

Note

WULFSTAN II'S COMPLAINTS OF 'UNLAGU IN THE NORTH'

One of the most prolific late Old English writers, Archbishop Wulfstan II of York 'Lupus' (d. 1023), is particularly known for drafting law-codes for King Æthelred II as well as his Danish successor, Cnut the Great. Touching on seemingly all aspects of life, the extensive legislative works attributed to Wulfstan form a major lens through which much of our understanding of early English law is viewed. This note will focus on one quite obscure legislative clause and seek to get us closer to its meaning and what it reveals about regional legal diversity within pre-Conquest England. In one manuscript version [D] of a Wulfstanian law-code for Æthelred which records pronouncements from a c. 1008 council, an idiosyncratic clause declares that:

And be norðan stod seo unlagu þæt man moste
banweorc on unsacne secgan, and þæt scolde
standan gif hit wurde swa gecyðed yðæges sona.

'And in the north there has been the unlawful practice that one can level an accusation of murder ['bone-work'] against an innocent person and it shall be permitted to stand if it was made immediately on the same day.'¹

The vague and strange reference to 'unlagu in the north' has been noticed by legal historians but merited little comment.² In the context of Wulfstan's legal writing, *be norðan* seems most likely to be metonymy for Northumbria, in the same manner as his uses of *Norðleoda laga* 'law of the Northern People' and *Norðengla lage*

'Northern English law'.³ This is broadly consistent with contemporary references to the Kingdom of Northumbria and this region generally across the 10th century, such *Saxan Tuaiscirt* ('Northern English') in Irish sources.⁴ With much of Northumbria having been conquered by viking armies in the late ninth century and becoming a zone eventually identified as under the 'law of the Danes' (*Dena lagu*), it is also possible that 'the north' refers to the Scandinavian-settled regions more generally. This would be akin to the likely meaning of Edward the Elder's legislation mentioning arrangements for fugitives 'in the east and north' being decided by peace-treaties.⁵ The 'Danelaw' remained a unique region of special legal jurisdiction after its conquest and incorporation into the English kingdom by the mid-10th century, with its ongoing legal distinctiveness and even autonomy suggested through royal acknowledgment of the Danes' continued 'good laws' within Edgar's 960's 'Wihtbordesstan Code', aspects of which are then codified in Æthelred's 997 'Wantage Code'.⁶ Wulfstan himself seems highly interested in Danelaw legal particularities and privileges (which may have occasionally benefited his York Archbishopric) and his texts often point to differences 'under Dane law' such as the unique *lah-slit* ('law-breach') fine, while he also produces the forgery 'Laws of Edward and Guthrum' which adds artificial age and reverence to this legal binary.⁷

Given this context, it seems quite likely that the *unlagu* Wulfstan refers to is a divergent Anglo-Scandinavian practice occurring in the Danelaw, which he views as unjust and incongruent with the standards espoused in English legislation. Revolving around those swiftly accused of a killing being unfairly convicted, this likely relates to bypassing the

³ *Norðleod*; Grið 13, 13:2; trans. A. Rabin, *The Political Writings of Archbishop Wulfstan of York* (Manchester, 2016), 70 (n. 15), 78.

⁴ N. McGuigan, 'Neither Scotland nor England: Middle Britain, c.850–1150' (St Andrews, 2015), 32.

⁵ II Ew 5:2.

⁶ E.g. IV Eg 2:1, 12, 13:1; III Atr 1:1, 3; see J. A. Stattel, 'Legal Culture in the Danelaw: A Study of III Æthelred', *Anglo-Saxon England*, xlviii (2022).

⁷ E.g. EGu 6-7; Northu 51-4; V Atr 31; VI Atr 37; II Cn 15-15:3. See K. Cross, *Heirs of the Vikings: History and Identity in Normandy and England, c.950–c.1015* (Martlesham, 2018), 195–7; N. P. Schwartz, 'Wulfstan the Forger: the "Laws of Edward and Guthrum"', *Anglo-Saxon England*, xlvii (2018).

¹ V Atr 32:4, ed. and trans. A. Rabin, *Old English Legal Writings: Wulfstan* (Cambridge, MA, 2020), 156-7. The abbreviation and organization of the laws follows the standard form established in F. Liebermann, *Die Gesetze Der Angelsachsen*, 3 vols. (Halle, 1903–16) and found on the [Early English Laws](#) website.

² E.g. P. Wormald, *The Making of English Law I: King Alfred to the Twelfth Century* (Oxford, 1999), 333; J. Hudson, *The Oxford History of the Laws of England, Volume II: 871-1216* (Oxford, 2012), 249.

robust legal protections afforded to defendants in Anglo-Saxon law, namely the wide-ranging ability of all free men in good standing to clear a charge with an exculpatory oath, a 'core feature of personal liberty'.⁸ In his writings, Wulfstan particularly emphasizes this as an inalienable legal right for even the humblest freeman, being a central *folc-riht* signifying free status, while his selective legislative borrowing elsewhere even suggests resistance to Danelaw concepts which made exculpation conditional upon payments.⁹ As such, it seems relatively secure that the *unlagu* here is strict prosecution which circumvents expected defensive rights, while 'on the same day' offers a clue into what this actually entailed.

The near-contemporary Wantage Code seems to record some specific legal practices from the Danelaw, where a similarly opaque clause stands out with no clear English comparisons. In a case of open robbery, the victim can make the accusation in three villages, which leaves the wrongdoer *fríð-leas* 'without-peace', likely a form of outlawry status.¹⁰ This seems to show a unique prosecutorial dynamic in the Danelaw where some degree of punitive measures can be levied without any formal court decision. More strikingly, this closely resembles the practice of 'publishing' seen widely in later legislation and sagas from across the Norse lands. The earliest Norwegian and Icelandic law-codes require a crime to be announced and the accusation lodged 'in the proper way' as soon as possible 'at the nearest house'.¹¹ The immediacy of an accusation is repeatedly emphasized as a crucial factor for its perceived veracity. A charge cannot be made, or is thrown out, if particular time limits are missed, such as within days or even hours of returning from an isolated area.¹² The earliest laws of Sweden declare that a 'case is wasted' if the accusation is not made at the first assembly following

the crime, which is echoed in Denmark.¹³ In a dramatic example, both Norwegian and Danish codes state that a woman who has been raped must make her accusation 'as soon as she gets away from her rapist' in order for it to stand.¹⁴ Particularly in Norway, there seem to have been general requirements for same-day accusations: for a wounding victim to receive compensation, 'they have to name the offender on the same day'.¹⁵ For a killing, accusations must be made 'on the same day that the other lost his life' with messages being sent out and an assembly held 'in the place where the killing was committed' soon after, very closely resembling the *unlagu* which Wulfstan decries.¹⁶ This added spatial aspect may also have a connection to Scandinavian-settled England, with an anecdote from the *Ramsey Abbey Chronicle* describing an assembly held on the place where a murder victim was buried in c. 1017–34 Cambridgeshire among Danish followers of Cnut.¹⁷

A further important factor, which may help us understand why Wulfstan resisted these practices, was that charges brought quickly in these Scandinavian contexts appear to have required a lower threshold for conviction. Norway's *Gulating Law* mentions a reduced quorum requirement at a deciding assembly, as well as the accused being automatically found guilty if they do not appear at the assembly after being reached by a messenger.¹⁸ The timeliness of an accusation seems to have made it more compelling within Scandinavian court dynamics, while such a diminishment of a defendant's protections may have seemed illogical and unjust to Wulfstan, with his commitment to a defensive exculpatory oath as a crucial right accessible to all free Englishmen. While we must be cautious about using later Nordic legal sources for this early period, a pattern emerges which heavily emphasizes the importance of immediacy in default legal practice likely among even Viking-Age Scandinavians, also demonstrating generally less forgiving protections for

⁸ T. Lambert, *Law and Order in Anglo-Saxon England* (Oxford, 2017), 290, see 255.

⁹ II Cn 20, 22; see also e.g. VI Atr 8:1; VII Atr 6:1; II Cn 1:1. Cf. III Atr 3; Northu 67:1; II Cn 81; see Stattel, 'Danelaw Legal Culture', 183.

¹⁰ III Atr 15. See II Cn 15a; S. Pons-Sanz, *The Lexical Effects of Anglo-Scandinavian Linguistic Contact in Old English* (Turnhout, 2013), 113–14, 173.

¹¹ *Gulatingssloven* 156, trans. E. Simensen, *The Older Gulathing Law* (London, 2021), 144; *Grágás* K 86–8, from A. Dennis et al., *Laws of Early Iceland: Grágás I-II* (Winnipeg, 1980–2000). Nordic law references from J. Love et al., *A Lexicon of Medieval Nordic Law* (Cambridge, 2020), 1–3.

¹² *Grágás* K 86–7; Add 41, 50, 82, 133.

¹³ *Äldre Västgötalagen*, Manslaughter 1, trans. T. Lindkvist, *The Västgöta Laws* (London, 2021), 27; *Jyske lov* II 9.

¹⁴ *Jyske lov* II 17, trans. D. Tamm and H. Vogt, *The Danish Medieval Laws: The Laws of Scania, Zealand and Jutland* (London, 2016), 260; *Gulatingssloven* 199.

¹⁵ *Gulatingssloven* 184, trans. Simensen, *Gulathing*, 153.

¹⁶ *Gulatingssloven* 151, trans. Simensen, *Gulathing*, 143.

¹⁷ W. D. Macray, *Chronicon Abbatie Ramesiensis a saec. X usque ad an. circiter 1200* (London, 1886), 133. Thank you to Rory Naismith for identification.

¹⁸ *Gulatingssloven* 151.

defendants when compared to Anglo-Saxon norms. This is certainly reinforced by Wantage Code evidence which suggests that allegations of wrongdoing in the *c.* 1000 Danelaw were more difficult to make in the first place, sometimes involving communal accusation by a ‘jury’ of twelve thegns, but were then correspondingly more incriminating and could not be repelled by oaths.¹⁹

It appears likely that in describing *unlagu* ‘in the north’ related to accusations made ‘on the same day’, Wulfstan is reacting to Scandinavian-influenced practices in the Danelaw which put great weight on the promptness of allegations. These may have allowed for easier convictions of the accused, to the degree that charges seemed insufficiently proven against men Wulfstan deemed *unsacne* (‘guilt-less’) by English norms, likely due to them not being permitted to make an exculpatory oath.²⁰ Here we are shown a contemporary outsider’s view into the distinctive *Dena lagu* in

effect within this special jurisdiction of England. This helps to reinforce the existence of this unique strand of legal thought which we only gain rare glimpses of within texts such as the Wantage Code, but which retained a degree of continued potency with heterodox procedures well after the 10th-century conquest of the Scandinavian-settled regions. Wulfstan’s complaints in this clause also suggest points of ongoing tension within this dynamic. In his contribution to the *Anglo-Saxon Chronicle*, Wulfstan openly critiques Edgar’s acceptance of Scandinavian ‘evil foreign customs’ and ‘heathen manners’, sentiment he may be echoing here by inverting the language of Edgar’s praise for Danelaw *godum lagum* (‘good laws’), now branded as *unlagu* (‘un-law, injustice’).²¹

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²⁰ V Atr 32:4. On Norse-derived *un-sac*, see Pons-Sanz, *Lexical Effects*, 167–9.

²¹ *Anglo-Saxon Chronicle* 959 DE, trans. N. P. Schwartz, ‘Archbishop Wulfstan’s Criticism of King Edgar in the *Anglo-Saxon Chronicle*’, *Early Medieval Europe*, xxxi (2023), 651; see L. Abrams, ‘King Edgar and the Men of the Danelaw’, in D. Scragg (ed.), *Edgar, King of the English 959–975: New Interpretations* (Martlesham, 2008).

¹⁹ E.g. III Atr 3:1, 4, 6, 15; see Stattel, ‘Danelaw Legal Culture’, 192–4.

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