too small offences” and even the substitute punishment—force us to question which crimes Wulfstan addressed here, it is clear that the punitive measures he advocates are milder than a sentence of death; as friōlice [mild] punishments, they are literally “punishments which do not put a man outside the friō ‘peace’ and make him liable to lose his life.” Such merciful

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311 V Æthelred 3 (Liebermann, Gesetze I 239).
312 O’Brien O’Keeffe 216.
313 Both Whitelock and O’Brien O’Keeffe refer to the Latin canons annotated by Wulfstan himself in British Library, Cotton Nero A. I, which explicate the punishments appropriate for such “small crimes”—“Sunt namque his temporibus iudices seculares qui pro modico commisso homines statim morti adiudcant, parui pendentes monita apostoli, dicentis: castigate et non mortificate. Castigandi sunt enim rei diuersisque modis, arguendi et non statimi necandi, sed per penas saluandi, ne anime pro quibus ipse dominus pasus [sic] est, in eternal pena dispereant. Alii uinculis et flagris; alii autem fame uel frigore cons[ringendi sunt; alii quoque pellem, capillos et barbam simul perdentes turpiter obprobria sustineant; alii adhuc acruii consv/ingantur, id est, membro perdant, oculum uidelicet uel nasum, manum uel pedem seu aliud al\q/uid membrum” (quoted in O’Brien O’Keeffe 216). [There are in these times secular judges who for a small crime condemn men immediately to death, thinking of no account the admonition of the apostle, saying “Punish and do not put to death.” Indeed the culprits ought to be punished by various means, they ought to be charged and not immediately killed, but be saved through punishments, lest their souls, for which the Lord himself suffered, be undone in eternal punishment. Some by chains and whips, others, however ought to be bound by hunger and cold; let others, losing at the same time skin, hair and beard, suffer disgrace shamefully; others should be restrained still more sharply; that is, let them lose a body part, namely an eye or ear, a hand or foot, or some other member] (O’Brien O’Keeffe 221, n. 29).
sentencing does not, however, spare the perpetrator so that he is free to return to a life of crime; rather, this punishment exhibits mercy of spiritual significance by encouraging the preservation of “Godes handgeweorc” [God’s handiwork] through not immediately killing a criminal and sending his soul to certain damnation. Thus, in the laws of Æthelred, thieves are still punished but they are able to avoid the “double death” of the “immediate death of the body and the eternal death of the soul.”

The provision made for both body and soul in the laws is at the core of the legal and religious synthesis they display in the tenth and eleventh centuries: as O’Brien O’Keeffe remarks, “such an expectation of ‘twin’ deaths is the trigger for Wulfstan’s modification of royal law.”

As mentioned above, mutilation was an option in the earlier laws for circumstances where guilt was proved by the ordeal alone, in which case the death penalty remained an option after multiple charges of criminal activity. The Wulfstanian legal promulgations of Æthelred’s Scandinavian successor, Cnut (r. 1016-35), favor a mitigated punishment for the express purpose of saving the criminal’s soul, though the death penalty does not disappear entirely. O’Brien O’Keeffe remarks that “the ‘mercy’ of a mitigated sentence as an alternative to death, called for by Wulfstan in Cnut’s voice, is made most explicit in the case of the recidivist thief,” a statement she supports through

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315 O’Brien O’Keeffe 223. The example O’Brien O’Keeffe cites to demonstrate the concept of a “double death” is the miraculous deliverance of a Frankish thief who was caught in the act and waiting execution in Translatio et Miracula S. Swithuni: “[...] gausius est eximium / se euaise periculum / atque mortis interitum / utriusque perpetuum” [...] (He rejoiced that he had escaped / so great a danger / as well as the perpetual oblivion / of either sort of death.)

316 O’Brien O’Keeffe 223.

317 See Thompson, Death and Dying 182-3. Thompson remarks that V and VI Æthelred contain “sparse references to the death penalty” through modifications in the language of earlier punishments for such crimes as deserting the king’s army or plotting against the king (183). Thompson aptly summarizes the changes in the laws of Æthelred, which follow similarly in Cnut’s laws, stating that “Wulfstan thus suggests the possibility of the death penalty, not its automatic imposition, and for only a small range of very serious crimes compared to the ‘bloody code’ of Athelstan” (183).
the following excerpts regarding criminals repeatedly proven guilty by ordeal in Cnut’s laws of 1020-23:

And æt þam oðrum cyrre ne si þær nan oðer bot, gif he ful wurðe, butan þæt man ceorfe him ða handa oðde þa fet oðde ægéper, be þam ðe seo ðæd-slæg.  
7 gif þonne gyt mare wurc geworht hæbbe, þonne do man ut his eagan, 7 ceorfan of his nosu 7 his earan 7 þæ uferan lippan oðdon hine hættian, swa hwylc þyssa swa man þonne gæðe, ða þe ðæerto rædan sceolon: swa man mæg styran 7 eac þære sawle beorgan.  

[And on the second occasion, there shall be no other compensation for him, if he is proved guilty, but that his hands or his feet or both be cut off, according to the deed.  
And if he accomplishes even more deeds, then one shall put out his eyes and cut off his nose and his ears and the upper lip or scalp, whichever of these is determined upon by those who shall advise it; thus one may punish and also preserve the soul.]  

Instead of suggesting the death penalty for a repeat offender, Wulfstan uses Cnut’s laws to fully protect the soul of the criminal, even when the number and nature of the crimes become great. The laws of Cnut, which also echo the declaration in V Æthelred 3§3 to not punish to liðum [too small offences] with death, reinforce mutilation in order to spare the criminal’s soul from eternal punishment. Regardless of the “mild” intentions, “survival of these mutilations may have been uncertain, and undesired by judges or victim, but there was a chance of the latter living to repent.” With the threat of immediate damnation removed, the soul is given the opportunity for repentance and

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318 II Cnut 30§4-5 (Liebermann, Gesetze I 332 and 334).  
319 The exception to the treatment of repeat-offenders regarding capital punishment is found in II Cnut 32-32§1 (Liebermann, Gesetze I 336), in which a different social caste is addressed: “7 gýf þeow[w]man æt ðæm ordale ful wurðe, mearcie [man] hine ðonna æt ðæm forman cyrræ. 7 æt ðæm oðran cyrræn ne sy ðær nan bot buton þæt heafod” [And if a slave is found guilty at the ordeal, then one shall mark [or brand] him on the first occasion. And on the second occasion, there shall be no compensation except his head]. However, other versions of II Cnut describe the perpetrator not as þeowman [slave], but as þeofman [thief]. The implications of this alternative reading, which identifies the person by his crime rather than his social status, require further consideration as this interpretation leaves the death penalty on the table for the crime of theft.  
320 II Cnut 2a§1 (Liebermann, Gesetze I 308).  
321 Wormald, Making 126.
redemption. As O’Brien O’Keeffe remarks, the mutilated bodies of convicted thieves become “texts of their behaviour and its lawful consequences,” which act as a “readable” example of the law’s efficacy for public discipline while the mutilation itself “forever after forces the body to confess its guilt as part of the process of salvation.” Thus, the laws punishing theft account for the spiritual health of the criminal through physical repercussions that both allow for and encourage the redemption of his soul.

It is critical to note that even in these later laws that encourage mutilation as an alternative to capital punishment, death yet remained an acceptable punishment for thieves. II Cnut states that “se ebæra ðeof þæt he sece, oððe se ðe on hlafordsearwe gemet sy, þæt hi næfre feorh ne gesecan”[the notorious thief who seeks [sanctuary], or he who is discovered plotting against his lord, shall never find life]. Theft, which is here equated with treachery against one’s lord, remains a crime worthy of death. No thief who is caught will ever find refuge or protection, and he could do little to reconcile himself with society after his crime. The thief’s associates are also denied protection, showing once again that the general public was expected to dissociate themselves from thieves and thus facilitate the elimination of these criminals. Cnut’s laws also demand that “ælc man ofer twelfwintre sylle þone að, þæt he nyle ðeof beon ne ðeofes gewita”

322 O’Brien O’Keeffe 217.
323 II “Cnut 26 (Liebermann, Gesetze I 328). This law echoes III Edgar 7§3 (Liebermann, Gesetze I 204).
324 According to II Cnut 82 (Liebermann, Gesetze I 366), all people are granted protection to and from “gemet” [assembly] except for he who is a “æbere ðeof” [notorious thief]. Furthermore, “open ðyfð” [discovered theft; see entry IV for open, Bosworth-Toller 763] is listed among the “botleas” [unpardonable] crimes in II Cnut 64 (Liebermann, Gesetze I 352).
325 See Cnut 1020 12 (Liebermann, Gesetze I 274), which states that anyone who protects or stands up for a thief “sy he emscyldig wið me þam ðe þeof scyld, buton he hine mid fulre lade wið me geclrensian mege” [shall receive the same penalty according to me as the thief ought to receive, unless he can clear himself according to me with full exculpation]. Excommunication was the penalty for men in holy orders who associated themselves with thieves. See I Cnut 5§3 (Liebermann, Gesetze I 286 and 288).
326 II Cnut 21 (Liebermann, Gesetze I 324). By requiring everyone over twelve to swear to not become a thief or assist any thief, Cnut’s laws add another layer to VI Æthelstan 1§1 (Liebermann, Gesetze I 173), which states, “þæt man ne sparige nanan ðeof ofer XII þæningsas 7 ofer XII wintre” [that one ought to spare
[each person over twelve years old shall swear the oath that he will not be a thief nor a thief's accomplice]. The interest in rooting out and preventing theft clearly remains a high priority. As is stated in Cnut's laws on coinage reform, the goal of his laws is to foster a peaceable society in such a way "swa ðam bonda sy selost 7 ðam ðeofan sy laðost" [as shall be the best for the householders and the worst for the thieves].

Making life difficult for thieves was in the best interest of society and the laws' continued provision for the slaying of thieves allows the victims of theft to react accordingly. As Ireland remarks,

In a society which is imbued with ideas of honor and status [...] the response considered natural, indeed proper, to the man found driving off my cattle before my very eyes, or indeed the man found sleeping with my wife, may not be to consult my solicitor. To stay the hand is to bear the insult as well as the loss and this, despite the entreaties of religion, may be too much to bear.\textsuperscript{328}

The legality of immediately reacting by killing the perpetrator remained a legitimate option for anyone who caught a thief in the act and, although mutilation was introduced as a substitute to capital punishment, both the hand-having thief and the accused thief found guilty by ordeal could still be executed. Ultimately, the severe punishments throughout the laws—in addition to the staggering amount of attention given to theft—communicate the continuing social stigma of an act that deliberately deprives someone of rightfully owned property.

To date, the connection between the severity of the punishments for theft and the social importance of ownership and gift-giving in Anglo-Saxon culture has been only

\textsuperscript{327} II Cnut 8 (Liebermann, Gesetze I 314).

\textsuperscript{328} Ireland 315.
peripherally explored. Among the early twentieth-century studies that point to such a relationship is the work of Mauss, in which gift-giving is explored as a privilege exercised exclusively by the owner of an object. In Mauss' review of the survival of gift-giving principles in Roman society, he mentions the problem of theft with respect to an object's value: "The notion of the power inherent in a thing has, moreover, in two aspects, never been absent from Roman law: theft, furtum, and contracts, re. As regards theft, the actions and obligations that it entails are patently due to the power inherent in the thing." Mauss contends that Roman laws on theft are directly related to the power of the object, suggesting that the response of the laws to theft is directly related to the potency of the stolen object. Mauss qualifies his assessment by noting that an object "possesses within it an aeterna auctoritas [eternal power], which makes itself felt when it is stolen and lost for good." Thus, the loss of an object through theft is primarily felt because of its aeterna auctoritas rather than the simple, economic loss of the object.

While Mauss' statements are only peripheral to his main argument about the object's potency in The Gift, he makes the connection between theft and the possession of an object-as-gift that scholars have also observed in Germanic cultures, but have not further developed.

Surber-Meyer also briefly discusses theft within her larger discussion of Anglo-Saxon exchange, stating that the "Isidorian epistemology based on analogy and opposition" makes it "possible to consider the gift in light of theft and vice-versa."

Although Surber-Meyer points to examples that "illustrate the reverse side of gift and exchange"—that is, theft—she notes that "the exact degree of opposition in the two

329 Mauss 50.
330 Mauss 50.
331 Surber-Meyer 37.
phenomena cannot be evaluated [...]" Surber-Meyer makes this claim largely in response to the work of Ernst Leisi, whose “Gold und Manneswert im Beowulf” asserts that the worth of objects both given and received in Beowulf is not in their material or aesthetic value, but in the way in which they represent the merit of the possessor. In reviewing Leisi’s argument, Surber-Meyer comments that he excludes “the concrete worth of the gifts,” which is critical given that these objects “confer honour and prestige [...] and therefore must be able to display, by analogy, their worth” through decoration, material, or age. The abstract quality is, nonetheless, Leisi’s basis for relating “die allgemein bekannte Härte der germanischen Rechte gegenüber dem Dieb (Todesstrafe, Knechtschaft, Verbannung)” to the nature of ownership among the peoples that theft directly affects. He notes that

der germanische Dieb nimmt mit dem fremden Reichtum nicht nur eine Sache in Besitz, sondern er schmückt sich mit fremder Tugend, Ehre, Macht, allgemein mit menschlichem Wert, der ihm nicht zukommt; darüberhinaus beraubt er den Bestohlene um eben diesen Teil seines Ansehens [...] Darum muss ihn in einer Gesellschaft, die jene ideellen Werte am höchsten achtet, die schwerste Strafe treffen.

Leisi’s claim that an object represents the merits of its possessor are certainly validated in the poetry, as his study of Beowulf amply demonstrates, but theft is not limited to the “goldhroden” [gold adorned] items so frequently exchanged in Beowulf. The laws of the Anglo-Saxons account for and punish the theft of any object, regardless of its lavish

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332 Surber-Meyer 37.
334 Surber-Meyer 73.
335 [the generally-known severity of the Germanic laws against a thief (the death penalty, bondage, exile)] Leisi 271.
336 [the Germanic thief takes—in addition to the foreign wealth—not only the object into his possession, but he also embellishes himself with foreign virtue, honor, power, in general with human worth, which does not belong to him; furthermore, he robs the person from whom he steals even of this part of his or her reputation [...] For that reason, in a society that regards such ideal values the most highly, the most severe punishment must befall him] Leisi 271.
decoration or ordinary utility, and only very few laws on theft specify a value or type of goods.\textsuperscript{337} Simply, ownership was so highly valued in Anglo-Saxon culture that death remained a suitable punishment for anyone caught taking that which was not rightfully his.

When we consider the means by which an object is transferred from one person to another, the relationship between gift-giving—which is predicated upon ownership—and theft—which fundamentally undermines ownership—becomes far less ambiguous. As was discussed in Chapter 2, it is the prerogative of the owner to use a rightfully-owned object for his own use or to give the object as a gift. In the case of the latter, the object’s movement to the possession of another person becomes more than an economic transfer of property: it bolsters the reputation and relationship of the giver and the receiver. When an object is stolen, however, the owner’s material possession of the object—and therefore his or her choice to bestow the object upon another person—is disregarded and both the object’s economic value and its potential for social significance are lost. In effect, acquiring an object without the owner’s consent triggers the exact opposite effect of gift-giving: by undercutting ownership, theft breaks down the social bonds that gift-giving creates. Thus, the enormous weight placed upon the owning and giving of one’s belongings in Anglo-Saxon culture justifies the harsh punishment for theft laid out in the laws.

\textsuperscript{337} See, for example, II Æthelstan 1 (Liebermann, \textit{Gesetze} I 150), which stipulates that the stolen goods must be worth “ofer cahta peningas” [over eight pennies], emended in VI Æthelstan I§1 to a worth of “ofer XII peningas” [over twelve pennies]. See also Alfred 9§2 (Liebermann, \textit{Gesetze} I 54), which specifically applies to the “goldðeofe 7 stodðeofe 7 beoðeofe” [gold-thief, horse-thief, and bee-thief].
CHAPTER IV

THEFT AND ITS REPERCUSSIONS IN ANGLO-SAXON POETRY AND HOMILIES

The crime of theft is depicted and its cultural implications are conveyed not only in the laws of the Anglo-Saxons, but also in their poetry and homilies. In these texts, the thief is no longer simply a criminal whose deeds render him subject to the full force of the law, but he is also an exile, a sinner, and a vehicle for the demise of the hero. These identities assigned to thieves reveal the stigmatization of anyone who subverts the cultural value of an object and its proper transfer, even in fictional contexts. The literature both echoes and expands upon the social expectations found in the laws and essentially provides a perspective on theft that enriches our understanding of this crime and its impact on society. In his study of the infamous theft of the dragon’s cup in Beowulf, Andersson looks to the Icelandic sagas to shed light on theft in the laws, remarking that

the sagas [provide] an insight into the attitudes toward theft not available from the lawbooks. The lawbooks tell us about procedures, not emotions. The sagas perform a different service—they mirror public opinion. It is clear that in the hierarchy of public animosity, theft in Iceland occupied an unenviable position and was considered to be particularly distasteful. The thief was characteristically lowborn, often a foreigner or otherwise estranged from the community. Theft was not infrequently connected with sorcery, another crime regarded as particularly contemptible. [...] [it] is also connected with sexual heterodoxy, a notoriously sore spot in the Icelandic value system. Accusations of theft invite extreme reactions on the part of those accused and result almost always in blood reprisals.338

Although the Icelandic sagas provide a more extensive set of exempla for both the crime of theft and its social and legal repercussions, many of Andersson’s remarks pertain to the poetry and homilies of the Anglo-Saxons. Theft’s undermining of cultural values as

338 Andersson 503.
important as ownership and gift-giving force the thief into a marginalized social category. Given that he intends to carry out his deed in secret, the thief comes to be characterized as a social deviant who acts outside the recognized cultural norms. Exploring instances of the word *heaf* [thief] in the poetry and homilies of the Anglo-Saxons and examining narrative circumstances in which objects are wrongly appropriated reveals the ignominy of theft and any connection to this crime. This chapter does not endeavor to be an exhaustive study of theft in Anglo-Saxon literature, but rather explores excerpts of heroic poetry, riddles, gnomic verse, and sermons in order to evaluate theft as a crime whose social repercussions were severe enough to warrant the perpetrator’s lawful execution.

One of the most notorious cases of theft in Anglo-Saxon poetry and also “the earliest story of theft in Germanic literature” is the furtive seizure of the dragon’s cup in *Beowulf* that sets off a chain of events leading to the hero’s doomed battle with the dragon. The story of the thief is largely peripheral in *Beowulf* and, as Andersson remarks in his study of this passage, “the thief has an auxiliary role in this momentous finale and has not attracted much attention. His function is only to activate the dragon.” In sum, Beowulf’s peaceful fifty-year reign—which was apparently so uneventful that the poet simply notes that Beowulf “geheold tela” [ruled well]—ceases when someone inadvertently wakes a dragon while taking a “sincfæt” [precious cup] from the dragon’s ancient hoard. The poet states that the dragon “slæpende besyred wurde þeofes cæfte” [sleeping, was deceived by a thief’s craft] and then goes on to explain that the person who successfully tricked the dragon was under terrible duress:

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339 Andersson 493.
340 Andersson 493.
341 *Beowulf*, l. 2208b.
342 *Beowulf*, l. 2231a.
343 *Beowulf*, l. 2218a.
[he did not at all intentionally break into the worm-hoard of his own will, he who sorely injured him [the dragon], but for necessity the [slave] of someone of the children of men fled hostile blows, in need of shelter, and hid therein, a guilt-distressed man].

The exact identity of this man has been subject to debate since the "p-" word in 1.222b that identifies him more precisely is illegible in the manuscript. In Friedrich Klaeber’s edition and glossary, which I have cited above, the word is read as “p(eow)” [slave], whereas “William W. Lawrence, along with Kemble, Zupitza, Holthausen, and Schücking, adopted the reading ‘p(egn)” [thegn]. Andersson adds his own suggestion of reading this word simply as “p(eof)” [thief], remarking that perhaps the “p-” word “refers to his legal status rather than his social status” as a slave or a thegn. This reading corresponds to the man’s deed, as he seizes the cup from the unsuspecting dragon, which would not have willingly given up a piece of his hoard. The violation itself is clear: when the man left the dragon’s lair to deliver his loot to his lord and “frioðowære bæd / hlaford sinne” [asked his lord for a covenant of peace], the dragon awoke to find that “wæs hord rasod, / onboren beaga hord” [the hoard was explored, the hoard of rings was diminished]. In reducing the dragon’s hoard by one drinking vessel, the man committed an act of theft, which justifies the poet’s calling him a “peof.”

344 Beowulf, ll. 2221-26a.
345 Andersson 493.
346 Andersson 495.
347 Beowulf, ll. 2282b-83a.
348 Beowulf, ll. 2283b-84a.
349 See the entry for rasian, Bosworth-Toller 787. The sense of “ræsod” here is not merely that the hoard has been investigated benignly, but rifled through or ransacked.
Andersson’s suggestion of “p(eof)” as a solution for the cryptic “p-” word also complements the perpetrator’s use of “peofes cræfte,” [thief’s craft] which refers to the cunning involved in the man’s act: he made away with the cup without disturbing the dozing dragon. Secrecy is essential to successful theft, as the thief must avoid public knowledge in order to obtain the desired goods, lest he be discovered and his deed prevented. As was discussed in Chapter 3, the laws of the Anglo-Saxons severely punish a thief whose covert act is interrupted; his guilt is unequivocal and interwoven with the shame of having acted with deliberate secrecy. Working with evidence in the Icelandic laws, Grágás, Andersson remarks that the underhanded nature of theft is also seen in the implications of being accused of theft: “if the accused is found innocent, he may sue for libel unless the accuser has expressly stated that he is prosecuting because he believes the accused to be guilty and not for the purpose of defamation.”

Andersson goes on to note that unlike being charged with an open crime such as the public seizure of goods, “the charge of theft is clearly an attack on the honor of the accused” and suggests the manifest disgrace of illegally taking another’s property and accomplishing the act in secret. Thus, an association with theft, such as acting with “peofes cræfte,” is clearly laced with condemnation, indicating the accused person’s devious and dishonorable character.

The narrative impact of the theft of the dragon’s cup in Beowulf also demands our attention, as the man’s act triggers a deadly series of events that unravels both the plot

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350 See entry for cræft, Bosworth-Toller 168.
351 The laws require anyone—not simply the owners of the stolen goods—to report, pursue, and detain thieves. See Ine 36 (Liebermann, Gesetze I 104), which punishes anyone who releases a thief or conceals the crime; II Æthelstan 1-1§1 (Liebermann, Gesetze I 150), which requires any witness to the act to slay immediately the hand-having thief; I Edgar 2 (Liebermann, Gesetze I 192), which calls the general public to pursue thieves.
352 Andersson 497.
353 Andersson 497.
and Beowulf’s quiet reign over the Geats. The man apparently sought to use the stolen cup as a means of absolving himself from guilt and preventing future abuse from his lord. Andersson remarks that this thief’s “tale of woe”—fleeing from maltreatment, seeking reconciliation—is what distinguishes him from the Icelandic thief of the sagas, with whom the thief in Beowulf shares “his flawed character (“synbysig”), his guile, and his alienation from society.”\textsuperscript{354} For this reason, the thief in Beowulf may more appropriately belong with other exiles of Old English poetry, found in such works as “Deor” and “The Wanderer.”\textsuperscript{355} However pitiable and desperate the thief may be, his effort to mollify his lord backfires when the dragon notices “dæt hæfde gumena sum goldes gefandod” [that some man had explored the gold”] and then proceeds to “lige forgyldan / drincfæt dyre”\textsuperscript{356} [compensate for the precious drinking cup with fire]. In an attempt to subdue the revenge-seeking dragon, Beowulf loses his life and leaves his people leaderless and vulnerable to Swedish onslaughts. At a very basic level, the theft in Beowulf does not bring about positive events in the narrative. Rather, it is a moment in which peace gives way to terror and uncertainty, quickly leading to the poem’s tragic ending. For a culture whose laws consider theft serious enough to be punished with death or mutilation, the near-total destruction that follows this episode of Beowulf may not have been a surprise. Set against the backdrop of the public and ceremonious gift-giving throughout Beowulf, the man’s decision to remove the cup from the hoard signals blatant disregard for the standards governing how one ought to transfer one’s wealth, even though he appears to

\textsuperscript{354} Andersson 507. \\
\textsuperscript{355} Andersson 507. \\
\textsuperscript{356} Beowulf, ll. 2305b-06a.
have stolen as a last resort.\textsuperscript{357} The theft ultimately signals social destruction, both within and without the poem: unlike gift-giving, which strengthens alliances and friendships, theft demands "negative reciprocity," with quite the opposite results of gift-giving. As was noted in Chapter 2, "negative reciprocity, as much as the giving of gifts, creates a binding social relationship, one of feud and vendetta. […] It is the natural opposition to friendship."\textsuperscript{358} The dragon does not react simply to the man's ignoble furtiveness—his "\textit{þeofes cræfte}"—but the reduction of his own hoard, on account of which he produces a lethal counter-gift by beginning to "\textit{gledum spiwan}"\textsuperscript{359} [spew fire] across the land.

The dative phrase "\textit{þeofes cræfte}" appears only one time outside of \textit{Beowulf} in the Anglo-Saxon textual corpus, in "Riddle 73" ("Spear" or "Bow"\textsuperscript{360}) of the Exeter Book. Describing the uprooting of the tree and its carving into a weapon in the first-person narration typical to Anglo-Saxon riddles, the narrator hints that its fashioners shaped it "\textit{þæt ic seoelde wiþ gesceape minum / on bonan willan bugan hwilum}"\textsuperscript{361} [so that I, with my form, must bend to the will of the slayer]. As a subject of the "bonan willan," then, the weapon appears to become an extension of the warrior himself, exhibiting human boldness and pugnacity:

\[
\text{Cuð is wide} \\
\text{þæt ic þrista sum} \quad \text{þeofes cræfte}
\]

\textsuperscript{357} If we accept the reading of "\textit{þeow}" [slave] as the theiving man's station in life, it follows that he would have little or no possessions of his own. He might have nothing to offer to his lord and must steal to meet this need. While the laws of the Anglo-Saxons do not indicate a mitigated treatment for theft committed under duress, there are cases in which the monetary compensation required from a slave is different than that of higher ranked people who committed the same crime. See, for example, \textit{Æthelbert} 90 (Liebermann, \textit{Gesetze} I 8), which requires a stealing slave to pay only twice the value of the stolen goods, no matter from whom the slave steals, rather than the three-fold to twelve-fold compensation established for anyone who steals from clergymen, the king, or freemen.

\textsuperscript{358} Samson 91.

\textsuperscript{359} \textit{Beowulf}, I. 2312b.


under hrægnlocan [...]  
hwilum eawunga  ṝeofelfæsten  
forðweard brece,  þæt ær frið hæfde.362

[It is widely known that I, one of the bold ones, with a thief’s craft under the head [...] at times I, pressing forward, openly break into a fortress that previously had peace].

As in the Beowulf passage, “peofes cræfte” is used in “Riddle 73” to indicate the furtiveness of the weapon’s movement as it aims to catch its victim off guard. In order to be effective, the weapon must fly with thief-like stealth, which allows it to pierce its target “under hrægnlocan” [under the head] and issue a mortal blow. Furthermore, one could make the case that it is not simply the nature of the weapon’s action in “Riddle 73” that is thief-like, but also the results of its action, as the weapon literally takes the life of an unsuspecting enemy. Although in a more abstract sense than the thieving man in Beowulf, the weapon in this riddle is given a comparable form of agency: seemingly without human participation, it breaches strongholds and interrupts the peace within by seizing that which it seeks.

The word peof appears a second time in the Exeter Book riddles, providing a further context for the concept of the thief’s deplorable activity. In “Riddle 47,” whose solution is generally agreed to be “bookworm,”363 the culprit who “word fræt”364 [consumed the words] is also described as a “peof in þystro”365 [thief in the dark]. This association of thieves and darkness, which is seen again in the Old English maxims discussed below, alludes to the shadow surrounding a thief’s activity that allows him to

362 “Riddle 73,” ll. 22b-24a. The sense of l. 24a is incomplete, as Krapp and Dobbie note: “There is no indication of the loss in the MS. after hrægnlocan, but the sense requires a second half-line here” (371).
365 “Riddle 47,” l. 4a.
avoid public knowledge of his crimes. In “Riddle 47,” the cryptic thief is called a
“moððe” [moth] or “wyrm” [worm] and it feeds on the “wera gied sumes” [song of a certain one of men], which adds a destructive quality to the definition of theft: a bookworm feeds upon the pages, rendering them useless and, in some cases, leaving nothing behind. The equation of theft with waste or misuse is repeated in the conclusion of “Riddle 47”: “Stælgiest ne wæs / wiht þy gleawra, þe he þam wordum swealg” [the thieving stranger was not a whit the wiser, though he swallowed the words]. The use of the compound “stælgiest” suggests that the bookworm’s predilection for eating the pages makes it an unwelcome guest; the insect is out of place as it misuses the book entirely, being not at all enriched by having literally consumed the words on the page. The notion of misuse as a characteristic of theft is also a possible explanation for an enigmatic use of þeof in Ine’s laws, which require a full fine for burning a tree in the forest because “fyr bið þeof” [fire is a thief]. Both a bookworm and a fire are thieves, since in the same way that a bookworm spoils a book for reading, so too does fire damage a tree and squander the lumber that could have been used constructively by men.

The trademark secrecy of a thief’s activity, which is compulsory to a successful theft, is also linked with the shame of concealing one’s destructive activity from others. As was discussed in Chapter 2, “Maxims II” presents a list of people or objects and states

366 “Riddle 47,” I. 1a.
367 “Riddle 47,” I. 3a.
368 “Riddle 47,” I. 3b.
369 “Riddle 47,” II. 5b-6.
370 Ine 43 (Liebmann, Gesetze I 108): “Donne mon beam on wuda forberne, 7 weorðe yppe on þone þe hit dyde, gielde he fulwite: geselle LX scyll, forþamþe fyr bið þeof” [When a man causes a tree in the woods to burn, and it becomes manifest who did it, he shall yield the full fine: he shall pay 60 shillings, because fire is a thief].
371 The reputation of fire as a devouring and destructive force is also seen in the contexts of fire consuming worldly treasures, whether on a funerary pyre or on Judgment Day: see Surber-Meyer 117, who cites such examples as “Christ,” II. 807b-08a and II. 811b-12a; “The Phoenix,” II. 504b-08a; and “The Judgment Day I,” I. 10.
their rightful place in the world, including everything from the bird belonging in the sky
to the boss belonging on the shield. Just as a king’s place is in the hall, where he shall
“beagas dælan”\textsuperscript{372} [distribute rings], the apt place for a thief is also noted:

\begin{center}
\begin{quote}
Peof sceal gangan þystrum wederum. Þyrs sceal on fenne gewunian, 
ana innan lande. Ìdes sceal dyrne crafte
fæmne hire freond gescecean, gif heo nelle on folce geþeon
Pæt hi man beagum gebicge.\textsuperscript{373}
\end{quote}
\end{center}

[A thief shall go about in dark weather. A giant shall dwell in the fen, 
alone within the land. A lady shall, with secret craft, a woman seek her 
lover, if she does not wish to thrive among the people so that someone might procure her with rings.]

In this section, the \textit{peof} is associated with two other individuals who rely on shadows and obscurity—the fen giant and the unfaithful woman. Regarding this section of “Maxims II,” Carolyne Larrington remarks that “the gloomy weather provides good cover for the thief’s illicit activities,”\textsuperscript{374} since it is imperative that his actions and intentions not be known. Larrington also posits that “metaphorically the weather suggests the dark state of the man’s soul and that of the monster, isolated from human society; he must dwell alone as an outcast, as the thief may find he must do when his crimes are uncovered.”\textsuperscript{375} In the sense that the monster “must” be cut off from humans, this passage exhibits the opinion that each individual has a specific and appropriate place—that is, that the thief \textit{belongs} in murky conditions just as the monster \textit{belongs} in the fen. Moreover, this excerpt from “Maxims II” shows that a thief is not only equated with traveling under the cloak of darkness, but he is also associated with the sort of seclusion and exile that is natural to monsters. The thief’s conduct is further linked to the habits of the “ides” [lady] in

\textsuperscript{372} “Maxims II,” l. 29a.
\textsuperscript{373} “Maxims II,” ll. 42-45a.
\textsuperscript{374} Carolyne Larrington, \textit{A Store of Common Sense: Gnomic Theme and Style in Old Icelandic and Old English Wisdom Poetry} (Oxford: Clarendon, 1993) 133.
\textsuperscript{375} Larrington 133.
“Maxims II,” who must use “dyrne cræfte” [secret craft] to be with her lover. If the woman’s activity were found out, humiliation and possible legal repercussions would ensue, making her concealment essential. The woman ultimately foregoes the culture’s standard for conduct: rather than have a man “beagum gebicge” [procure [her] with rings], the woman seeks intimacy outside the bonds of marriage. Likewise, the thief does not acquire goods through trade or gift-giving, and the public exposure of his exploits would foil his goal of seizing another’s property. Thus, the thief is an outcast who is forced—like the “ides” in her illicit affair—to conduct his business in the shame of secrecy.

Furthermore, both the thief’s activity and his location set him in direct opposition to the king, who is naturally in a very public place, as his hall would be filled with the retainers and subjects receiving “beagas” [rings] from him. Unlike the thief, the treasure-giving king operates in the open, without requiring the cloak of obscurity. In fact, the act of giving in the hall is meant to be explicit in its ceremoniousness and, as such, it acknowledges the significance of observation, which, in ideal circumstances, serves to hold the men to the pledges of service that they announce during the exchange. The ceremony embodies the king’s relationship with his retainers, which is public in all aspects—from the treasures openly given in the hall to the retainer’s return of service-as-counter-gift on the battlefield. The thief, on the other hand, does not distribute goods, but rather takes them from their rightful owners. His deed is done both privately and usually alone, as public knowledge would devastate his intentions and possibly result in his

376 The legal repercussions for a woman—either married or maiden—caught lying with a man who is not her husband are seen in Æthelbert 10 (Liebermann, Gesetze I 13), Æthelbert 85 (Liebermann, Gesetze I 85), Alfred 10 (Liebermann, Gesetze I 56), Alfred 18§1-18§3 (Liebermann, Gesetze I 58 and 60), Alfred 42§7 (Liebermann, Gesetze I 76), and II Cnut 53 (Liebermann, Gesetze I 348).
demise; “Maxims II” goes on to state that “wearh hangian, / fægere ongildan þæt he ær facen dyde / manna cynne”377 [a criminal shall hang, fairly atone for that which he previously committed against mankind]. Perhaps the peaf mentioned in “Maxims II” would be included in the more general category of “wearh” [criminal], whose rightful place is none other than the gallows.

There are also instances in Anglo-Saxon poetry in which the failure to return a service or supply a counter-gift is viewed as a subcategory of theft, which introduces a palpable relationship between gift-giving and theft. Since a gift is accepted with a vow to reciprocate, the failure to counter—whether out of cowardice, greed, or some other fault—is literally unforgivable. Evidence for such vow-breaking surfaces in Beowulf following Wiglaf’s harangue, which was discussed in Chapter 2. When Beowulf succumbs to his fatal wounds, the retainers who fled to the woods return and approach the body of Beowulf in humiliation:

Næs ða long to ðon,
þæt ða hildlutan holt ofgefan,
tydre treowlogan tyne ætsomne,
dâ ne dorston ær dareðum lacan
on hyra mandryhtnes miclan þearfe,
æc hy scamiende scyldas bæran,
guðgewædu, þær se gomela læg;378

[It was not long before the cowardly ones left the wood, ten craven traitors together, who, before, dared not fight with spears in their lord’s great need, but they, ashamed, bore their shields, war-trappings, to where their aged king lay;]

Beowulf’s ten retainers, still fully armed, emerge from hiding to see the results of their

377 “Maxims II,” ll. 55b-57a.
378 Beowulf, ll. 2845b-5.
cowardice. The emphasis in this passage on the war-gear, which Beowulf had given to
them as a gift, reiterates the expectation previously voiced by Wiglaf that they were
equipped in order that they would fight when required and thus fulfill their pledge.
However, having abandoned these pledges, the retainers neglected their leader and
mistreated the objects by not using the “guðgewædu” [war-trappings] for the intent with
which Beowulf gave them. Wiglaf does not allow their conduct to go unrewarded and
details the consequences of their ignoble acceptance of the goods:

“þæt, la, mæg secgan se dé wylé sód specan
þæt se mondreyhten se eow ða maðmas geaf,
eoredgeatwe, þe ge þær on standað,
þonne he on ealubence oft gesedalde
healsittendum helm ond byrnan,
þeoden his þegnum, swylce he þrydlicost
ower feor oððe neah findan meahete,
þæt he genunga guðgewædu
wraðe forwarpe, ða hyne wig beget.
[...] Wergendra to lyt
þrong ymbe þeoden, þa hyne sio þrag becwom.
Nu sceal sincþego ond swyrdgifu,
eall edelwyn eowrum cynne,
lufen alicgean; londrihtes mot
þær meæburge monna æghwylc
idel hweorfan, syðdan ædelingas
feorran gefricgean fleam eowerne,
domleasan dæð. Deað bið sella
eorla gehwylcum þonne edwitlif!”\(^{379}\)

[“Indeed, one may say, who wishes to speak truth,
that the lord, who gave to you the precious treasures,
the warlike-equipments, in which you stand there,
when he on the ale-bench often bestowed
to his hall-sitters, helm and mail-coat,
a king to his thegns, the most splendid as he
might find anywhere far or near,
that he completely threw away
the war-trappings, grievously, when war befell him.
[...] Too few defenders
thronged around the king, when hardship befell him.

\(^{379}\) Beowulf, ll. 2864-72; 2882b-91.
Now the treasure-receiving and sword-giving,
all the home-joy for your family
and comfort shall fail; each man must be deprived
of the land-privileges of the kinsmen, after princes
from afar hear of your flight,
your shameful deed. Death is better
for every warrior than a life of disgrace!”]

Wiglaf’s censure of the deserters hinges upon the objects themselves and Wiglaf
heightens his rebuke by noting that Beowulf went to great lengths to secure high-quality
goods for his men in exchange for their battle-ready pledges. For their failure to fulfill
their obligation, Wiglaf accuses them of being men of words rather than deeds. In other
words, though such vows were meant to denote a service to be rendered, *their* vows were
mere utterances, proven to have stood for nothing. Furthermore, the punishment for the
warriors’ lack of reciprocation is exile, as they and their kin are to be dispossessed of the
benefits of the hall, as well as their land-rights—a fate reckoned by Wiglaf to be worse
than death. These men are punished on account of their reluctance to answer Beowulf’s
act of giving, which essentially left them in possession of objects for which they could
not account in deed. That the ten warriors took the battle-gear and weapons, perhaps
without the intention of ever returning the gesture, made them traitors to Beowulf and
abusers of the objects he gave. This abuse substantiates the grounds for their exile: they
failed to uphold the cornerstone of the lord-retainer relationship and therefore must be
stripped of all that ties them to their people.

While the *Beowulf-poet* does not call these traitorous retainers “thieves” outright,
their acceptance of gifts and subsequent dodge of their debt to Beowulf is just cause for
their removal from society, which is a punishment not unlike those outlined by the laws
of Wihtred for theft.\textsuperscript{380} The significance of the association with theft in this episode of Beowulf is that the punishment for taking or accepting an object without giving back suggests that these misdeeds carried a symbolic weight that effectively countered that of giving. While the act of giving builds relationships and secures mutual trust within society, both theft and procuring gifts without giving back to the owner destroys these relationships by breaking the object’s intended circulation, and must be punished by excising the perpetrator from society.

The reason it is imperative to rid society of thieves or anyone who misappropriated goods is because of the extent of the resulting injury to the social structure, both tangibly and intangibly. In “The Battle of Maldon,” certain retainers’ disregard for their lord’s gifts and indifference toward their own promises ultimately causes a rippling effect in the battle against the Danes. After the death of Byrhtnoth, leader of the East Saxons, his retainers had to choose between inevitable slaughter in battle or the shame of outliving their lord. In the case of three men who chose the latter, the decision to flee was a complex gesture of contempt against both Byrhtnoth and the welfare of the men who were equally obliged to fight:

\begin{verbatim}
Hi bugon þa fram beaduwe þe þær beon noldon.
þær weard Oddan bearn ærest on fleame,
Godric fram guþe, and þone godan forlet
þe him mænigne oft mear gesealde;
he gehleop þone eoh þe ahte his hlaford,
on þam gerædum þe riht ne wæs
and his broðru mid him begen ærndon,
Godrine and Godwig, guþe ne gymsdon,
ac wendon fram þam wige and þone wudu sohton,
flugon on þæt fæsten and hyra feore burgon,
and manna ma þonne hit ænig mæð wære,
gyf hi þa geearnunga ealle gemundon
\end{verbatim}

\textsuperscript{380} See Wihtred 26 (Liebermann, Gesetze I 14), which stipulates the king’s right to sell a thief overseas.
Godric’s decision not only to flee from the fight, but also to run off with Byrhtnoth’s own horse indicates that Godric has ignored Byrhtnoth’s expectation that Godric would be loyal and steadfast in battle. Godric’s actions further suggest that he has defaulted on Byrhtnoth’s earlier generosity; the “Maldon”-poet makes it clear that although Byrhtnoth had given Godric many a horse, the thegn decided to take yet another, along with the accouterments of his lord’s mount. While the poet does not label this as “theft,” there is an unambiguous distinction between that which is and is not owned by Godric, as the horse upon which he leaps is described specifically as “þone eoh þe ahte his hlaford” [the war-horse which his lord owned]. The poet also remarks that Godric’s act “riht ne wæs” [was not right], showing that abandoning the fight and leaving with both the goods Byrhtnoth already gave him as well as Byrhtnoth’s horse is blatantly poor conduct for a retainer. Furthermore, Godric’s choice not only makes evident the spuriousness of his


382 Dobbie remarks that “no such personal name as Godrine exists in Anglo-Saxon” and the final “e” may have been a miscopied “c,” as in Godrine (Minor Poems 145 n. 192). Other editions of the poem list the name as Godwine. See John C. Pope, ed., Seven Old English Poems, 2nd ed. (London: W. W. Norton, 1981) 23.
own vows, but it also destroys the resolve of the retainers who retreat upon seeing
Byrhtnoth's horse and its rider deserting the battle, believing it to be Byrhtnoth himself.
Thus, Godric's unwillingness to counter Byrhtnoth's previous acts of giving destabilizes
the ranks of thegns still fighting, while Godric and his brothers keep their lives, their
unearned gifts, and the horse and trappings of their fallen lord. Since the poet frames the
account of these three traitors with the heroic deaths of the steadfast thegns, his
judgment of Godric, Godrine, and Godwig becomes even more overt. Their negligence
towards the vow for which the objects stood is acted out in contrast to the ideal conduct
of those retainers who fulfilled their vows to Byrhtnoth. Although the poet does not note
the fates of the three brothers, it is possible that they were subject to the same punishment
of forfeiture and exile that befell Beowulf's negligent retainers. Even if not rebuked or
killed for their flight from battle, they would have been cursed by their ill reputation and,
thus, forced to live a lordless existence known by such Old English exiles as "The
Wanderer."

The significance of the objects given by the lords in both Beowulf and "The
Battle of Maldon" is rooted in the bond that these goods sealed between lord and retainer,
who accepted the lord's gift with the understanding that he would provide a service at a
later time. Both the retainers' vows in the hall and the wares the lord gives in return are
symbolic of mutual devotion. Since the worth of an object is rooted in its material value
as well as this symbolic power to establish an obligation to the giver, any act that
involves absconding with goods slights both the giver and the gift-giving practice on

383 See "The Battle of Maldon," ll. 198-201, which relates the doubt that one retainer, Offa, voiced to
Byrhtnoth regarding the emptiness of the words spoken in that hall by men who would be proved unworthy
in battle. Furthermore, the "Maldon"-poet goes on to demonstrate the stark difference between the
meaningless pledge of the sons of Odda with that of Offa—the description of Offa's death (ll. 288-94)
emphasizes the fact that Offa kept his promise to Byrhtnoth, his "beahgifan" [ring-giver].
which social relationships are built. In this way, the symbolic weight of obtaining undeserved goods and that of theft are essentially the same: both acts disparage the object’s original owner and thus dissolve the immaterial worth of the object as something that can be owned, given, and used as a symbol of relationships.

While the Anglo-Saxon poetic works include behavioral expectations couched in historical narrative or pithy riddles, the homilies of the Anglo-Saxons directly address issues of behavior in order to exhort the audience to avoid sinful conduct and therefore damnation. In particular, the homilies engage in “the semiotic enterprise of persuading parishioners to commit themselves to God and to devote themselves to good works.”

Like the laws, the homilies express an interest in rooting out “unriht” [wrong] and both law and homily intend “to inculcate Anglo-Saxon minds to accept royal governance and to trust in God’s deliverance.” But “unlike the royal codes of law, many Anglo-Saxon homilies had ample audiences who, throughout the seasons of the liturgical year, received admonitory and hortatory advice on faith, virtue and moral action.”

The interplay between homiletics and law-making in Anglo-Saxon England is of particular interest considering that the tenth and eleventh centuries witnessed the ever-tightening relationship between kingship and the enforcement of the king’s Christian duties, from his coronation ceremony to the promulgation of laws. Michael K. Lawson notes that “kings—even, indeed especially, Christ-like kings—needed instruction in their duties,” and the bishops used the king-making ceremony to establish that “with prudent and God-fearing counsellors [the king] should be the defender of the Church.”

384 Green 2.
385 Green 9.
386 Green 31.
387 Lawson 568.
“witan” [councilors] aimed to bolster this position for the Church and also to act as advisors for the king’s legislation. Eager to promote the development of a society with Christian values, the witan expressed their displeasure for the status quo in both their public sermonizing and their involvement in the king’s legislative duties. The acts of preaching and legal promulgation went hand in hand and occurred as a part of a single process at the councils of law-making kings, with both acts engaging the public on the nature of their earthly deeds and the eternal consequences.\(^{388}\)

The homilies produced during this period bear a message from the pulpit that is similar to that of the laws: theft remains a problem that yet needs to be addressed and its consequences demand particular attention, both in terms of the earthly ramifications of the thief’s deeds and the salvation of his damned soul. In addressing crimes and criminal charges, the homilists must consider the interwoven matters of the eternal consequences for harboring such vices as greed, which could motivate one to break the law and steal another’s property, and the earthly consequences of the deed itself, since a death sentence speeds an unrepentant criminal on his way to judgment and eternal damnation. The issue of robbery, which is the open seizure of goods, is typically viewed together with theft in the homilies, demonstrating that it is not the secretive means of the act that the homilists address, but the resulting violation of ownership that occurs with both crimes. The sermons of both Archbishop Wulfstan of York (d.1023), who “brought to the language of

\(^{388}\) In the reign of Ethelred, these two activities overlap: the deliberations of the witan in 1008, which resulted in V Ethelred, were followed by the witan receiving “the King’s permission to preach on various matters, which those assembled promised to heed [...]. Once this had been done, Wulfstan could quite legitimately publicize his preaching as the decrees of the witan” (Lawson 574). Lawson further notes that the process of preaching and promulgation that was followed in 1008 at Enham was not unfamiliar in the reign of Cnut: “There is no difficulty in believing that I Cnut, like Wulfstan’s Enham work, was preached to King and people before it received the royal assent” (580).
law-making the sermonizing approach that was already his acknowledged specialty," and his contemporary Ælfric of Eynsham (d. ca. 1010) echo the abhorrence for theft seen in the laws, adding a spiritual dimension such that theft was not considered simply a crime against society, but also a sin against God.

Wulfstan, who was involved in the legislation of both King Æthelred and King Cnut, is responsible for the favoring of a mitigated punishment, such as mutilation, instead of capital punishment in the laws. Wulfstan not only dealt with the crime of theft as the pen-hand of these law-making kings, but he also addressed theft from the pulpit. He addresses the problem of robbery as a crime against society—and God—in his homily, De Visione Isaie, which annotates Isaiah’s words concerning the wickedness of Judah and Jerusalem. In Isaiah’s prophecy, he focuses on the social trespasses of the people, among which is the subject of robbery. Robbery is the first of nine transgressions addressed by Wulfstan in this homily, all of which are glosses of synopsized selections from Isaiah. Wulfstan abbreviates the relevant Latin passage, drawn from Isaiah 3:11-12 and 14, then glosses it in Old English under the heading “be reaflacum” [concerning robbery]:

Ve impio in malum, retributio manuum eius fiet ei. Populum meum exactores spoliauerunt. Rapina pauperis in domo uestra. Wa manfullan, he cwæð, for his misdædan: edlean his weorca eal he sceal habban. Min folc is beryped, he cwæð, eac, þurh gytsiende reaferas; 7 wræccena reaflac is on heora hamum, 7 wa þæs gestreones þam ðe his mæst hafað.

[Woe to the wicked one, he said, for his misdeeds: he shall have full retribution for his works. My people are despoiled, he said also, by

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389 Wormald, Making 450.
391 De Visione Isaie, ll. 119-23.
Wulfstan's selective use of Isaiah's prophecy reveals something of the motivation behind this homily: he addresses topics that were specifically relevant to the social well-being of his congregation. In this case, the robbers violate the ownership of the "gestreones" [treasure] of the "wræccena" [poor], demonstrating that this crime is viewed as a characteristic of wickedness: it deprived even paupers of their sustenance. Robbery thus causes imbalance, as the needs and interests of the owners of these goods are superseded by the "gitsung" [greed] of the taker. Like the selections from Isaiah that address sins such as gluttony, deceit, and over-confidence, robbery is singled out as an issue that needed to be addressed from the pulpit. In other words, Wulfstan viewed Isaiah's prophecy through the lens of his own society, where he saw a need for its application in urging the wicked to turn to God and act "rihtlice" [rightly]. His closing remarks reinforce this interpretation, as he reminds the audience that God's words spoken through Isaiah yet apply: "Dus ure Drihten cwæð be us eallum"\textsuperscript{392} [Thus our Lord said concerning us all]. Wulfstan thus establishes that robbery ought not to be perpetrated as it goes against the commands of God, who "unne þæt we magan 7 motan his willan areðian"\textsuperscript{393} [grants that we be able and permitted to carry out His will]. In doing so, Wulfstan reminds his congregation to avoid this sin by expressing both its negative social impact and its spiritual repercussions as a violation of God's will.

Wulfstan further illustrates the nature of theft and robbery by listing these crimes among other transgressions against society in his homilies \textit{De Fide Catholica} and \textit{Sermo}

\begin{footnotes}
  \item[392] De Visione Isaie, I. 232.
  \item[393] De Visione Isaie, I. 233.
\end{footnotes}
ad Populum. In the former, Wulfstan describes the people who, in light of their unrepented sin “sculan to helle faran mid saule 7 mid lichaman 7 mid deoflum wunian on helle witum”\textsuperscript{394} [shall go to hell with soul and with body and with the devils dwell with punishments in hell]. Likewise, in Sermo ad Populum, Wulfstan makes clear that the sinners’ eternal punishment fits their earthly crimes: “Wa ðám þonne þe ær geearnod helle wite”\textsuperscript{395} [Woe to those then, who previously earned the torment of hell]. Both homilies then inventory the inhabitants of hell who must endure the “ece gryre”\textsuperscript{396} [eternal horror], according to their offenses. In De Fide Catholica, Wulfstan states:

\begin{quote}
ðider sculan mannslagan, 7 ðider sculan manswican; ðider sculan æwbrecan 7 ða fulan forlegenan; ðider sculan mansworan 7 morðwyrtan; ðider sculan gitseras, ryperas 7 reaferas 7 woruldstruderas; ðider sculan þeofas 7 ðeodscædan; ðyder sculon wiccan 7 wigleras, 7, hrædest to seccannte, ealle þa manfullan þa ær yfel worhton 7 noldan geswican ne wið God þingian. Wa heom þæs siðes þæt hi men wurdon.\textsuperscript{397}
\end{quote}

[To there shall [go] man-slaughterers and to there shall [go] traitors; to there shall [go] adulterers and the foul fornicators; to there shall [go] perjurers and murderers; to there shall [go] misers, robbers, and plunderers and spoilers; to there shall [go] thieves and public criminals; to there shall [go] wizards and soothsayers, and, in short, all the wicked ones who previously worked evil and would not cease nor reconcile themselves with God. Woe to them of this fate that they became men [i.e., were born].

This passage, which is echoed in Sermo ad Populum with little alteration,\textsuperscript{398} demonstrates the social stigma applied to the inappropriate treatment of objects, as five of the criminal categories Wulfstan lists are linked to such offenses: *gitseras, ryperas, reaferas, woruldstruderas*, and *þeofas* [misers, robbers, plunderers, spoilers, and thieves].

\textsuperscript{394}De Fide Catholica, II. 120-22.
\textsuperscript{395}Sermo ad Populum, I. 84.
\textsuperscript{396}Sermo ad Populum, I. 123; 230, I. 85.
\textsuperscript{397}De Fide Catholica, II. 128-35.
\textsuperscript{398}“Sermo ad Populum” includes this list in a slightly different order, leaving out wigleras and adding *bearnmyrdran* [murderers of children]. See Bethurum 231.
Appearing between murderers and those who meddle in witchcraft, the gravity of these object-based crimes is clear: anyone who steals will find himself in the same hell as one who literally steals another person’s life. Furthermore, the seriousness with which Wulfstan treats theft and robbery in *Sermo ad Populum* is reinforced by the fact that Wulfstan grouped these transgressions together in the royal laws he is thought to have composed. Similar lists are found throughout the legal promulgations of Æthelred and Cnut, showing a distinct point at which Wulfstan’s laws and homilies overlap in both theme and function. While the laws explicate the crimes Wulfstan desires to purge from society—“7 æghwile unriht awurpe man georne of þisum eared þæs man don mæge” [and each wrong shall be eagerly cast out of this land as far as possible]—his homilies describe the punishment that waits for those who commit these crimes and do not repent. Thus, a thief may suffer immediate physical death if caught in the act of thieving only to then endure everlasting spiritual death in hell for his crime. While each one of the hell-bound offenders that Wulfstan lists is eligible for forgiveness, the criminal must earnestly turn from his ways and yield himself to God, thereby avoiding spiritual death. Clearly, Wulfstan’s primary concern is the state of their souls and he thus emphasizes the importance of their repentance before physical death removes the

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399 The laws that reflect such a listing are: V Æthelred 24-25, VI Æthelred 7 [=Edward/Guthrum 11 and II Cnut 4], 28§2; Cnut 1020, 15; II Cnut 4, 6, 7. See Bethurum 309, n. 96-end. Bethurum further states that “no two of the lists cited are exactly identical; the phrases are rearranged with additions and omissions” (309).

400 V Æthelred 23 (Liebertmann, Gesetze I 243).

401 In *De Fide Catholica* Wulfstan reassures the congregation by reminding them that there is still time for repentance, communicating the urgency of their need through a series of imperative verbs: “Ac do nu manna gehwylc swa him mycel ðearf is, geswice yfeles 7 bete his misdæda þa hwile þe he mage 7 mote” (ll. 135-7; Bethurum 163) [But do now, each of men, as for him is a great need: cease from evil and amend his misdeeds while he is able and permitted [to do so]]. Likewise, Wulfstan remarks in “Sermo ad Populum” that all the listed offenders are destined for hell “buta hy geswican 7 deoppor gebetan. For Godes lufan we biddað manna gehwyldene þæt he bepence georne hine sylfhe” (l.96; Bethurum 231) [unless they yield and solemnly make amends. For God’s love we beg each of men that he eagerly reflect for himself].
opportunity for salvation.

The advocacy of repentance before death is a key feature in the discussion of theft found in the homilies of Ælfric of Eynsham, which are roughly contemporaneous with Wulfstan’s writings. Outside of Ælfric’s homilies, his views on capital punishment for crimes such as theft are found in his correspondence with Wulfstan during Wulfstan’s work as an advisor to King Æthelred.\footnote{For a study of Ælfric’s correspondence with Wulfstan, see Malcolm Godden, “The Relations of Wulfstan and Ælfric: A Reassessment,” Wulfstan, Archbishop of York: The Proceedings of the Second Alcuin Conference, ed. Matthew Townend (Turnhout: Brepols, 2004) 353-74.} In making a case for the treatment of consecrated and unconsecrated burials in Anglo-Saxon England, Thompson claims that “Ælfric and Wulfstan had very different attitudes to the death penalty” given their different positions and interests in Church affairs.\footnote{Thompson, Death and Dying 180.} Thompson argues that Ælfric represents canon law while Wulfstan must grapple with the existing framework of the centuries-old legal tradition, citing Ælfric’s concern over priestly involvement in contrast with Wulfstan’s interest in the legal application of punishment to preserve the soul of the condemned.\footnote{Thompson, Death and Dying 180.} However, it is clear from Ælfric’s homilies that his desire to see the repentance of the criminal matches the appeal of Wulfstan in II Cnut, as well as Wulfstan’s homilies, regarding the condition of the criminal’s soul. Their difference of opinion centers on the subject of priestly involvement in capital punishment, for which Thompson cites a letter from Ælfric to Wulfstan:

\begin{quote}
We ne moton beon ymbe mannes deað. Þeah he manslaga beo oþþe morðfremmende oþþe mycel þeofman [...] tæcean þa læwedan men him lif oþþe deað, þæt we ne forleosan þa līban unscaðþbignyse, we, þe furþon ne moton ænne fugel acwellan.\footnote{Quoted in Thompson, Death and Dying 186.}
\end{quote}
commits manslaughter or murder, or is a great thief [...] let the laymen offer him life or death, so that we may not lose our gentle innocence, we who are not permitted to kill even a bird.]

Ælfric’s concern is that the innocence of churchmen is compromised with the taking of life, even if such an action is called for by law. While Ælfric does not appear to have qualms with the death penalty itself for crimes as serious as theft, he cannot justify its enactment at the hands of someone in Church orders—perhaps including Wulfstan. Other letters from Ælfric to Wulfstan deepen his potential criticism of Wulfstan on this issue, and Thompson remarks that such writings may reveal “Ælfric’s harsh verdict on the compromises of Wulfstan, a man deeply involved in the world, who used the Christian understanding of capital punishment in his attempt to moderate the ruthlessness of the lay authorities [...]” While Ælfric and Wulfstan were at odds on the issue of who ought to dole out death sentences, their disagreement does not negate the larger purpose expressed in their homilies as well as the contemporary laws regarding theft: the priority is the deliverance of the thief’s soul, as his act justifies both his physical death and spiritual damnation.

Ælfric’s most extended illustration of the crime of theft and its appropriate punishment is found in Ahitophel and Absalom, a homiletic addendum to Ælfric’s Passion of St. Alban. In this homily, Ælfric illustrates the devil’s craftiness in swaying men toward treachery through the story of King David’s rebellious son, Absalom, and his ill-advising councilor, Ahitophel. In prefacing his larger point of the devil’s deceit

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406 See Thompson, Death and Dying 186: “et tu estimas te posse sine culpa de furibus aut latronibus iudicare? Caue, ne forte dicatur tibi a Christo: Quis te constituit iudicem, forum aut latronum? Nam Christus, mittens discipulos ad praedicandum, dixit eis: Ite, ecce ego mitto uos sicut agnos inter lupos” [and you think yourself capable without fault of judging thieves and robbers? Beware, lest Christ say to you, “Who set you as a judge over thieves and robbers?”] For Christ, sending his disciples to preach, told them “Go, behold, I send you as lambs among wolves”].

407 Thompson, Death and Dying 187.
leading to death, Ælfric provides a lengthy discourse on the punishment of thieves:

> Is nu to witenne þæt man witnað foroft.
> ða arleasa sceadæn and þa swicolan ðeofas,
> ac hi nabbað nan edlean æt þam ælmihtigan gode
> ac swyðor þa ecean witu for heora wælhwrownysse
> forðan þe hi leofodon be reaflace swa swa reðe wulfas
> and þam rihtwisum ætbrudon heora bigleofan foroft.
> Wolde huru se earming hine sylfne bepencan
> and his synna geandettan mid soðre behreowsunge
> huru ðonne he on bendum bið and gebroht to cwale [...].

[It is now to be known that one very often punishes the wicked robbers and the treacherous thieves, and they shall have no reward from the Almighty God, but rather the everlasting torments for their cruelty, because they lived by plundering, like savage wolves and often times snatched away from the righteous their sustenance.]

I wish that at least the poor wretch would reflect for himself and confess his sins with true repentance, at least when he is in the bonds and brought to a violent death [...].

In the opening lines of the homily, Ælfric remarks that theft and robbery are recurrent problems in society and one “witnað foroft” [very often punishes] the perpetrators. Providing a definition of the crime committed, he places the “sceadæn” [robbers] and “ðeofas” [thieves] in a single category, characterized as those who “leofodon be reaflace swa swa reðe wulfas” [lived by plundering, like savage wolves], leading lifestyles hardly suitable for human beings. Once again, they who take objects owned by others are classified as outcasts, people who live outside the expectations of the culture regarding ownership. Thus, robbers and thieves are equated to scavengers that are excised from society for literally feeding off of others’ possessions without acknowledging any debt.


409 See entry for bigleofa, Bosworth-Toller 100. The primary definition of this word is “provision by which life is maintained,” meaning food and nourishment, or the wages through which one acquires such nourishment.
Furthermore, they are accused of having “pam rihtwisum ætbrudon heora bigleofan foroft”\(^410\) [often times snatched away from the righteous their sustenance], meaning that the goods which they steal are not necessarily treasures of great material value but simple sustenance or even foodstuffs. The fact that the thieves and robbers deprive others of food may explain why Ælfric identifies these criminals as “arleasa” [wicked] and “swicolan” [treacherous]; their crimes jeopardize the very survival of the “rihtwisum” [righteous] victims. Although the laws of the Anglo-Saxons do not differentiate between the theft of victuals and the theft of more expendable items, the stealing of “bigleofan” provides a most vivid picture of the “wælþreownysse” [cruelty] of these criminals, even if they—like the thief in Beowulf—are stealing to survive. Their conduct is essentially backwards in this society: instead of fostering relationships through respecting ownership and the system of gift and counter-gift, thieves and robbers disintegrate social bonds by acting in their own self-interest. They take goods without the owner’s consent—or even knowledge—and thus violate those with whom relationships might have been built.

Having established the nature of the crime, Ælfric moves to discussing the punishment of theft. He notes that theft is undeniably punished by men, but it is the lack of God’s “edlean” [reward] in the afterlife that is the real retribution. The punishment for theft on which Ælfric focuses is not corporal, but rather spiritual: thieves will be remunerated for their deeds with “ecean witu” [everlasting torments]. Given the importance of the state of the soul, then, Ælfric expresses his desire that the criminal contemplate his deeds and seek contrition before he dies and it is too late to repent. The emphasis is that the thief ought to “hine sylfne beþencan and his synna geandettan mid

\(^{410}\) Ahitophel and Absalom, l. 160.
soðre behreowsunge\textsuperscript{411} [reflect for himself and confess his sins with true repentance], meaning that one cannot simply be remorseful for having been caught in his sins, but must recognize and repent for the sins themselves. Such repentance is ideally done by the time the thief is “on bendum bið and gebroht to cwale”\textsuperscript{412} [in the bonds and brought to death], so that although physical death may be the price for theft, the thief may avoid eternal punishment. Using the same verb as Wulfstan in Sermo ad Populum, Ælfric states in Ahitophel and Absalom that one must consider or reflect upon [“beþencan”] himself, stressing the importance of the self-willed decision to repent before inevitable execution. In other words, personal deliberation is central to a confession that earnestly incites God’s forgiveness. Ælfric illustrates such an eleventh-hour conversion in the story of the thief on the cross next to Christ, reinforcing the importance of a sinner’s repentance especially in the moments before his death. He remarks that “ge-earnode se arleasa sceāda on his deādes prowunge þæt ece lif mid criste”\textsuperscript{413} [the wicked robber, in the suffering of his death, earned that eternal life with Christ], demonstrating that the alternative to “ecean witu” [everlasting torments] for the crime of theft is earned only through repentance.

The importance of giving the thief this opportunity for “soðre behreowsunge” [true repentance] is inherent in Ælfric’s remarks in Ahitophel and Absalom, though he does not suggest here that earthly—corporal—punishment should be avoided. Rather, Ælfric states,

\begin{quote}
Se sceāda bið nu ofslagen and to sceāme getucod and his earme sawl syðdan syððan to helle to þam ecum suslum on sweartum racenteagum.
\end{quote}

\begin{flushright}
\textsuperscript{411} Ahitophel and Absalom, ll. 160-61.
\textsuperscript{412} Ahitophel and Absalom, l. 163.
\textsuperscript{413} Ahitophel and Absalom, ll. 169-70.
\end{flushright}
We wenað swaðeah þæt se eall wealdenda hælend
wille ge-miltsian þam manfullan sceanðan
gif he mid eallre heortan and incundre geomungerunge
clypað to ðam ælmihtigan gode and his arfaestnysse bit
ærðan þe þæt scearpe swurd swege to his hneccan.414

[The robber will now be slain and shamefully punished,
and his wretched soul afterwards will travel to hell
to the everlasting miseries, in dark chains.
We believe, however, that the Ruling Savior
will pity the wicked robber,
if he, with all his heart and internal moaning,
cries out to the Almighty God and entreats His mercy
before the sharp sword sways to his neck.]

Thus, in the present world, Ælfric anticipates that anyone who steals will be punished,
and the punitive measures to which he refers appear only in the form of capital
punishment. Without contrition for their deeds, thieves and robbers are condemned to die
by decapitation, though hanging was a more common means of execution.415 Without
repentance, the soul of the thief, which Ælfric describes as “earme” [wretched] on
account of the deeds he committed, is destined to a miserable, fettered eternity in hell.
However, once again, Ælfric remarks hopefully that the criminal shall be granted mercy
if he acknowledges his sins and cries out to God, even in the final moments of his life.

Another extended discourse on theft and capital punishment occurs in Ælfric’s
Passion of St. Edmund, which is an Old English translation and redaction of the Latin
version by Abbo of Fleury (d. 1004). In both accounts, a group of eight thieves comes to
the tomb of Edmund in the hopes of pilfering some of the treasures left for the martyred
king. In Ælfric’s version, each of the “unge-sælige þeofas” [unblessed thieves] toils all
night long with various tools to break into the tomb and, having failed entirely, all are
caught in the act at sunrise. It is in the reaction to this act of manifest theft that Ælfric,

414 Ahitophel and Absalom, ll. 178-85.
415 Whitelock, Beginnings 144.
following Abbo, provides a revision of the punitive measures to avoid capital punishment:

Hi wurdon þa ge-brohte to þam bisceope ealle
and he het hi hon on heagum gealgum ealle.
Ac he næs na gemndig hu se mild-heorta god
clypode þruh his witegan þas word þe her standað.
Eos qui ducentur ad mortem eruere ne cesses.
Þa þe man læt to deaðe alys hi ut symble
and eac þa halgan canones gehadodum forbeodað
ge bisceopum ge preostum to beonne embe þeofas
for-þan-þe hit ne gebyrap þam þe beoð gecorene
gode to þegnigenne þæt hi geþwærlæcæ can sceolon
on æniges mannes deaðe gif hi beoð drihtenes þenas.416

[Then they were all brought to the bishop,
and he commanded them all to hang on a gallows high;
but he was not mindful how merciful God
implored through His prophet the words which here stand;
Eos qui ducentur ad mortem eruere ne cesses:
Always release those who man assigns to death.
And also the holy canons forbid clerics,
both bishops and priests, to have anything to do with thieves,
because it is not fitting for those that are chosen
to serve God, that they should consent
to the death of any man, if they be the Lord’s servants.]

This portion of the homily offers a two-fold explanation of Ælfric’s view of theft. He uses this passage overtly to express the improper inclination of churchmen toward capital punishment, and also more subtly to express what it means to be a thief. On the latter point, the bishop wished the eight men to be hanged, although they were unsuccessful in their efforts to break into and despoil Edmund’s grave. This element is crucial to understanding the view of the crime, as these men are being judged on their motivation in the act, rather than their successful completion of the crime. Although the theft was only attempted, they are yet called “þeofas” [thieves], the same word that would have been

used had they broken into Edmund’s grave. In this way, the passage echoes the laws of the Anglo-Saxons that permit thieves to be killed if caught in the act.

Ælfric’s more overt point stems from his disapproval of the bishop’s demand for capital punishment. Ælfric censures this judgment because it is improper for “drihtenes þenas” [the Lord’s servants] to “geþwærlæcan [...] on æniges mannes deaðe” [consent to the death of any man]. It appears that the punishment of death for the crime of theft is not the issue so much as the means by which it is ordered: the approval of the execution of anyone by a man of the cloth is not becoming of his office in the Church. Thus, Ælfric does not condemn capital punishment itself, but the participation of God’s elect in its implementation. To illustrate this point, Ælfric relates the consequences suffered by the bishop after the hanging:

Eft þa ðæodred bisceop sceawode his bec syðdan
behreowsode mid geomerunge þæt he swa reðne dom sette
þam ungesæligum þeofum and hit besargode æfre
oð his lifes ende and þa leode bæd georne
þæt hi him mid fæstan fullice þry daðas
biddende þone ælmihtigan þæt he him arian scolde. 417

[Afterwards, Theodred the bishop searched his books, rued with moaning that he had ordained so cruel a judgment to these unhappy thieves, and ever was sorry for it until his life’s end; and then earnestly asked the people that they fast fully with him for three days, asking the Almighty that He would be merciful to him.]

This passage makes it clear that Bishop Theodred’s execution order for the thieves was carried out, as he apparently did not consult his “bec” [books] until it was too late. While precisely which books Theodred consulted is unclear, they must have held enough authority to move him to a state of compunction that gripped him for the rest of his life.

Ælfric uses Theodred’s fraught reaction to his own “reðne dom” [cruel judgment] to

demonstrate the error of the involvement of churchmen in ordering a man’s death. It is Theodred’s “dom” [judgment] over the thieves that causes his remorse, as a man in his position ought to be tending to the men’s souls and looking after their salvation, rather than passing a judgment that contributes to their death. Thus, Ælfric appears to accept capital punishment as a fitting form of retribution for theft, but he declares that this ought not to be a task of the Church, whose chief concern is God’s—not man’s—dom of the human soul. It is on this point that one finds concord among Ælfric’s homilies and Wulfstan’s legal and homiletic writings: the act of theft requires severe earthly punishment and the churchman’s duty is to ensure that the thief has an opportunity for repentance so as to avoid eternal punishment.

The various treatments of theft seen in the non-legal Anglo-Saxon texts surveyed above ultimately inform our understanding of the crime itself and illuminate the laws that the Anglo-Saxons established to protect the values of the culture. On one level, the thief is condemned for his furtive means of operation as he encounters the rest of society in the most discrete manner possible: he enters into the private domain of other people, but is uninvited and his presence is often unknown. Even after acquiring the desired goods clandestinely, the thief must live in secrecy, as any public use or display of the stolen goods would doubtlessly result in his accusation and criminal trial. Such secrecy ultimately connotes shame, leading to theft’s association with the private practices of sorcery, witchcraft, and treachery against one’s lord. Simply, deeds that cannot be done publicly must be coupled with twisted motives and deceit, and those who aim at such concealment are acting with “peofes cræfte.” An act of theft, however, involves more than simply sneaking about: theft is punished because it dismantles ownership, on which
both simple survival and social relationships depend. Whereas someone who gives away an owned object as a gift is then given a counter-gift, thieves simply consume, like the bookworm in "Riddle 47" or the fire in the woods in Ine 43. By taking goods without the owner's consent or even knowledge, thieves eschew any obligation to restore to the owner his due, leaving in their wake a society riddled with dispossession. In essence, theft rends the very fabric of a society built on ownership and its potential to establish relationships through gift-giving.
CHAPTER V

CONCLUSION

In Anglo-Saxon England, theft is a crime that affected every level of society, potentially devastating anyone from a freeman to the king himself. Seeking to suppress theft, the laws of the Anglo-Saxons severely punish the *peof* [thief] with capital and corporal punishment, even extending his sentence to any associates or kinsmen who attempt to harbor, rescue, release, or avenge him. The literature of the Anglo-Saxons further shows the ostracism of the thief from society on account of his crime, adding to his character the qualities of secrecy, treachery, and sinfulness. For being the most widely discussed legal trespass in Anglo-Saxon England, however, the thief's crime is virtually undefined in Anglo-Saxon texts and any cultural basis for the harsh punishment that befalls him has gone largely unexplored. This study has endeavored to analyze theft through its impact on Anglo-Saxon society and the values that theft essentially undermines. The centrality of ownership and gift-giving in Anglo-Saxon culture predicated the establishment of laws to protect the rightful possession of goods; ideally, the laws provide this protection by ruthlessly punishing anyone who dares to jeopardize ownership in any capacity.

In order to understand the punishment assigned to theft in the laws, we must evaluate what an act of theft, in a most basic sense, is. Schwyter classifies theft as a crime against property with the sense-component of "illegal taking," which means that a thief is someone who deliberately removes property from the rightful owner, who involuntarily—and often unknowingly—parts with his or her property. Whether the

\[418\] Schwyter 42.
stolen goods are a herd of cattle, weapons, or human beings, the thief’s violation is that he removes this property from the owner’s possession without the owner’s consent.

It is not until we consider the importance of ownership in Anglo-Saxon culture that the problem of theft becomes evident. As was discussed in Chapter 2, material possession is compulsory to survival, as one must own items such as tools, livestock, and clothing in order to physically subsist. Ownership of goods also gives one the option of giving away possessions as gifts, an act of social communication that establishes and maintains the vital social and political network with one’s peers and superiors.\textsuperscript{419} The poetry of the Anglo-Saxons makes it clear that the giving of gifts conveys the status of both the giver and the receiver, symbolizing their mutual esteem and friendship. Objects are also vehicles through which status is communicated after death, as grave goods may indicate the social rank or occupation of the deceased while also reflecting the veneration of his or her relatives. Given the ample evidence for the importance of wealth and its circulation amongst the Anglo-Saxons, ownership was clearly a fundamental part of the Anglo-Saxon worldview: the loss of wealth would hamper the ability to feed one’s family, to carry on with daily life, and to solidify the relationships that bind together Anglo-Saxon society.

With the intention of protecting ownership, then, the laws of the Anglo-Saxons set out the harshest punishments for the thief, making theft one of the few capital crimes in Anglo-Saxon England. The diachronic and synchronic analysis of theft in Chapter 3 revealed that theft was both a very serious crime and one that was a constant concern for Anglo-Saxons everywhere. Theft’s negative effect on both the owner of the stolen goods and the society as a whole is visible in the legal response to the crime: at no point in the

\textsuperscript{419} Gurevich, “A Gift Awaits” 333.
Anglo-Saxon laws may a *peof* simply return the stolen property without penalty. In the earliest written laws, Æthelbert establishes a fine that provides the owner with an amount several times the worth of the stolen object, and from the early eighth-century laws of Wihtred through those of Cnut in the eleventh century, the thief is liable to pay for his deed with his life. He can be slain by anyone who catches him with the stolen goods in hand, or, if he escapes and is later accused of theft, he may be executed by the authorities following proof of his guilt at the ordeal. Unlike the circumstances of losing a kinsman to killing or murder, when a thief is killed for his crime, the hands of his kinsmen are essentially tied, as they can neither declare a vendetta against the thief’s killer nor can they collect his wergild. Having forfeited the value of his life for his crime, the thief is entirely stripped of his worth as a human being.

The literature of the Anglo-Saxons, as was discussed in Chapter 4, contributes to our understanding of theft, making it especially clear that the *peof* is someone who attempts such “illegal taking” in secret, aiming to abscond with the desired property without public knowledge. His secrecy carries with it connotations of immorality, as his underhanded deeds endanger his very soul. Furthermore, the literature addresses the broader concern of taking goods without permission or compensation, as seen in scenarios of thegns abusing a lord’s generosity or neglecting to supply a counter-gift or service. Clearly, there is a stigma on anyone who seeks to gain wealth outside the established channels of sale, trade, inheritance, or gift-giving.

The concern for theft demonstrated in the laws, proverbs, heroic poems, and homilies of the Anglo-Saxons did not simply emerge from the crime’s pervasiveness in
their society, but from the way in which theft devastated the security of the people. As Ireland remarks,

Theft is an offense both against an individual and against the trust upon which community depends. It challenges both private right and public order, an offense—as it comes to be formulated—against both the owner and the king. The individual victim, though he may indeed want revenge, may have as his primary purpose the recovery of his goods or their equivalent in his pursuit of the thief. On the other hand a royal policy of maintenance of social control may insist on punishment. We have seen that in England execution was at first a right and then a duty of those who took thieves in the act.\(^{420}\)

The simple recovery of one's stolen property does not satisfy the law, through which the king attempts to sustain the order and protection of his people. Instead, the law consistently calls for the severe punishment of the thief, since he jeopardizes both the physical survival and the social vitality of the owner by stealing goods that the owner rightfully possessed. The treatment of thieves ultimately indicates that ownership and the proper transfer of wealth are high priorities in Anglo-Saxon culture, thus justifying the harsh punishment that befalls anyone who undermines these values.

The centrality of material culture and the correspondingly severe punishment of thieves are concepts not exclusive to Anglo-Saxon culture. The basic principles of this study may be applied to other medieval Germanic cultures in which the high value of ownership and gift-giving compels the severe treatment of thieves. The Anglo-Saxon laws, as Katherine Fischer Drew remarks, “more closely approach pure Germanic custom than any other early Germanic legislation”\(^{421}\) and the laws of other Germanic peoples,

\(^{420}\) Ireland 322.
\(^{421}\) Drew, Salian Franks (Introduction) 25. Her reasoning is that the Anglo-Saxon kings ruled an island that “had been to a degree cut off from its Roman contacts for some time […] and had always been out on the fringes of Roman territory. As a result, Roman survivals were weaker here than in any of the other Germanic kingdoms” (25). In essence, the law-making Anglo-Saxon kings had no Roman personnel to whom they must cater and thus issued laws for their Germanic population in the Germanic vernacular.
such as the Icelanders, Franks, Burgundians, and Lombards, would be fertile ground for a comparative study on the legal treatment of theft. The laws of medieval Scandinavia, although codified later than those of the Anglo-Saxons, are arguably the closest to Anglo-Saxon legislation regarding the capital punishment of thieves.\footnote{The similarity between the laws of the Anglo-Saxons and those of the Scandinavians likely stems from both cultures' limited contact with Roman custom, as compared with Germanic peoples on the Continent. According to Kari Ellen Gade, “Hanging in Northern Law and Literature,” \textit{Maal og mine} 3-4 (1985): 159-83, the connection between thieves and the specific execution of hanging “does not appear to have existed in Roman law, and this indicates that we have to do with a Germanic tradition, not one introduced at a later stage as the result of influence from Justinian or earlier Roman law” (164).} The death penalty does not explicitly appear in the Old Icelandic Grágás,\footnote{Gade remarks that “the Grágás mentions only outlawry and fines as penalty for theft” (162).} but the late-thirteenth century Járnspöa and Jónsbok both include provisions for the capital punishment of thieves.\footnote{Gade (161 and 179 n. 21) cites Ch. 2 from Járnspöa, which is based on the Norwegian Older Frostabingslög (“Treatment of Theft,” Section XIV, Ch. 12) and Older Gulabingslög (“Treatment of Theft,” Ch. 253; Ch. 259 of the Gulabingslög states specifically that a slave who steals is to be decapitated. See Gade 179 n. 22). Gade notes that “the Járnspöa was replaced in 1281 by Jónsbok,” which was based on the Norwegian Landslög (161). Both Jónsbok (“Treatment of Theft,” Chapters 1 and 2) and Landslög (“Treatment of Theft,” Chapters 1 and 2) call for the execution of thieves. This practice is also echoed in the Swedish and Danish provincial laws, which Gade cites throughout.} Kari Ellen Gade, who explores the practice of hanging criminals such as thieves in Northern Europe, remarks that “there is legal evidence that an early connection between gross theft and hanging existed on Germanic territory,” as the hanging of thieves appears to have been a Germanic tradition.\footnote{Gade 164.} Gade goes on to comment on the immediate slaying of the hand-having thief, as we have seen throughout the Anglo-Saxon laws: “the penal procedure that ensued when the thief was caught with the stolen property in his possession appears to have been very stable and of ancient Germanic origin. The thief was bound and hanged and his relatives had no right to compensation or to instigate feud against the executioner.”\footnote{Gade 165.} The denial of retaliation on the part of the thief’s kinsmen is
found throughout Scandinavian laws.\textsuperscript{427} In essence, the killing of a thief was legal so long as the executioner announced his deed, which was conveniently part of the penal action if the thief's hanged body remained on display.\textsuperscript{428} The Icelandic sagas, which Gade also explores in her study, lend further evidence to the practice of executing thieves and, in particular, the relationship between theft and the dishonorable punishment of hanging.\textsuperscript{429}

Owing simply to geography, the Continental Germanic peoples had more contact with the Roman population and law than the Scandinavians or the Anglo-Saxons. Perhaps because of this non-Germanic legislative influence, the laws of the Franks, Burgundians, and Lombards embrace a less lethal punishment for thieves, usually requiring monetary compensation for the act of stealing, the amount of which is based on the goods or livestock stolen. Inability to pay the required sum, however, would result in a far harsher course of action. Regarding the laws of the Salian Franks, Drew remarks that "it is difficult to know how many Frankish families could pay such sums, but it must have often been the case that the money penalties could not be paid. The Frankish laws are clear on this point—a man's property and his person were the final security for payment."\textsuperscript{430} If a freeman is proven a thief and is unable to pay the compensation for his crime—including a fine for the time its use was lost to the owner—he must "pay with his

\textsuperscript{427} Gade 181 n. 54.
\textsuperscript{428} Gade 166. Gade remarks that "hanging must have been an intended outrage and a symbol of ultimate degradation. Not only did the criminal forfeit his life by his action, but his post mortem honor and the honor of his descendants were effectively destroyed as he hung on the gallows or in a tree exposed to public scorn" (167).
\textsuperscript{429} See Gade 171; 182 n. 82-84; 183 n. 87.
\textsuperscript{430} Drew, Salian Franks (Introduction) 50.
life." The forfeiture of one’s life, which Drew notes as being sold into slavery, demonstrates the seriousness of the crime of theft in Frankish society.

The laws of the Burgundians, who in the fifth century settled in the “thoroughly Romanized” Rhône Valley, are more brutal to thieves of livestock: the Liber Constitutionum sive Lex Gundobada states that any Burgundian or Roman who steals a horse, mare, ox, or cow ought to be killed without question. The Burgundian laws also include a proclamation justifying the escalation of the punishment for thieves to the death penalty, stating that “[...] so far neither by corporal punishments nor by losses of property has it been possible to bring an end to the cruel acts of robbers.” Thus, the laws were emended to state that if “any freeman, barbarian as well as Roman, or a person of any nation dwelling within the provinces of our kingdom takes horses or oxen in theft,” he shall be killed. Furthermore, the wife of such a thief, if she knew of the crime and did not report it, must give herself up as a slave to the victim of the theft “because it cannot be doubted, and is often discovered, that such women are sharers in the crimes of their husbands.” Thus, as in the Anglo-Saxon laws, the Burgundian laws extend the punishment for theft to anyone who knowingly conceals or releases a thief.

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431 See, for example, Pactus Legis Salicae Ch. XI, regarding freemen who commit theft or housebreaking (Drew, Salian Franks 76-77).
432 Drew, Salian Franks (Introduction) 50. The phrase “to pay with his life,” however, could imply that the thief is to be killed if he cannot pay for his crime.
433 Drew, Salian Franks (Introduction) 24.
434 Burgundian Code, Lex Gundobada Ch. IV in Katherine Fischer Drew, trans., The Burgundian Code, 3rd ed. (Philadelphia: U of Pennsylvania P, 1988) 24. The theft of other goods in the Burgundian laws, however, is often compensated by a fine or, if the thief is a slave, corporal punishment. See, for example, Burgundian Code, Lex Gundobada Ch. LXIII (Drew, Burgundian 67), which calls for native freemen to compensate for the theft of grain in sheaves three-fold, and if a slave does the same his master shall pay the fine and he shall receive three-hundred blows.
435 Burgundian Code, Lex Gundobada Ch. XLVII (Drew, Burgundian 54).
436 Burgundian Code, Lex Gundobada Ch. XLVII (Drew, Burgundian 54).
437 Burgundian Code, Lex Gundobada Ch. XLVII (Drew, Burgundian 54). For children, the law goes on to state that to be held accountable for theft, a child must have “passed the fourteenth year of age” and he, like his mother, shall “be placed in perpetual subjection under the dominion (dominium) of that man against
Finally, the Lombards, who invaded the Italian peninsula in 568, appear to have treated theft in a manner similar to the Salian Franks: if a freeman steals and is caught in the act (*fengangi*), he must provide monetary compensation for his crime or else “lose his life.”

Drew notes that in the period before written Lombard law, anyone who caught a thief *fengangi*, or hand-having, could kill him, but in the period of written law, the thief was allowed to buy back his life. Under King Liutprand, a thief had to “pay composition for his theft” and was then imprisoned for two to three years. If unable to pay this composition, however, then “the judge ought to hand him over to the man who suffered the theft, and that one may do with him as he pleases,” thus leaving the thief’s execution subject to the discretion of the thief’s victim. In all cases, the return of stolen property is never enough for a thief to clear himself of his crime, and the thief—as well as his accomplices—must supply monetary compensation or else face potential servitude or death.

whom the theft is proved to have been committed.” Underage children who are considered innocent, however, “may claim the allotment of property (sors) and personal possessions (facultas) of their parents” (Drew, Burgundian 54).


Lombard Laws, Rothair’s Edict Ch. 253 (Drew, Lombard 103).

Drew remarks that the “meaning of the Lombard expression *fegangit* or *fegangi* is not clear. Carlo Carlisse, *A History of Italian Law*, favors the interpretation that it corresponded to the Roman *furtum manifestum* [manifest theft] as opposed to *furtum nec manifestum* [non-manifest theft] [...]. [In the period before written law] and before police power was claimed and asserted by the state, a man might kill him whom he surprised in the act of theft. By the period of the *Leges*, however, this practice had been modified to allow the thief to purchase his life (eighty solidi in the case of a freeman and forty solidi in the case of a slave) in addition to making a ninefold payment of the thing stolen” (Lombard 249 n. 68).

Lombard Laws, Laws of King Liutprand Ch. 79.X (Drew, Lombard 178).

Lombard Laws, Laws of King Liutprand Ch. 79.X (Drew, Lombard 178). This law goes on to state that if the thief commits the crime again, he shall be shaved, beaten, and branded on the face. A third offense will result in his being sold outside the province.

As we have seen in the laws of the Anglo-Saxons and the Burgundians, an accessory to theft is subject to punishment, perhaps even receiving the same sentence as the thief himself. For various examples of those liable for punishment, see Lombard Laws, Rothair’s Edict Ch. 259 (Drew, Lombard 104): concerning freemen who order their son or slave to steal; Lombard Laws, Rothair’s Edict Chapters 265-66 (Drew, Lombard 105): concerning ferrymen who transport thieves; Lombard Laws, Laws of King Aistulf Ch. 9 (Drew, Lombard 230): concerning anyone who neglects to investigate or pursue a thief.
Although the death penalty appears to be a last resort for punishing thieves in the Continental Germanic laws, the kings issuing them clearly sought to protect their people from property violation by requiring the thief to pay large and perhaps insurmountable sums of money. If, as Drew remarks, these steep penalties often could not be paid, then Continental thieves would have been treated similarly to those in Anglo-Saxon England in the late seventh century: “Gif man frigne man æt hæbbendre handa gefo, ðanne wealdæ se cyning ðreora anes: oððe hine man cwelle ðære over sae selle ðære hine his wergelde aleæ” [If someone captures a freeman having [the stolen goods] in hand, then the king shall determine one of three courses: either someone should kill him, or sell [him] overseas, or release him for his wergild]. Whether he is killed or spared, the thief’s violation places him beyond the protection of his home and kin, and unless he can adequately compensate for his crime, the thief must relinquish his life to bondage or to the grave.

Laws essentially serve as an index to a culture’s values, revealing those values that are so deeply rooted that anyone who violates them must face the most severe consequences. By analyzing legal texts alongside contemporary literary sources, one can piece together a more comprehensive perspective on these deeply-rooted values as well as the impact of certain crimes on the society that produced these texts. As Gade remarks, “the Germanic penal system cannot be reconstructed, but a critical study of the interplay between historical documents and laws on the one hand and literature on the other, provides information about both the earlier penal practices and the conditions of

444 Drew, Salian Franks (Introduction) 50.
445 Wihtred 26 (Liebermann, Gesetze I 14).
the later medieval society when law and literature were written down. In Anglo-Saxon England, where the importance of owning and transferring wealth are ingrained in social communication at every turn, the sentence established for anyone guilty of stealing is unvaryingly brutal. The relationship between the crime of theft and its punishment in the laws is thus implicit: given the nature of theft's violation of an owner's possession of property, it was consistently viewed as one of the most destructive crimes in Anglo-Saxon society. In turn, the laws sought to curb the devastation of theft by rooting out and eliminating thieves, valuing the protection of ownership over the continued existence of anyone who would undermine it. The laws on theft thus offer us further evidence for the significance of material culture and its many layers—from gift-giving to grave-goods—in Anglo-Saxon England.

\[446\] Gade 176.
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