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From *Morðor* to *Murdrum:* The Preconquest Origin and Norman Revival of the Murder Fine

By Bruce R. O'Brien

What was the English opinion of the Normans who had conquered them in 1066? Perhaps it makes better sense to ask, What did they see when they beheld one of their new Norman lords? Were the Normans seen as oppressive? If so, in what way and with what result? Can it be said that the Normans' treatment of their new subjects was any different from the treatment *ceorlas* had received from *eorlas* and *thegnas* before 1066?[1] There can be no single or simple answer to these questions, as the tone of Norman lordship and English response must have varied a great deal depending on such intangible matters as the characteristics of an individual lord or the shifting attitudes of the English toward that new lord, matters that are difficult to assess. Answers here must move not nationally, but region by region, lordship by lordship, and should consider the traditions and beliefs of both English *ceorlas* (as well as surviving *thegnas*) and Norman *seignurs* in order to reconstruct the whole edifice.

In this case, however, often only half of the plans are available. The rule and beliefs of the new *seignurs* are evinced by chronicles, biographies, and copious records of governance that mark the Anglo-Norman and Angevin kingdom as one of the more literate in western Europe. Rarely, and only indirectly, do we learn of the perspective of the English. Some help in eliciting that information from the sources comes from viewing the relationship against other models of colonialism, as John Le Patourel, Michael Clanchy, and R. R. Davies have argued. By seeing Anglo-Norman England in colonial terms, they and other scholars have done much to map the complex, unpredictable, and rarely stable political, economic, legal, and social relationships of this world.[2] Their studies of, for example,

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[1] This tripartite division comes from the private law code entitled *Geþyncðo* 2 and 5, in Felix Liebermann, ed., *Die Gesetze der Angelsachsen,* 3 vols. (Halle, 1903–16), 1:456–69. Codes in Liebermann's edition will be cited in the footnotes according to his now standard abbreviations: Af = Alfred, AGu = Alfred and Guthrum, As = Æthelstan, Atr = Æthelred, CHn cor = Coronation charter of Henry I, Cn = Cnut, ECf = *Leges Edwardi Confessoris (Tractatus de legibus et consuetudinibus Anglie editis tempore magni regis Willelmi),* Eg = Edgar, EGu = Edward and Guthrum, Em = Edmund, Hn = *Leges Henrici Primi,* Hu = Hundred Ordinance, In Cn = *Instituta de legibus regum Anglorum,* Leis Wl = *Leis Willelme,* Quadr = *Quadripartitus,* Wl art = *Willelmi articuli decem.*

[2] John Le Patourel, *The Norman Empire* (Oxford, 1976); M. T. Clanchy, *England and Its Rulers, 1066–*

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changing personal names in places like Winchester and Wales reveal that in certain places the conquered were swept away by Norman cultural imperialism. In other areas the reaction was more mixed. Responses to this imperialism are easier to identify for Ireland and Wales, where enduring native traditions of historiography tell the other side; the English were not so graced, as to all appearances the late eleventh and early twelfth centuries saw the decline and disappearance of those native traditions along with the official use of their language, Old English. The problem, then, is that while the colonial model promises some assistance in uncovering the attitudes of the English, the model itself has been difficult to anchor given the partiality of the evidence.

One piece of evidence, however, the murder fine,[3] has become a de facto anchor, accepted by most Anglo-Norman historians as proving that the introduction of Norman lordship was commonly resisted with violent, even "terrorist," force and that the Normans responded with harsh and equally violent measures to stifle rebellion. The very strength and endurance of this Norman measure have given body and soul to the English resistance, which appears as sullen, violent, yet committed. The twelfth-century description of the fine most commonly trusted by historians explains the origins of this punitive legal measure by saying that in the years immediately after 1066, the new lords were ambushed repeatedly by the English—a sign that the victory at Hastings and the coronation of William had been accepted only by some.[4] The Normans responded with "violent measures . . . with various refinements of torture."[5] When this failed to stop the assassinations (implying the strength of English resolve), the new king and his advisers decreed that when a Frenchman was found slain, the districts surrounding the site would be amerced for a substantial fine unless the English identified or turned in the slayer. Further, a body was presumed French unless Englishry was presented, that is, unless it was proven by testimony that the body was that of an English person. As William I's counterinsurgency tactic, the new murder fine, or *murdrum* as it was sometimes called, had a certain appreciable logic if the conquerors and the conquered were indeed divided by such open hostility.[6] The

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1272: Foreign Lordship and National Identity (London, 1983), pp. 17–18; and R. R. Davies, *Domination and Conquest: The Experience of Ireland, Scotland and Wales, 1100–1300* (Cambridge, Eng., 1990), p. 3. The detailed implications of Norman colonialism in one city can be found in Martin Biddle, ed., *Winchester Studies,* 1: *Winchester in the Early Middle Ages: An Edition and Discussion of the Winton Domesday* (Oxford, 1976).

[3] See below, n. 30, and text at n. 31. Richard Fitz Nigel, *Dialogus de Scaccario* (hereafter cited as *Dialogus*) 1.10, ed. and trans. Charles Johnson, with corrections by F. E. L. Carter and D. E. Greenway (Oxford, 1983), p. 52.

[4] *Dialogus* 1.10, pp. 52–53. For more recent analyses of English rebelliousness, see Susan Reynolds, "Eadric 'Silvaticus' and the English Resistance," *Bulletin of the Institute of Historical Research* 54 (1981), 102–5; and Peter A. Clarke, *The English Nobility under Edward the Confessor* (Oxford, 1994), pp. 117–19.

[5] *Dialogus* 1.10, pp. 52–53.

[6] The majority of historians, past and present, assign the creation of the fine to William I: see E. A. Freeman, who thought the murder fine William I's earliest act of legislation, *The History of the Norman Conquest of England,* 6 vols. (Oxford, 1876), 4:325; F. Pollock and F. W. Maitland, *History of English Law,* 2nd ed., 2 vols. (London, 1898), 1:89; George Burton Adams, *Council and Courts in Anglo-Norman England* (New Haven, Conn., 1926), p. 15, who also gives Henry I credit (p. 124) for substituting

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existence of the fine itself then becomes tangible proof of English attitudes and actions after 1066. That the English did not accept their new tyrants and resisted the Norman agenda can, it appears, be read as the inverse of Norman actions: as *murdrum* was created to protect Norman lords, so it betrays not only the unwillingness of the English to accept their new position but also their desire to return to their former position as lords in the near future.

The most recent account of the murder fine, by George Garnett, argues that political exigencies persuaded William I and his immediate successors both to create a fine to distinguish between conquerors and conquered and to cater eventually to the sensibilities and self-image of the English by disguising their oppressive fine as "English." By Anglicizing the murder fine these lords hoped that its application might no longer appear a foreign imposition to the English and so would no longer endanger Norman control. Consequently, in reevaluating royal policies toward *Franci* and *Angli,* Garnett presents *murdrum* as not only a tactic to protect William I's followers—and thus an important part of the king's overall policy to distinguish between the two *gentes,* a distinction punctuated most publicly by the double interrogation and acclamation of the new coronation *ordo*—but also as evidence of the lengths to which the Norman king would go to appear a traditional English ruler.[7] Garnett builds this argument upon an inconsistency he identified in the way William I's peoples were labeled in contemporary sources. While the coronation *ordo* used in 1066 called for both peoples, French and English, to acclaim their new king separately and so suggests a salient difference between conquerors and conquered, other sources ignore any such division and group all of William's *gentes* under the label *Angli.* Garnett reads in this inconsistency of the sources William's need both to assert his royal English prerogatives and "to distinguish in practice the conquerors from the conquered."[8] Within such a policy, Garnett argues, the murder fine held an important place for it served not only to assure William's followers that they would receive protection among the dangerous *Angli* but also to assert William's own position as legitimate successor to Edward the Confessor. Here, the growing territorial application of "supposedly English law" mandated that such a distinction between *Franci* and *Angli* soon disappear so that William and his successors might in England be kings of

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the hundred for the vill as the district liable for the fine; G. W. S. Barrow, *Feudal Britain: The Completion of the Medieval Kingdoms, 1066–1314* (London, 1956), p. 50; David C. Douglas, *William the Conqueror: The Norman Impact upon England* (Berkeley, Calif., 1964), pp. 314–15; Le Patourel, *Norman Empire,* p. 262; Judith A. Green, *The Government of England under Henry I* (Cambridge, Eng., 1986), p. 80; Clanchy, *England,* pp. 44–45; A. L. Poole, *From Domesday Book to Magna Carta, 1087–1216,* 2nd ed. (Oxford, 1993), pp. 329–30. John Hudson, "Administration, Family and Perceptions of the Past in Late Twelfth-Century England: Richard fitz Nigel and the *Dialogue of the Exchequer,*" in *The Perceptions of the Past in Twelfth-Century Europe,* ed. Paul Magdalino (London, 1992), p. 85, n. 62, denies it to Cnut.

[7] George Garnett, "*Franci* and *Angli:* The Legal Distinctions between Peoples after the Conquest," *Anglo-Norman Studies* 8 (1985), 109–13. Earlier accounts of the murder fine are still valuable: see Frederick Coyne Hamil, "Presentment of Englishry and the Murder Fine," *Speculum* 12 (1937), 285–98; and Hessel E. Yntema, "The *Lex Murdrorum:* An Episode in the History of English Criminal Law," *Harvard Law Review* 36 (1922–23), 146–79. The strength of Yntema's conclusions is often vitiated by his rather indiscriminate use of the legal evidence (e.g., p. 151 and n. 23).

[8] Garnett, "*Franci* and *Angli,*" p. 113.

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the one people, the English, who had been Edward's subjects.[9] Not surprisingly, then, this distinction between *Franci* and *Angli* was fast disappearing by the beginning of Henry I's reign, when the institution that had maintained it, the murder fine, was Anglicized by sleight of hand; for in Henry I's coronation charter, murder fines have been neatly fitted into the *laga Edwardi,* the good old law in force before the political complexities and violence arising after 1066 had suggested a need for such discrimination.[10]

Was the murder fine "Anglicized," or had it always been English? Given the significance attached to the fine as evidence of relations in England, this question is of fundamental importance. Some evidence says the fine had always been English, predating the conquest by at least two, if not five, reigns; both Henry I's coronation charter (c. 1100) and the apocryphal *Leis Willelme,* written before the 1140s, saw it as a custom that had been observed under Edward the Confessor, whose patronage of French knights and clergy, as well as his need to protect them, is well known.[11] Twelfth-century forgers of postconquest confirmations of exemptions inserted *murdrum* into their documents as a right enjoyed under Edward the Confessor, accepting it themselves as preconquest or believing that their contemporaries would see it this way.[12] The drafter of the coronation charter thought it

[9] Ibid., pp. 114–16, 136–37.

[10] Ibid., pp. 136–37. On the coronation charter, see below, n. 13. The idea that Norman innovations were Anglicized for political reasons was first voiced by Felix Liebermann, *Über die Leges Edwardi Confessoris* (Halle, 1896), p. 112, who was followed by William Alfred Morris, *The Frankpledge System* (New York, 1910), p. 35.

[11] Leis Wl, prol.: "Cez sunt les leis e les custumes, que li reis Will. grantad al pople de Engleterre aprés le cunquest de la terre, ideles meimes que li reis Edward sun cusin tint devant lui," in Liebermann, *Gesetze,* 1:492. Leis Wl in its earliest version survives in a single manuscript: London, British Library, Additional MS 49366, fols. 141–57. According to what N. R. Ker argues with respect to the general layout of postconquest manuscripts, Additional 49366 must be earlier than mid-twelfth century, though how much earlier is unclear: Neil Ripley Ker, *English Manuscripts in the Century after the Norman Conquest* (Oxford, 1960), pp. 40–46. The hand is consistent with a date in the first half of the twelfth century. Most historians have put the manuscript considerably later: e.g., Liebermann, *Gesetze,* 1:xxx, assigned it (Hk) to c. 1230. I would like to thank Dr. Ian Short for redirecting my attention to the correct dating of this manuscript. For further studies of Leis Wl, see below, n. 15. On Edward's French period, see Frank Barlow, *Edward the Confessor* (Berkeley, Calif., 1970), pp. 104–17.

[12] *Murdrum* here may mean either exemption from the fine or jurisdictional rights to hold pleas concerning it. All of the charters that claim *murdrum* as Edward's grant are of dubious authenticity: some of these state the earlier origin directly, claiming that the various customs listed, including the right to hold pleas about *murdrum,* were held by the grantee in the time of King Edward. One, a purported record of Henry I's confirmation of Westminster Abbey's rights, lands, and liberties, claims that "si enim placitum de murthro vel latrocinio terre sue evenerit, sic placitet et in illis locis sicut carta praedicti regis Eadwardi testatur et praecipit": *Regesta regum Anglo-Normannorum, 1066–1154* (hereafter cited as *Regesta*), 2: *1100–1135,* ed. C. Johnson and H. A. Cronne (Oxford, 1956), calendar no. 489 (pp. 305–6). The other charters are *Regesta,* 1: *1066–1100,* ed. H. W. C. Davis and R. J. Whitwell (Oxford, 1913), no. 224; *Regesta,* 2, nos. 1240, 1251; *Regesta,* 3: *1135–1154,* ed. R. H. C. Davis and H. A. Cronne (Oxford, 1968), nos. 928, 929. Most of these charters were concocted, it seems, by Osbert de Clare, Westminster's most ardent advocate for the canonization of its founder and most productive forger in the service of his abbey: see Pierre Chaplais, "The Original Charters of Herbert and Gervase, Abbots of Westminster (1121–1157)," in *A Medieval Miscellany for Doris Mary Stenton,* ed. Patricia M. Barnes and C. F. Slade, Publications of the Pipe Roll Society 76, n.s. 36 (London, 1962), pp. 89–110. For further discussion of the charter evidence, see below, pp. 330–31 and 333–34.

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so well known that he felt no need to list the amount of the fine and instead states only that murders "now committed . . . shall be paid for justly according to the law of King Edward."[13] Other evidence places it even earlier than the reign of Edward the Confessor. The *Leges Edwardi Confessoris,* an early-twelfth-century treatise on breach of various kinds of peace, actually says that the fine was created under Cnut when English nobles stood as sureties for any of their men who might slay one of Cnut's Danes. Although this treatise has generally been disregarded as an untrustworthy source, it may tell the truth, for there is more than this one piece of evidence to support such an attribution.[14]

In order to show that the murder fine dates from Cnut's reign, I will first consider the problems with the eleventh- and twelfth-century sources on the murder fine. Then I will reexamine the evidence that places the fine before 1066 and offer a narrative of the origins of the fine in the world of Æthelstan, Edmund, and Æthelred, where *morð* and *morðor* became a matter of lordship and, under Cnut and afterwards, of corporate liability. Finally I will adduce from that and other evidence some conclusions bearing on the nature of Danish and Norman rule and, by consequence, on the relations between *Franci* and *Angli,* and between *seignurs* and *ceorlas,* in postconquest England.

There are four early accounts of the fine, each of which speaks with uncertain authority and has a different tale to tell. The four accounts are in the *Willelmi articuli decem,* the *Leges Henrici Primi,* the *Leges Edwardi Confessoris,* and the *Leis Willelme.*[15] The only one of the treatises with a secure dating is the *Leges Henrici Primi,*

[13] CHn cor, c. 9, Liebermann, *Gesetze,* 1:522, reads, "Murdra etiam retro ab illa die qua in regem coronatus fui omnia condono; et ea quae amodo facta fuerint iuste emendentur secundum lagam regis Eadwardi."

[14] ECf 16 (see below, n. 15). Some historians have accepted the tale told by ECf or at least have argued along similar lines: Francis Palgrave, *The Rise and Progress of the English Commonwealth,* 2 vols. (London, 1832), 1:196. Bishop Stubbs was intrigued by the likelihood that the murder fine was Cnut's and raised the point a number of times in his published lecture on Norman legislation: see William Stubbs, *Lectures on Early English History,* ed. Arthur Hassall (London, 1906), pp. 52, 82, and 118. H. G. Richardson and G. O. Sayles, in rare communion with the bishop, agreed: see *Law and Legislation from Æthelberht to Magna Carta* (Edinburgh, 1966), p. 52. They refused to be lured down the byway opened up by this attribution. Naomi Hurnard alluded to this origin, and most recently Paul Brand argued the case briefly: see Naomi Hurnard, "The Jury of Presentment and the Assize of Clarendon," *English Historical Review* 56 (1941), 387–90 and 395, n. 3; Paul Brand, "The Contribution of the Period of Baronial Reform and Rebellion (1258–67) to the Development of the Common Law" (D.Phil. thesis, Oxford University, 1974), p. 246 and n. 2. Yntema, "*Lex Murdrorum,*" pp. 150–55, was willing to consider the possibility seriously but refused to commit. See earlier authors listed below, n. 20. The list of those who distrust the treatise is long, but the dismissal in Pollock and Maitland, *History,* 1:103–4, is the source for most twentieth-century unease. Garnett dismisses the story in the *Leges Edwardi Confessoris* as a "highly unconvincing *canard*" (p. 124).

[15] All are edited in Liebermann, *Gesetze,* 1:486–88 (Wl art), 547–611 (Hn), 627–70 (ECf), and 492–520 (Leis Wl). The second has been reedited and translated by L. J. Downer, ed., *Leges Henrici Primi* (Oxford, 1972). Major studies of the codes have been few, especially since Liebermann fielded his team of monographs: *Über die Leges Edwardi Confessoris* (Halle, 1896); "Über die Leis Willelme," *Archiv für das Studium der neueren Sprachen und Litteraturen* 106 (1901), 113–83; *Quadripartitus, ein englisches Rechtsbuch von 1114* (Halle, 1892), which has much on Hn; and *Über das englische Rechtsbuch Leges Henrici* (Halle, 1901). Richardson and Sayles, *Law and Legislation,* passim, devote much space to spirited, if unorganized, analysis of all the treatises. Also of interest is Dirk Korte, *Untersuchungen zu Inhalt, Stil und*

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which dates from between 1114 and 1118.[16] For the others, the only certain indicator of origin is the terminus ad quem established by the earliest manuscript: 1123 for the *Articuli* and the 1140s for the *Leges Edwardi Confessoris* and the *Leis Willelme.*[17] By contents, none is much earlier than 1100, though parts of some may go back to William I.[18] All of them were written, or achieved their surviving form, about a half century after the supposed creation of the murder fine by William I. None is in extant form an authoritative statement of royal law. All are in fact part of an extensive body of apocryphal legal treatises produced in England between the conquest and Magna Carta, a body composed privately to compensate, it seems, for the well-known reluctance of the Norman kings to produce comprehensive legislation like their English and Danish predecessors. Because most of these treatises claim to be the legislation of kings who could not have issued them in their current form, two, possibly three, are technically forgeries.[19] Although all but one were wildly popular in the twelfth century and persuasive to legal writers of the thirteenth century as records of Anglo-Norman law, such support is not a valid gauge of their veracity.[20] No one account is necessarily better or more authoritative than any other.

Technik angelsächsischer Gesetze und Rechtsbücher des 6. bis 12. Jahrhunderts, Archiv für vergleichende Kulturwissenschaft 10 (Meisenheim am Glan, 1974). On the Leis Wl there has been some valuable work: see J. Wüest, *Die "Leis Willelme": Untersuchungen zur ältesten Gesetzbuch in französischer Sprache,* Romanica Helvetica 79 (Bern, 1969). On ECf see Bruce R. O'Brien, "Studies of the *Leges Edwardi Confessoris* and Their Milieu, 1050–1150" (Ph.D. diss., Yale University, 1990).

[16] Downer, *Leges Henrici,* pp. 34–37. The terminus a quo may be even earlier: see Richard Sharpe's appendix to Patrick Wormald's "Quadripartitus," in *Law and Government in Medieval England: Essays in Honour of Sir James Holt,* ed. George Garnett and John Hudson (Cambridge, Eng., 1994), pp. 150–51, where Sharpe argues that one recension of *Quadripartitus* was certainly finished by 1108 but may in fact have been started under William II. This, of course, has implications for the date of Hn, which constitutes the second and final book of this collection of *leges Anglorum.*

[17] For Wl art, see *Textus Roffensis,* ed. P. H. Sawyer, 2 vols., Early English Manuscripts in Facsimile 7, 11 (Copenhagen, 1957–62), 1:11, where Sawyer points out that the last archbishop of Canterbury listed by the main scribe in the obituaries (fols. 110v–116r) was Radulf (d. 1122) and that his successor was listed by a new scribe. The earliest manuscript of ECf and Leis Wl is British Library, Additional MS 49366, on which see above, n. 11.

[18] See Liebermann, *Gesetze,* 3:277–81, 283–92, 312–29, and 339–50. Wl art has the strongest claim to be early and may in fact reproduce some act(s) of William I's reign; the form of the document, however, and the author's acquaintance with the In Cn, if it is indeed an early-twelfth-century text, argues a later date of composition than David Douglas's "1070–1087," in D. C. Douglas and G. W. Greenway, eds., *English Historical Documents,* 2: *1042–1189,* 2nd ed. (London, 1981), p. 431. In Cn, however, may be from the Conqueror's reign: personal communication from Patrick Wormald.

[19] Both ECf and Leis Wl claim to represent William I's confirmation of Edward the Confessor's laws, while both include ostensibly later material. I say they are technically forgeries as it is unclear how much of a deception was intended, in particular by ECf, which identifies some of the later material by monarch (see c. 11).

[20] The most convenient listing of the numerous manuscripts in which these texts appear is at the beginning of the first volume of Liebermann, *Gesetze,* 1:xviii–xlii. Bracton, for one, accepted the authority of these treatises to explain both royal pleas and criminal procedure: Henry de Bracton, *De legibus et consuetudinibus regni Anglie,* ed. and trans. S. E. Thorne, 4 vols. (Cambridge, Mass., 1968–77), 2:179, 305, 328, 338–39, 345, 351, 354, 361–62, 367, 379, 382–83, 386, 408, 427–29. Yntema, "*Lex Murdrorum,*" pp. 149–50, n. 16, points out that, before the nineteenth century, most of those who wrote on the subject accepted ECf's evidence that the fine was Cnut's: this list includes Edward Coke, *The Third Part of the Institutes of the Laws of England* (1628–44; 13th ed., London, 1817), pp. 47–

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This lack of authority would not be so bothersome if the accounts agreed on most points. There are, of course, basic similarities among them. All concern the killing of a Frenchman or foreigner when the slayer cannot be brought to justice.[21] In all, the fine for such a crime is forty-six marks.[22] Lastly, each at some stage makes the corporate body of the hundred liable to pay the fine.[23] Beyond these things, there is no unanimity. In some matters these accounts are incomplete, and so comparison is not particularly useful: both the *Articuli* and the *Leis Willelme* fail to specify the penalty that the slayer will suffer if caught; therefore, although the *Leges Henrici Primi* and the *Leges Edwardi Confessoris* disagree on who ultimately received custody of the captured murderer, it is unclear which treatise represents reality most closely.[24] More significant are the differences in matters that occur in all accounts. For example, each code assigns liability to pay the fine in the first instance to a different party. The likely earliest text, the *Articuli,* lays this burden on the lord of the slayer.[25] The *Leges Henrici Primi,* finished somewhat later, puts it first on the lord, not of the slayer, but of the manor in which the body was found and then on the hundred (if the manor was royal or unable to provide the full fine).[26] In the special case where the body was found on a royal road, the *Leges Henrici* assigned liability to the lord whose land adjoined the road at that spot.[27] The less complicated scheme of the *Leges Edwardi Confessoris* burdened the vill first, then the hundred, while the *Leis Willelme* targeted only the hundred.[28] Although the treatises generally agree that catching the murderer will absolve the district of its liability to pay the fine, only one treatise, the *Leges Henrici Primi,* mentions presentment of the Englishry of the slain as a way to avoid the fine when the killer could not be found; the others address neither the case of an unidentified body nor the presumption of French ethnicity.[29] With no agreement on a matter as fundamental as liability, these accounts provide the early murder fine with only contradictory evidence of its procedure and impact.

Some historians have tried to clean up this confusion by relying on Richard Fitz Nigel's later description as a standard by which to judge the credibility of the

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48; John Selden, *The Reverse Backface of the English Janus,* trans. Redman Westcot (London, 1682), 1.24, pp. 40–47; and William Blackstone, *Commentaries on the Laws of England,* 4 vols. (1765–69; repr. Chicago, 1979), 4:195.

[21] Wl art 3; Hn 91.1, though the author reports a change in what constituted *murdrum* before his time; ECf 15, which, although it says "anyone anywhere," by analogy means the French (cf. ECf 16–16.2); Leis Wl 22.

[22] Wl art 3; Hn 91.1; ECf 15.2; Leis Wl 22.

[23] Wl art 3; Hn 91.2a, 91.3; ECf 15.3; Leis Wl 22.

[24] Hn 92.15 would have the royal justice hand over the murderer to the kin of the slain, while ECf 15 puts the slayer in the hands of a royal justice and nowhere else.

[25] Wl art 3, which Richardson and Sayles, *Law and Legislation,* p. 47, thought a clear sign of how fantastical this text was. For a possible explanation, see below, n. 80.

[26] Hn 91.1b-4.

[27] Hn 91.4. There are further refinements: e.g., if a body is found on a border between manors, the two lords are responsible, while if discovered "in campis partibus et passim accessibilibus," the hundred rather than the lords paid the fine.

[28] ECf 15.3; Leis Wl 22.

[29] Hn 92.6, 92.9a–b, 92.11.

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earlier accounts.[30] The context of this description is a dialogue between Master and Student, which Richard uses as his vehicle for discussing the workings of the Exchequer. After a discussion of gifts in alms, the Student asks about the exemption the barons of the Exchequer enjoy from scutage, murder fines, and danegeld; the Master responds with an explanation of the origin and workings of the fine. The story he tells has all of the details of origin, and especially motive, missing in the legal treatises. Here the *Angli* "secretly laid ambushes for the Normans whom they distrusted and hated" wherever concealment of such a crime was possible, and "when opportunity presented itself they slew them in secret." Apparently these slayings were so common that the conquerors "devised a plan" to punish individual districts known as hundreds with stiff fines if a Norman was anonymously slain there and the slayer was not identified. This plan aimed not only to provide for the safety of "wayfarers" but also to ensure the public reporting of crimes and criminals—communal accusation—which when done would relieve the hundred of its liability. Richard's explanation has been difficult to resist. Garnett, for example, accepts the *Dialogus* as evidence that the fine "can only fit into the immediately post-Conquest context" and amplifies Richard's view of English ambushes by calling them "terrorist assassinations."[31]

Richard's *Dialogus de Scaccario,* however, is neither very reliable on earlier English history nor particularly trustworthy on older customs or legal practices like the murder fine.[32] Some historians have implied that Richard consciously manipulated the past to suit his own ends; H. G. Richardson and G. O. Sayles portray him as a teller of "some fictions," who "sometimes describes as practice his own ideals."[33] John Hudson, while avoiding any narrow judgment of Richard's honesty, nevertheless lays out the rich variety of problems Richard faced in attempting, as he wrote, "to make known to posterity the laws appointed by their forefathers," rather than to allow the silence of his contemporaries "to cause new

[30] *Dialogus* 1.10, pp. 52–53. Many rely in a general sense on the *Dialogus* because it answers the important questions of cause and effect not treated in the laws: Liebermann, *Über die Leges Edwardi,* pp. 108–13; Morris, *Frankpledge,* pp. 30–31; Yntema, "*Lex Murdrorum,*" pp. 148–49; Theodore F. T. Plucknett, *A Concise History of the Common Law,* 5th ed. (Boston, 1956), pp. 88, 445; H. R. Loyn, *The Norman Conquest* (London, 1965), pp. 149–50; Garnett, "*Franci* and *Angli,*" pp. 117–18; Clanchy, *England,* pp. 44–45 and 64. It is in part behind Marjorie Chibnall's account, *Anglo-Norman England, 1066–1166* (Oxford, 1986), p. 167.

[31] Garnett, "*Franci* and *Angli,*" p. 117.

[32] Richard's weakness as a historian has been discussed by many historians and most recently confirmed by John Hudson's study of the past as represented in Richard's *Dialogus:* see Hudson, "Administration, Family," p. 81, n. 31, who cites the earlier studies critical of Richard's history. That Richard Fitz Nigel's work would reflect misunderstandings of earlier law is not exceptional but rather to be expected in an age with easily muddled memories. See also Paul Brand, " 'Time Out of Mind': The Knowledge and Use of the Eleventh- and Twelfth-Century Past in Thirteenth-Century Litigation," *Anglo-Norman Studies* 16 (1994), 37–54, but esp. p. 53, where Brand cites a Common Bench justice in 1284 rehashing Richard Fitz Nigel's explanation of the need for the murder fine after the conquest. The Norman past remained potentially important to litigants as late as c. 1300, when "1189 really does begin to act as a 'limit of legal memory' in a more general sense and almost all of the eleventh and twelfth centuries becomes excluded from the functioning and usable legal past, to begin to be treated as truly 'time out of mind' " (p. 54).

[33] H. G. Richardson and G. O. Sayles, *The Governance of Mediaeval England from the Conquest to Magna Carta* (Edinburgh, 1963), p. 243.

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laws to be made."[34] Richard's reconstitution of the past, as Hudson makes clear, was born of the competing interests of his literary influences, the controversies of his day, the taste of his audience, his own selective memory, the records he had available and which he chose to consult, native informants, and his family connections in the government and Exchequer.[35] Given such various and often unsafe roads to the past, it is no surprise that Richard lost his footing on occasion. His classic slip is his claim that the danegeld was not often collected under the Norman kings since William I was reluctant "that a tax imposed by the necessities of war should be paid annually" and so established a precedent followed by his sons.[36] However, the single pipe roll of Henry I implies that danegeld was collected annually during his reign.[37] Richard's account of the murder fine is also exceptional in ways that do not inspire confidence. Against the unanimous witness of the other accounts, he gives a mulct of thirty-six or forty-four pounds (fifty-four or sixty-six marks) "according to the different localities and the frequency of homicide."[38] There is less reason to doubt Richard when he is on the firmer ground of his present; but for something that at the latest occurred over a century before his present he is an unreliable guide.[39]

The treatises, then, do not justify conclusions about the fine with any degree of certitude. *Murdrum,* however, does not show up exclusively in Anglo-Norman legal treatises; it also appears in a number of contemporary charters and writs as well as in Latin translations of Old English laws. Unfortunately, the context of these references is often not sufficiently clear to help evaluate or supplement the picture drawn from the treatises. First, it is not always the case that *murdrum* refers to the murder fine. *Murdrum,* which appears in the translations and charters, is merely a Latinized Germanic word present in analogous forms, though with differing semantic fields, in all three of the relevant vernaculars: Old English, Old Danish, and Old French.[40] The Latinized form is not technical in law, and so it might sometimes stand for some unspecified type of killing as understood in one of these vernaculars, while at other times it might mean the murder fine. For example, when the translator of the *Quadripartitus,* an early-twelfth-century trans-

[34] *Dialogus* 1.8, p. 50.

[35] Hudson, "Administration, Family," pp. 82–98.

[36] *Dialogus* 1.11, p. 56.

[37] *Magnum rotulum scaccarii vel magnum rotulum pipae de anno tricesimo-primo regni Henrici Primi* (hereafter cited as *The Pipe Roll of 31 Henry I*), ed. Joseph Hunter (1833; repr. London, 1929). See also Hudson, "Administration, Family," pp. 81, n. 31, and 85–86; *English Historical Documents,* 2:562, n. 6; Judith Green, "The Last Century of Danegeld," *English Historical Review* 96 (1981), 241–58; and idem, *The Government of England under Henry I* (Cambridge, Eng., 1986), p. 69.

[38] *Dialogus* 1.10, pp. 52–53. Luke Owen Pike, *A History of Crime in England,* 2 vols. (London, 1873–76), 1:453–55, argued this. Yntema, "*Lex Murdrorum,*" p. 168, takes this discrepancy as evidence of the *Dialogus*'s reliability since, by Richard Fitz Nigel's day, the amounts did in fact vary considerably from locality to locality.

[39] Richard perhaps can be believed on the shift from a linguistic-political-cultural to a socioeconomic definition of the *Angli;* this is one of the implications of Paul Hyams, *Kings, Lords and Peasants in Medieval England: The Common Law of Villeinage in the Twelfth and Thirteenth Centuries* (Oxford, 1980), pp. 221–65, esp. p. 253, and also p. 77, n. 49, where Hyams mentions how "Old English law slid down socially with those who used it after the Norman Conquest, to end as peasant custom."

[40] On the philological evidence, see below, nn. 75 and 96.

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lation of Old English laws, rendered as "murdri opus" the "morðweorc" of Cnut's injunction against the person who "performs murderous acts in any way, either by sacrifice or by divination or by the practice of any such delusions," he probably was not thinking of the murder fine.[41] However, when this same translator and the translator of the *Instituta de legibus regum Anglorum* both rendered "morð" as "murdrum" or "mordrum" in II Cnut 56 on *open morð,* that is, "murder which is discovered," they might very well have been rightly or wrongly associating Cnut's law with the crime for which murder fines were levied in the early twelfth century.[42]

Charters that record grants of or exemptions from *murdrum* present an even more irresolvable difficulty because the identification of the vernacular behind their Latin is only useful once the question of the origin of the murder fine has been answered. For example, Henry I's quittance of Thorney abbey from all pleas, quarrels, suit in county and hundreds, and all other things except "murthrum et latrocinium" implies by the orthography of the Latin form the Old English *morðor* rather than the Old French *mordre.*[43] This is important, as will be discussed in greater length below, because Old English *morðor* or *morð* and Old French *mordre,* while cognates, meant significantly different kinds of killings by 1120, the earliest date for this charter. But the entire phrase is too taciturn to tell us that the scribe implied the Old English form because he knew that murder fines were part of English law before the coming of the Normans. The form could equally have

[41] II Cn 5.1 (London, British Library, MS Cotton Nero A.I): "oððon morðweorc gefremme on ænige wisan, oððon on blote oððon fyrhte, oððon swylcra gedwimera ænig þingc dreoge" becomes (in Quadr, ed. Liebermann, *Gesetze,* 1:313) "aut murdri opus quolibet modo sectetur aut in sacrificio (id est secundum ritum Suuanorum)—uel mortificia quoquo modo suscipiat aut in sorte—uel in fyrhte uel in similibus fantasiis uel prestigiaturis aliquid agat."

[42] That the translator of Quadr meant this is without doubt; in his Hn, the description of the murder fine is based in part on his earlier rendering of II Cn 56. For convenience, as this title and its translations will be referred to more than once, I include them here in full. London, British Library, Cotton Nero A.I: "Gif open morð weorðe, þæt man sy amyrred, agyfe man þam magum. And gif hit tihtle sig, and æt lade mistide, deme se bisceop." Quadr: "Qui murdrum aperte perpetrabit, reddatur parentibus interfecti. Et si compellatio sit, et in emundatione miseueniat, iudicet episcopus." In Cn: "Si apertum mordrum fuerit, ut aliquis per illud occidatur, reddatur parentibus suis. Et si purgatio euenerit, et in purgatione ceciderit, episcopus uideat et iudicet." All texts are in Liebermann, *Gesetze,* 1:348–49. Downer, *Leges Henrici,* p. 422, notes correctly the source of 92.19 as II Cn 56 but argues that here the author has shifted from a discussion of *murdrum* to simple homicide because it was not specified that the victim was a foreigner. However, Downer's separation is in no way supported by either text, titles, or manuscripts. The translation "murder which is discovered" is Robertson's, *Laws,* p. 203. In his rendering of II Cn 6, the translator of In Cn understood "manslagan" to be "occulti homicide"; clearly he was looking for what he imagined to be *murdrum* in Cnut's laws and did not trust the Old English to be necessarily technical. On his mistaken belief in *occultus,* see below, n. 149.

[43] *Regesta,* 2:368 (no. 1636) from c. 1120 x 1129; see also n. 57 below. Stephen's 1153 x 1154 grant of exemption from *murdre* to Crowland abbey is unabashedly Old French: see *Regesta,* 3:90 (no. 251). F. M. Stenton, ed., *Transcripts of Charters Relating to the Gilbertine Houses,* Lincoln Record Society 18 (Horncastle, Eng., 1922), p. 14 (no. 25, c. 1150), records in its exemptions "calumpnia et murdre et relef et de omni re erga dominos." See also William Farrer and Charles Travis Clay, eds., *Early Yorkshire Charters,* 12 vols., 1–3 (Edinburgh, 1914–16), 4–12, Yorkshire Archaeological Society Record Series, Extra Series 1–3 and 5–10 (n.p., 1935–65), 6:86–88 (no. 13), concerning *murdre,* though outside Yorkshire.

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resulted from an Anglophone scribe Anglicizing the term from an originally intended or dictated Old French *mordre,* or from a Francophone scribe equating Old French *mordre* with Old English *morðor,* and thus introducing a semantic loan into Old English.[44] Clearly, without knowing when to date the creation of the murder fine we can do little with these charters except ask the questions.

Neither the accounts nor the charter references and translations do much to establish more than the basics of the murder fine. Nor do they answer the question of origin. The place to begin this answer is with a consideration of the possible contexts of the fine if instituted by William or if by Cnut. If the murder fine was meant to be a protection for one's men in unsafe areas of the country, William I would have wanted it in the north and the west. In worrying about the safety of his Normans, his mind would surely dwell on the slaughter of Earl Robert de Comines and his seven hundred (or nine hundred) men in Durham in 1068 by the local people and the massacre of the French garrison of York by the combined Danish and English armies in the following year.[45] He would also want protection in the west, where endemic war with the independent Welsh may have encouraged his Welsh subjects to rebel or, at least, to ignore his authority and special protections.[46] He could not but conclude that his men needed greatest protection in the north and on the Welsh border.[47]

Cnut, however, would have wanted it in the south, the heartland of the English kingdom, not in the north, where periods of Scandinavian rule and continuous settlement from the mid-ninth century had made Northumbria in particular as

[44] The variations of these explanations to my theme are many. For example, if a semantic loan had taken place, then the *mordre* fine established by William I would be read after a time as Old English *morðor* because, through the influence of French domination (as one possibility), Old English *morðor* would have begun to take on some of the usual meanings of *mordre* (on which, see below, pp. 351–53). The scribe would then have assumed an equivalence and heard *morðor,* meaning *mordre,* and Latinized the Old English term to *murthrum,* while in no way signifying any traditional Old English denotation.

[45] Dorothy Whitelock, D. C. Douglas, and S. I. Tucker, eds., *The Anglo-Saxon Chronicle* (London, 1961), (D, E), s.a. 1068, gives the higher figure. The lower figure is from Symeon of Durham, *Historia ecclesiae Dunhelmensis* 3.15, ed. Thomas Arnold, in *Symeonis Monachi opera omnia,* 2 vols., Rolls Series 75 (London, 1882–85), 1:99. The event made an impact on the minds of contemporaries: Symeon of Durham, *Historia regum,* ibid., 2:186–88; Orderic Vitalis, *The Ecclesiastical History of Orderic Vitalis,* ed. and trans. M. Chibnall, 6 vols. (Oxford, 1969–80), 2:226–28; Florence of Worcester, *Florentii Wigornensis Monachi Chronicon ex chronicis,* ed. B. Thorpe, 2 vols. (London, 1848–49), 2:3–4. The most recent accounts are William E. Kapelle, *The Norman Conquest of the North: The Region and Its Transformation, 1000–1135* (Chapel Hill, N.C., 1979), pp. 112 and 115, and, with a very different approach, Paul Dalton, *Conquest, Anarchy, and Lordship: Yorkshire, 1066–1154* (Cambridge, Eng., 1994), pp. 19–78.

[46] *Brut Y Tywysogyon, or the Chronicle of the Princes (Red Book of Hergest Version),* ed. and trans. Thomas Jones (Cardiff, 1955), pp. 27–29 (s.aa. 1072, 1073, and 1074, editor's dates), reveals the Welsh perception. The most recent synthesis is David Walker, *Medieval Wales* (Cambridge, Eng., 1990), pp. 20–28.

[47] Reynolds, "Eadric 'Silvaticus,' " pp. 102–5, argues that resistance was not confined to the north, observing that such sources as the *Abingdon Chronicle* and *Evesham Chronicle* report violence in other parts of England. However, the Evesham entry is a proof text of the pious reputation of Abbot Æthelwig, while the Abingdon reference treats a rise in brigandage and has the air of hyperbole, setting the context for Abingdon's own woes: see W. D. Macray, ed., *Chronicon abbatiae de Evesham,* Rolls Series 29 (London, 1863), pp. 90–91; Joseph Stephenson, ed., *Chronicon monasterii de Abingdon,* 2 vols., Rolls Series 2 (London, 1858), 1:485.

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much a province of Denmark and Norse Dublin as of England.[48] In that part of the realm Cnut's worries about the safety of his men were few; nor did he concern himself much with security on the Welsh border, for the early eleventh century was a quiet time for the Cambrian chieftains, and Cnut showed no inclination to extend his power into their cantreds.[49] By contrast, Cnut has to have had some concerns about the West Saxon heartland, indeed all of the south, which had stood behind Edmund Ironsides in the recent war.[50] In part for securing his hold on England, Cnut chose to rule this region directly while doling out the rest of the kingdom to his earls; no doubt, he settled in Wessex proper a fair number of the forty boats of warriors he had retained in England after 1018.[51] In the south Cnut slew "many English nobles" with Eadric Streona in 1017 because, as William of Malmesbury recalled, these men had confessed to murdering their lord, King Edmund, and he may have feared an uprising as a result of such violence.[52] It was not only the thegns whom Cnut feared, moreover: the early period of his reign saw what may have been a peasant insurrection led by one Eadwig, "king of the ceorls," whose revolt may suggest a more widespread opposition, at least initially, to Danish lordship.[53] This region, where Alfred had withstood Halfdan's

[48] The essential facts are in H. R. Loyn, *The Vikings in Britain* (New York, 1977). For a study more closely focused on the Scandinavian north, see Alfred P. Smyth, *Scandinavian York and Dublin: The History and Archaeology of Two Related Viking Kingdoms* (Dublin, 1987). A longer perspective is provided by N. J. Higham, *The Kingdom of Northumbria, A.D. 350–1100* (Dover, N.H., 1993), pp. 173–210. The actual density of Scandinavian settlement is an unfortunately unresolvable issue, though the evidence of personal and place-names, archeology, linguistics, and narratives suggests it was in places fairly thick: see Gillian Fellows Jensen, "The Vikings in England: A Review," *Anglo-Saxon England* 4 (1975), 181–206, and, for the British Isles, Loyn, *Vikings,* pp. 113–51. On the influence of Old Danish on Old English, the extent of bilingualism, and the possibility that the two languages were mutually intelligible, there has been much lively debate: see D. Kastovsky, "Semantics and Vocabulary," in *The Cambridge History of the English Language,* 1: *The Beginning to 1066,* ed. Richard M. Hogg (Cambridge, Eng., 1992), pp. 306–36, which cites and evaluates the earlier work.

[49] Cnut never followed up Edgar's victories to subordinate the Welsh princes. Of Cnut, the *Brut Y Tywysogyon,* s.aa. 1016 (p. 21) and 1035 (p. 23), records only his accession and death. It records only one battle between the Welsh and some unnamed Saxons, in which Caradog ap Rhydderch was slain (p. 23). Walker, *Medieval Wales,* p. 16, reports "sporadic" border warfare between Cnut's earl in Mercia and the Welsh, but he cites only the *Brut* for 1034 and 1035 as evidence, which is not particularly persuasive as the sons of Edwin who were fighting the Welsh in 1034 were the grandsons of Hywell Dda, through his son Edwin: see John Edward Lloyd, *A History of Wales from the Earliest Times to the Edwardian Conquest,* 3rd ed., 2 vols. (London, 1939), 1:336–37, n. 61. Another raid is recounted in the *Annales Cambriae* (MS C), by one Eilaf, who might, according to Lloyd, have been one of Cnut's men; Lloyd, *History,* p. 351, points out that Cnut's earl of Mercia, Leofwine, is not known to have invaded Wales.

[50] The south must have been the scene of the earlier St. Brice's day massacre (13 November 1002), which could not have been carried out in the north: see *Anglo-Saxon Chronicle,* s.a. 1002; Pauline Stafford, *Unification and Conquest: A Political and Social History of England in the Tenth and Eleventh Centuries* (London and New York, 1989), p. 66; Stenton, *Anglo-Saxon England,* pp. 388–93. It should be remembered that contemporary and slightly later chronicles thought Swein and Cnut's invasion was a response to this massacre: see, e.g., *The Gesta Normannorum Ducum of William of Jumièges, Orderic Vitalis, and Robert of Torigni* 5.6, ed. Elisabeth M. C. Van Houts, 2 (Oxford, 1995), pp. 14–16.

[51] *Anglo-Saxon Chronicle,* s.a. 1018 (D).

[52] William of Malmesbury, *De gestis regum Anglorum libri quinque* 2.181, ed. William Stubbs, 2 vols., Rolls Series 90 (London, 1887–89), 1:218–19.

[53] The rebellion of Eadwig cannot be tied to any specific region, north or south. Eadwig's name

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and Guthrum's armies and which Edward, Æthelstan, and Edgar had used as a base for the reconquest of England from the Danes, is where Cnut would have needed to protect his men.

All the evidence of the collection of the fine from the early twelfth to the fourteenth century shows that the fine would have fitted Cnut's needs best. The murder fine was collected in the south and Midlands, never in Yorkshire and the northern provinces, nor on the Welsh border. The evidence for collection is fairly consistent over time.[54] The pipe roll of Henry I records murder fines in all but nine southern counties, and those nine show evidence of collection in later pipe rolls and assize rolls.[55] Neither the earliest pipe roll nor any later ones show any sign that murder fines were collected or Englishry presented in the Welsh border counties, except Monmouthshire, or north of Lincolnshire, Nottinghamshire, and Derbyshire. Charter references to exemptions from *murdrum* support that distribution.[56] The pipe roll and charter evidence for the collection of the fine therefore makes more sense if the fine had been created by Cnut than by William I.

The charters, in fact, while not directly addressing the question of the origin of the fine, suggest nevertheless a preconquest origin of *murdrum* by associating it with other preconquest rights or exemptions. When Henry I granted certain liberties to Ramsey abbey, including full jurisdiction, *foresteal, blodwite, murther,* treasure trove, and all other liberties pertaining to the Crown, *murther,* especially in this undiluted Old English form, appears as a preconquest royal plea, just like

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may reveal that he had some link to the royal family, which then may suggest the south as the scene of the uprising. The evidence is mixed in origin: Florence of Worcester and *Anglo-Saxon Chronicle* (D and E), s.a. 1017, are the sources. While both Florence and the D version of the *Anglo-Saxon Chronicle* are from Worcester, and the entry on Eadwig was copied between c. 1050 and 1079 probably in Worcester, nevertheless the similarity of D and E with C for the years 983 to 1018 reveals a common debt to Abingdon for material: see Whitelock, *Anglo-Saxon Chronicle,* pp. xiii, xvii–xviii. Abingdon, of course, would be better informed of events in the south than a more northerly oriented church like Worcester. See M. K. Lawson, *Cnut: The Danes in England in the Early Eleventh Century* (London, 1993), pp. 83–86, for a discussion of these issues.

[54] Hamil, "Presentment of Englishry," pp. 285–98.

[55] *Pipe Roll of 31 Henry I,* pp. 8–10, 14–15, 20–21, 39, 45, 56, 61, 65–66, 69–70, 74, 78, 88, 93, 97, 115, 119, 123, 126, 150–51, and 155–60. The nine counties that show no collection in the pipe roll are Oxford, Surrey, Huntingdonshire, Northamptonshire, Buckinghamshire, Bedfordshire, Warwickshire, Rutland, and Worcestershire. For later collection, see Hamil, "Presentment of Englishry," pp. 290–94.

[56] There are at least three dozen royal charters from the conquest to the end of Stephen's reign that mention *murdrum,* either in grant for holding pleas or exemption from paying the fine: *Regesta,* 1, nos. 202, 224, 489, 593, 968; 2, nos. 986, 999, 1240, 1251, 1427, 1618, 1636, 1785, 1789; 3, nos. 31, 36, 51, 151, 192, 207, 213, 217, 251, 271, 445, 522, 583, 584, 592, 658, 675, 687, 852, 919, 929, and 1002. Not all of these charters are authentic; six are probable forgeries done for Westminster Abbey: *Regesta,* 1, no. 202; 2, nos. 489, 1240, 1251; 3, nos. 428, 429. There are also a number of baronial charters that mention *murdrum:* see *Early Yorkshire Charters,* 4:37–38 (no. 31), and Stenton, *Transcripts of Charters,* p. 14 (no. 25), which grant exemption; *Early Yorkshire Charters,* 6:86–88 (no. 13), warrants land against *murdre,* danegeld, and other taxes. Note that the Yorkshire charters cover land in Lincolnshire and Leicestershire, both of which provide evidence of collection. Several of the Danelaw charters collected by Stenton may record grants from Stephen's reign: F. M. Stenton, ed., *Documents Illustrative of the Social and Economic History of the Danelaw,* British Academy Records of the Social and Economic History of England and Wales 5 (London, 1920), pp. cxx–cxxvi, 2, 105, 185, 189, 192, 197, 231, and 234.

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foresteal and *blodwite*.[57] It is true that *murdrum* in the charters is reserved as often as it is granted, and this special treatment could be seen as signaling its status as a recent Norman creation;[58] but the context of the reservations suggests it was kept because it was predictably lucrative, a known source of revenue as much from impositions as from exemptions, rather than because it continued to be required to protect the Normans. While the murder fine was an older part of the criminal law, it was under Norman control a not inconsequential source of royal revenue and so was a matter of some royal interest. The murder fine, as an issue of revenue rather than of criminal control, shows up in charters listed with the taxes too often for this association to have been a product of chance.[59] Thus in 1154 Stephen's general confirmation to Meaux abbey itemizes not only judicial or criminal pleas possessed by the monks but also the freedom the monks were to have from "danegeld et de murdro et seruitiis et exactionibus."[60] Like danegeld, which continued to be collected long after the incursions of the Danes had ended, *murdrum* remained an item of revenue long after the reason behind its collection had disappeared.

The main objection to attributing the murder fine to Cnut is that it does not occur in any of Cnut's law codes. Given that the survival rate for manuscripts of obsolete secular law in a barbaric tongue could never have been all that good, this negative evidence should not be given too much weight.[61] According to our one narrative source for Cnut's creation of the fine, the *Leges Edwardi Confessoris,*

[57] *Regesta,* 2, no. 999; the text is printed in W. D. Macray, ed., *Chronicon abbatiae Rameseiensis,* Rolls Series 51 (London, 1886), p. 214. For an analysis of preconquest royal rights, see Florence Harmer, ed., *Anglo-Saxon Writs* (Manchester, Eng., 1952), pp. 81 (*foresteal*) and 83–84 (*blodwite*). Harmer lists *blodwite* with doubtful cases since it cannot be found in any trustworthy grant by Edward the Confessor. However, its consistent postconquest use and its appearance in Domesday Book are, I believe, more than presumptive of the preconquest origins of its technical usage. Cf. Frederic W. Maitland, *Domesday Book and Beyond* (1897; repr. Cambridge, 1987), p. 193, where *blodwite* is evidence of an Anglo-Saxon borough peace over against the market peaces established by the king. At what point treasure trove became a plea of the Crown is unclear. It is first mentioned as such in retrospective Anglo-Norman works—Hn and ECf. By Bracton's day the understanding of it had largely been shaped by Roman law, thus brushing over any Old English or Norman tracks.

[58] E.g., *Regesta,* 2, nos. 593 ("murdro et latrocinio") and 1785 ("exceptis murdro et tesauro"). *Early Yorkshire Charters,* 4:37–38 (no. 31), provides a fuller description in a grant by Conan, earl of Richmond, to Kirkstead abbey of jurisdiction (including *utfangentheof*) "cum omnimoda forisfactura que ad murdrum et ad latrocinium pertinent." Henry II's quittance to William Malduit of suit in courts and pleas—except murder and theft—adds what must have been commonly understood: "Si murdrum uel latrocinium contingat in terra sua . . . coram justicia mea teneatur sicut melius et liberius tenuit tempore Henrici regis aui mei": Emma Mason, ed., *The Beauchamp Cartulary Charters, 1100–1268,* Pipe Roll Society, n.s., 43 (London, 1980 for 1971–73), p. 101 (no. 172).

[59] The list includes charters regardless of their suspected lack of authenticity because forged documents will reveal just as accurately as authentic records the associations of rights and duties made by contemporaries: *Regesta,* 1, no. 202; 2, no. 1240; 3, nos. 36, 151, 192, 207, 251, 371, 522, 583, 584, 592, 658, 919; possibly 3, no. 31 as well. See also Henry I's charter in favor of the citizens of London (1130 x 1133) in Liebermann, *Gesetze,* 1:524–26. Certainly murder fines appear in company more financial than judicial in the pipe rolls.

[60] *Regesta,* 3, no. 583.

[61] Lawson, *Cnut,* p. 62, warns that calling untraceable material in the laws an innovation is unpersuasive, given how much material may have once existed from which laws like Cnut's may have been drawn.

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Cnut instituted the murder fine almost as soon as he was accepted as king, perhaps as part of the agreement by which Edmund's thegns submitted to him.[62] In the first place, we would not expect any such novel agreement to be recorded in a law code under Cnut, whose codes reached final form between 1020 and 1023, several years after the beginning of his rule. The lack of evidence for the fine may be the result of Cnut's rigorously enforcing it only during the initial years of his reign and softening it thereafter when his hold on the kingdom strengthened.[63] As William of Malmesbury reported, once Cnut had subjugated England, "he reconciled the English to himself by tremendous effort, granting them the same rights as his Danes in the assembly, in council, and in battle."[64] In such a policy Cnut would most likely diminish any special protection that he earlier had granted to his Danish followers during the violent days of 1017. Second, even if Cnut had formalized the fine sufficiently to set it into writing, it might never have made it into any of his codes because they, like the codes of Æthelred, were written by Wulfstan, archbishop of York (1002–23), and may well reflect more what the archbishop thought important than what Cnut actually had done. As M. K. Lawson remarks, Wulfstan's discussions of secular affairs are not "likely to reveal aspects of royal administration of which churchmen disapproved."[65] Even the version of Cnut's laws in Cambridge, Corpus Christi College, MS 201, which Dorothy Whitelock has argued was prepared by Wulfstan after the Oxford council of 1018, where, according to the *Anglo-Saxon Chronicle,* the Danes and the English reached an agreement, is not thought by Lawson to have had any connection to Cnut.[66]

While the murder fine as later defined makes no appearance in Cnut's law codes, *morð* does turn up in both Æthelred's and Cnut's codes in a context that may be relevant to the origins of the fine. In all but two places it appears as part of three compounds: *morðwyrhtan* 'workers of murder', *morðweorc* 'act of murder',

[62] ECf 16.

[63] Liebermann, *Gesetze,* 2:593, considered the possibility that the repeal of the fine would explain the silence of the preconquest records, though he thought it an unlikely scenario.

[64] William of Malmesbury, *Gesta regum* 2.181, 1:219: "[I]lle ingenti studio Anglos sibi conciliare, æquum illis ius cum Danis suis in consessu, in concilio, in prælio concedere." This conciliation included Cnut's honoring English martyrs to the Danes, such as Edmund and Ælfheah. On William's credibility, which is usually quite high, see Rodney M. Thomson, *William of Malmesbury* (Wolfeboro, N.H., 1987), pp. 11–38, and Antonia Gransden, *Historical Writing in England, c.550 to c.1307* (Ithaca, N.Y., 1974), pp. 167–74. Robin Fleming, *Kings and Lords in Conquest England* (Cambridge, Eng., 1991), p. 21 and n. 22, notes the more general patronage of the church, some of which Pamela Nightengale, "The Origin of the Court of Husting and Danish Influence on London's Development into a Capital City," *English Historical Review* 102 (1987), 567, sees as evidence of a royal policy of appeasement. For the most thorough analysis of the issue of Cnut's manipulation of the church to support his control, see Lawson, *Cnut,* pp. 124–60.

[65] Lawson, *Cnut,* p. 60. Lawson (p. 63) is generally pessimistic about using the laws as evidence for Cnut's actual administration or intentions.

[66] *Anglo-Saxon Chronicle,* s.a. 1018 (C, D, E); Dorothy Whitelock, "Wulfstan and the Laws of Cnut," *English Historical Review* 63 (1948), 433–52; idem, "Wulfstan's Authorship of Cnut's Laws," *English Historical Review* 70 (1955), 72–85; Lawson, *Cnut,* p. 61. The Corpus text has recently been edited and translated by A. G. Kennedy, "Cnut's Law Code of 1018," *Anglo-Saxon England* 11 (1983), 57–81. See also Patrick Wormald, "Æthelred the Lawmaker," in *Ethelred the Unready: Papers from the Millenary Conference,* ed. D. Hill, British Archaeological Reports, British Series 59 (Oxford, 1978), pp. 47–80.

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and once as *morðslagan* 'killers by murder'.[67] In this compound form *morð* keeps company with the sinners who recur in Wulfstan's homilies, the *wiccan, manslagan, manswican, forlegenan, æwbrecan, ryperas,* and a host of others in various arrangements, all seemingly grouped more for their proximity in biblical models and the demands of alliteration imposed by the author than for their reflection of English legal realities.[68] In two places, however, it is simply *morð* and is a *botleas* 'unatonable' crime. In one (II Cnut 64) it joins not the witches and adulterers of the homilies but *husbryce* 'house-breaking', *bærnet* 'arson', *open þyfþ* 'theft which cannot be disproved', and *hlafordswice* 'treachery towards one's lord'.[69] Earlier (II Cnut 56), not only had *morð* been defined obliquely as *botleas* but the kin of the slain were given the slayer in some rude calculus of sympathetic punishment.[70] Why would Wulfstan use in these two places *morð* instead of *morðor,* which by the tenth century had almost completely displaced *morð,* or instead of one of the compounds he had employed in Æthelred's codes? *Morð* shows up only in the earliest poetry, most of which dates from the late seventh or early eighth century, and it is extremely rare before homiletic writers revived it in the tenth century. Since II Cnut is not a homily, it is unlikely that Wulfstan was simply following Ælfric, who was his model in so much of his sermon literature and who used *morð* on occasion.[71]

One possible reason for Wulfstan's revival of *morð* in Cnut's code is that he wanted there to be no doubt in his audience that he was describing a crime specifically called *morð* and not generic killers, known in the pulpit as *morðwyrhtan* or *morðslagan.* Further, while Wulfstan made the *morðwyrhtan* of II Cnut 4a go into exile or forfeit possessions unless they made amends, here he stressed the impossibility of such amends: *æbere morð* is *botleas.* That Wulfstan made such a vivid distinction with such an unusual term suggests a purpose, which perhaps might have to do with his opposition to the new Danish king's murder fine, which made

[67] *Morðwyrhtan:* VI Atr 7, VI Atr 36 = II Cn 4a; *morðweorc:* V Atr 25 = VI Atr 28.2, and II Cn 5.1; and *morðslagan:* Cn 1020, c. 15.

[68] Wulfstan, "De fide catholica," lines 129–33, in Bethurum, *Homilies,* no. 7, p. 163. On this aspect of Wulfstan's bootleg codes, see M. K. Lawson, "Archbishop Wulfstan and the Homiletic Element in the Laws of Æthelred II and Cnut," *English Historical Review* 107 (1992), 565–86.

[69] Robertson's translations, *Laws,* pp. 206–7. One of the sermons originally attributed to Wulfstan, but now unassigned and undated, offers a similar combination; in an address "to eallan folke," the homilist lists together as *botleas* according to secular law "open þyfðe and hlafordes searwu and æbere morð": Arthur Napier, ed., *Wulfstan: Sammlung der ihm zugeschriebenen Homilien nebst Untersuchungen über ihre Echtheit,* 1: *Text und Varianten* (Berlin, 1883), p. 274 (no. 51, lines 23–24). Whether this homily is independent of, derived from, or the source of Wulfstan's own work is not known.

[70] For the English text and Latin translations, see above, n. 42.

[71] Wulfstan, in fact, uses it in only one other place: *Polity* 2.1.1, ed., Karl Jost, *Die "Institutes of Polity, Civil and Ecclesiastical": Ein Werk Erzbischof Wulfstans von York,* Schweizer anglistische Arbeiten 47 (Bern, 1959), p. 152. The explanation for such a revival may be that it is part of what Peter S. Baker identified as an archaizing trend in the vocabulary of late Old English literature: see his "The Old English Canon of Byrhtferth of Ramsey," *Speculum* 55 (1980), 22–37, noted by M. Godden, "Literary Language," in *Cambridge History of English,* 1 (above, n. 48), p. 534. Ælfric uses such vocabulary in his sermons for saints days: *De auguriis,* line 154, in *Ælfric's Lives of Saints,* ed. Walter W. Skeat, 4 vols. repr. as 2, EETS OS 76, 82, 94, 114 (London, 1966), 1:374; *Passio sancti Eadmundi regis,* line 209, ibid., 2:328.

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morð an atonable crime.[72] In Old English literature *morð* was Satan's crime against God, an act of treason for which no amount of compensation could wipe out the stain of betrayal.[73] Cnut's *morð,* which in Old Danish (if Old Norse can be trusted to be a faithful cousin) means "murder" but may also mean "assassination, or night slaying," has no verifiable denotation of "unatonable," and so it is likely that Cnut understood *morð* in the laws very differently from Wulfstan.[74] The archbishop might here have been singling out Cnut's new law against *morð* because he disapproved less of Cnut's creation than of his willingness to diminish the seriousness of *morð* by accepting compensation. As God had not forgiven Satan his sin of *morð,* neither should Cnut extend mercy to contemporaries guilty of the same crime.[75]

The second objection may be that the administration of the murder fine under Cnut was not possible without the existence of the institution of communal presentment and of the local suretyship system known by the twelfth century as frankpledge, both of which many historians would argue did not exist until after 1066.[76] Few, however, would not qualify their arguments since little is known

[72] Maitland suggested that between Æthelred's Wantage Code and 1066, "the severity of the law had been mitigated and this bot-less crime [*morð*] had become one for which in some cases a composition might be taken": F. W. Maitland, "The Criminal Liability of the Hundred," repr. in *The Collected Papers of F. W. Maitland,* ed. H. A. L. Fisher, 3 vols. (Cambridge, Eng., 1911), 1:241–42.

[73] See below, pp. 345–49.

[74] In *Egils Saga Skallagrímssonar,* when Egil appeared at the court of his enemy, King Erik Bloodaxe, Erik's queen demanded that Egil be executed immediately. Egil's friend Arnbjorn, however, responded that Erik would not allow this "þvi at náttvíg eru morðvíg" ("because killings at night are killings by murder"): E. V. Gordon, ed., *An Introduction to Old Norse,* 2nd ed. (Oxford, 1957), p. 109. Cf. Pollock and Maitland, *History,* 1:53, n. 1, and *Egil's Saga,* trans. Hermann Pálsson and Paul Geoffrey Edwards (Harmondsworth, Eng., 1976), p. 155.

[75] Stafford, *Unification and Conquest,* p. 16. It is possible that Danish settlement and rule effected a semantic loan into Old English, with a possible meaning of North Germanic *morð* 'secret-slaying' being imported into the existing Old English lexical unit *morð*. This kind of legal loan is not unlikely. Though most Scandinavian loans entered English in the twelfth and thirteenth centuries, of the earlier loans, legal loans were the most extensive (see Kastovsky, "Semantics," pp. 333–34). From the importance of these loans and estimates of extensive settlement by Danes in particular, some have argued that an Anglo-Scandinavian creole was created in this period, a mix not unlikely given the large number of cognates in the two languages but also a combination of languages that would redefine Wulfstan's and Cnut's different definitions of *morð* as less significant than they appear. In my argument any such loan is, however, undetectable given that the context of *morð* in the laws is too spare to help ascertain the word's denotation; nor has the creolization thesis found significant support among linguists: see above, n. 48. A sign of the difficulty of identifying even the most obvious loans from North Germanic into Old English is the problem associated with the word *lagu.* The borrowing of *lagu* is frequently misrepresented as a loan from Old Norse *logr;* rather, it is a semantic loan deriving its meaning from an unrepresented North Germanic */lɑg-u/: see Roger Lass, *Old English: A Historical Linguistic Companion* (Cambridge, Eng., 1994), p. 188. Any borrowing could, of course, have involved conscious selection: see M. Godden, "Ælfric's Changing Vocabulary," *English Studies* 61 (1980), 206–23, and idem, "Literary Language," pp. 515, 509, and 532.

[76] That presentment arose from Angevin legislation see, most recently, Richard Mortimer, *Angevin England, 1154–1258* (Oxford, 1994), p. 55. That frankpledge was an Anglo-Norman creation is argued by, e.g., Douglas, *William the Conqueror,* p. 314, n. 6. A recent survey showing the typical approach is W. L. Warren, *The Governance of Norman and Angevin England, 1066–1272* (Stanford, Calif., 1987), pp. 41–42, which accepts the English precedents but claims the Norman frankpledge was significantly different from the English *friborg.*

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about the origins of these institutions. The reason for this lacuna is not difficult to find. The sources for both are the equivalent of a handful of single movie frames surviving from what might have been several films of uncertain length, where the only thing known is the relative order of the fragments; no director would honestly expect to be able to recount the plot from such poor evidence, and so neither should historians attempt to present any firm and exclusive narrative of the development of communal presentment and frankpledge.[77] Nor is the later twelfth- and thirteenth-century serialization of either institution a trustworthy guide to the appearance of the original.[78] It is all too easy to distort the fragile remains of the tenth and eleventh centuries by imposing on them the much-recast product of two or three centuries of use. Much in English law, both parts and the whole, had changed during this time. For these reasons most historians have been wisely circumspect when discussing either institution. Here I must follow a similar course.

It is probably true that communal presentment or accusation, for example, had to be in place for the murder fine to have made legislative sense to a conquering king. What communal accusation offered was a system whereby representatives of the vill or hundred were obligated to indict criminals or suspected lawbreakers in their respective assemblies. Without such an obligation, the imposition of the murder fine, dependent as it was on the testimony of local people, would have entailed the creation of an equally immense and complex system for its own enforcement. However, the existence of presentment would have encouraged a legislating king to imagine that his fine could be put into effect. As Naomi Hurnard recognized, some kind of communal accusation "was essential to give point to the murder fine and it is highly probable that it goes back as far as the fine itself."[79] There is no need, however, to link the creation of the murder fine and communal accusation to the same legislative act or king.

The original independence of the institutions seems, in fact, quite clear. The group presenting murders, the hundred, appears originally not to have been subject in the first instance to any penalty. Instead of making hundreds liable, Cnut's murder fine was probably directed initially against lords; the similarity of the liability of lords for the misdeeds of their men in I Æthelred and for the slayings committed by or against their men in the *Articuli* is too striking to be coincidental and perhaps suggests that Cnut would have continued English tradition and placed liability for the fine on his English lords.[80] This target makes some sense

[77] A taciturnity in striking distinction to contemporary Irish and Welsh treatises on suretyship: cf. Robin Chapman Stacey, *The Road to Judgment: From Custom to Court in Medieval Ireland and Wales* (Philadelphia, 1994), pp. 7–8.

[78] Analyzing frankpledge through the developed institution of the thirteenth century is the implicit approach of Morris, *Frankpledge,* pp. 1–41. Hurnard, "Jury of Presentment," pp. 379–81, examines the problems arising from such an approach to communal presentment.

[79] Hurnard, "Jury of Presentment," p. 387.

[80] Compare I Atr 1.10–11 (Textus Roffensis): "And hæbbe ælc hlaford his hiredmen on his agenon borge. Gif he ðonne betyhtled wurðe and he utt oþhleape, gylde se hlaford þæs mannes were þam cyninge" (Quadr: "Et habeat omnis dominus familiam suam in plegio suo. Sin autem accusetur aliquis et aufugiat, emendet dominus regi weram hominis accusati") with Wl art 3.1: "Et si quis de illis [men who had come over with William] occisus fuerit, dominus eius habeat infra quinque dies

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as it would be the retinues of the defeated nobles who would be one of Cnut's, and later William's, greatest worries. Nor is this scenario for Cnut without evidence. The *Leges Edwardi* explains the murder fine in the context of the English *barones'* standing surety for the safety of Cnut's Danes; the author has not put this liability on the representatives of the shires or hundreds who proclaim the law in the prologue but has chosen to lay the burden for the fine, at least as originally conceived, on the lords.[81] The late-twelfth- or thirteenth-century resting of liability on the hundred, not on lords, has obscured the early structure of the system.

The hundred did eventually become liable. The problem of determining when the hundred actually assumed some of the liability for murders or other crimes, however, must take into account the second institution with which the murder fine has been linked, the frankpledge system, because the areas where the murder fine was collected were also the only places where men were organized into frankpledges. Frankpledge, a form of suretyship that obligated members to maintain the peace, was probably the result of the fusion of two institutions, *borh* and *teoðung,* both of whose early histories are still only poorly known. It seems clear, however, that by the time of Cnut *borh* 'suretyship' was essentially a way to make men liable for their neighbors' or retainers' crimes, while *teoðung* 'group of ten' was the institution that compelled local men to identify, and at times capture, malefactors, especially thieves. The problem has been to date the fusion of these two into frankpledge and explain frankpledge's coincidence with *murdrum.* Felix Liebermann, followed by William Morris, placed this fusion after the conquest because of the apparent causal link between the murder fine, which he identified as Norman, and frankpledge;[82] Morris thought that William I's creation of the murder fine caused the fusion since, in order for the fine to have worked, the local body responsible for catching the killers also had to be liable to a penalty for failure to do so.[83] According to Morris's theory, the independent institutions of *borh* and *teoðung* were welded together in those areas where the murder fine was collected by the imposition of *murdrum* itself.

There are several problems with this analysis. First, frankpledge is a difficult institution to track because both *borh* and *teoðung* were changing during this period, with only hints of their transformation revealed in the law codes and occasionally elsewhere. Determining when they were fused is almost as difficult as determining when they were not. For example, Æthelstan's Grately Code shows that the model

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homicidiam eius, si potuerit; sin autem, incipiat persoluere mihi quadraginta sex marcas argenti, quamdiu substantia illius domini perdurauerit." There are several problems posed by pronouns and antecedents in this passage, which make it difficult to be sure who is paying the fine. While the initial "eius" would normally refer to the slain person, not the slayer, note that the subject of the next sentence, who is doing the paying, cannot be the lord of the slain; this is the meaning of "illius domini." He must, however, pay the fine out of that lord's wealth. Who then is the agent? Is the title addressed to a shrieval official (or to the sheriff)? The passage raises more questions than it answers. Clearly not much weight can be placed on the exactness of the Latin in these clauses.

[81] ECf 16: "Murdra quidem inuenta fuerunt tempore Canuti regis, qui, post adquisitam terram et secum pacificatam, remisit domum exercitum suum precatu baronum de terra. [16.1] Et ipsi fuerunt fideiussores erga regem, quod illi quos retineret in terra firmam pacem haberent."

[82] Liebermann, *Über die Leges Edwardi,* p. 81; Morris, *Frankpledge,* pp. 29–34.

[83] Morris, *Frankpledge,* pp. 35–37.

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for the later frankpledge, the kin group, was obligated to act in the capacity of both *borh* and *teoðung* for its members, and both Æthelstan's and Æthelred's laws suggest that lords may have been similarly obligated.[84] Morris, in fact, argued that even before being fused under William I *borh* and *teoðung* would have been linked in practice, as the men who stood surety for one another in any given village were probably also members of a single *teoðung*.[85] Since the two were joined in kin groups and lords' households and probably were indistinguishable in personnel at the level of the village, it is unclear how they could have separated in order to have fused again after the Norman Conquest.

The only evidence that they were seen as separate and exclusive institutions, rather than differing though linked obligations, is II Cnut 20. This, however, is weak evidence; not only is it Wulfstan's phrasing, attuned to his literary ear, but the wording itself is vague.[86] Titled in one manuscript "þæt ælc mon beo on teoðunge," the law reiterates the need for every freeman who wants to have the right of exculpation and compensation through wergeld to be "on hundrede and on teoðunge" ("in hundred and in tithing") and that every homeowner (*heorðfæst*) or follower (*folgere*) be "on hundrede and on borge" ("in hundred and in surety") to ensure that someone as *borh* shall "lead him to every lawful duty."[87] The common interpretation that Wulfstan was distinguishing lords and their men from the rest of the hundred's freemen seems to trust too much in the narrowness of the terms, which might otherwise mean one who possessed his own home and a freeman attached to another's household.[88] *Heorðfæst,* then, might include lords with retainers and freemen without followers since status is here linked to domicile, not retinue. If Wulfstan had meant to limit this mention of *borh* to a lord and his household and exclude those not in a lord's retinue by placing them in *teoðung,* he could have signaled this more clearly by using *hlaford* 'lord' and *þeowas* 'ser-

[84] For kin: II As 1.3–4, 2, 6.1. For lords: III As 7–7.1; I Atr 1.10–11. Kin and lords both appear to be trying to avoid these obligations; in Maitland's analysis, they did so by trying to shift the obligations onto some outside organization, which explained for Maitland the creation of frankpledge: see Maitland, *Domesday Book,* p. 284.

[85] Morris, *Frankpledge,* pp. 27–28.

[86] Morris, *Frankpledge,* pp. 14–15, puts the greatest weight on this title as proving the independence of the institutions.

[87] II Cn 20 (British Library, Cotton Nero A.I, fols. 19v–20r): "and we wyllað þæt ælc freoman beo on hundrede . and on teoðunge gebroht . þe lade wyrðe beon wylle . oððon weres wyrðe . gyf hine hwa teon wylle ofer þæt he byð XII . wintre . oððon he ne beo syððan æniges freo rihtes wyrðe. Si he heorðfæst . si he folgere . þæt ælc si on hundrede . and on borge gebroht . and gehealde se borh hine . and gelæde to ælcan rihte": text in Liebermann, *Gesetze,* 1:322.

[88] Joseph Bosworth and T. Northcote Toller, *An Anglo-Saxon Dictionary* (Oxford, 1898), s.vv. heorþfæst, folgere. The former appears only in II Cn 20; one of its near cousins, *heorþgeneat* 'retainer, hearthcomrade' appears only in poetic texts (*Beowulf; The Battle of Maldon,* line 202) and so might suggest that the *heorþ-* term used in II Cn was an archaism. The latter, *folgere* 'follower, attendant, disciple', is clearly a broad term, which, in its only other legal venue, signifies a person of some status who nevertheless owes some agricultural service to his lord: "Rectitudines singularum personarum" (Rect.) 10, ed. Liebermann, *Gesetze,* 1:450. The supplement to Bosworth-Toller defines it only through II Cn 20 as a contrast to *heorþfæst:* T. Northcote Toller and Alistair Campbell, eds., *An Anglo-Saxon Dictionary* (Oxford, 1921), p. 230. P. D. A. Harvey has argued that the *folgere* of Rect. is the plowman, who is otherwise missing from the text: "Rectitudines singularum personarum and Gerefa," *English Historical Review* 108 (1993), 15.

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vants', in contrast to *ceorlas.*[89] Wulfstan, however, did not intend them to identify distinct classes of men in the hundred or separate institutions but rather to emphasize two distinct duties beholden on all freemen. Frankpledge, then, as a specific combination of the obligations of *borh* and *teoðung* could have been in place by Cnut; some combination of *borh* and *teoðung* was undoubtedly already in existence by Edgar's or, at earliest, Alfred's reign.[90] Thus Cnut would have found a system that obligated villagers for police duties and penalized them when they failed to apprehend the criminals among them.

A second question remains unanswered: why was frankpledge, which in the late twelfth century specifically excluded men within the *borh* of lords, coextensive with the murder fine if Cnut's fine primarily targeted English lords? At some point between I Æthelred and the *Articuli* the hundred took up liability for some crimes.[91] While in Æthelred's laws the lord alone paid to the king the wergeld of any of his men who broke the law, by the time of the Norman kings, according to one source, when the lord could not produce the entire sum of the fine, "the entire hundred in which the killing took place shall together pay what remains."[92] Why would that shift of liability occur? The explanation is twofold. First, lords had by 1066 already been shifting this type of *borh* and *teoðung* liability onto other groups—sometimes back onto the kin, at others onto artificial kin groups like the *wærborh.*[93] More immediately, the size of the fine, forty-six marks, was simply too large for most lords. That this burden began to be shared by the hundred is not surprising; the hundred was already accustomed to raising large sums to cover the collective burden imposed by the danegeld, with which *murdrum* is most often joined in later charters.[94] It seems likely that once recourse was made to the

[89] Cf. Wulfstan, "Sermo lupi ad Anglos," lines 117–19 (no. 20 [E, I]) in Bethurum, *Sermons,* p. 271.

[90] Patrick Wormald argues that in fact a suretyship system of oath and tithing, very similar to later frankpledge, was already in place in the tenth century, and may even be traced to Alfred, as William of Malmesbury believed: see Patrick Wormald, *The Making of English Law: King Alfred to the Norman Conquest* (Oxford, forthcoming), chapter 9: "The Pursuit of Crime."

[91] Maitland, "Criminal Liability." Maitland presents the Domesday Book evidence to raise a question but does not, in fact, explain it. All of his evidence for the Danish establishment of the liability of the hundred is postconquest and so may represent a Norman expansion of, for example, *murdrum* in the Danelaw. How the heavy fines listed there (8 pounds for each wapentake to make up the 144 or 96 pounds of the fine for breaches of certain types of peace) worked in practice alongside the murder fine at any time is unclear. See also Helen M. Cam, "The 'Private' Hundred in England before the Norman Conquest," repr. in her *Law-Finders and Law-Makers in Medieval England: Collected Studies in Legal and Constitutional History* (New York, 1962), pp. 59–70, where the extent of "seignorial" control of hundreds before 1066 would help explain how lords were able to shift burden for Cnut's murder fine onto the shoulders of the hundred. Cyril Hart has now argued that the hundred is the English derivative of the Danes' wapentake, a theory that has too many implications beyond the scope of this paper to work out in detail here. Suffice it to say that he has still not fully explained the peculiar sizes of southern hundreds if they were inspired rather late by Danish organization: see Cyril Hart, *The Danelaw* (London, 1992), pp. 281–88, which curiously makes no use of Maitland's essay.

[92] Wl art 3.2: "totus hundredus, in quo occisio facta est, communiter persoluat quod remanet."

[93] III As 7–7.2; III Em 7–7.1; analyzed by Morris, *Frankpledge,* pp. 22–25.

[94] They are grouped together in Richard Fitz Nigel's *Dialogus* as exemptions to which the barons of the Exchequer were entitled as perquisites of their office. See also J. H. Round, "The Hundred and the Geld," *English Historical Review* 10 (1895), 732, for the responsibility of the hundred for collecting the geld in the twelfth century.

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hundred to complete the fine, the actual balance would be distributed by the existing subunits of the hundred, the tithings, supplemented by whatever *borh* groups existed (whether *mægðborh, wærborh,* or lords and their households). The collective term *hundredus* must have included the men of other lords and excluded only those men in the *borh* of the slayer's lord, who had been the first to contribute, since it is difficult to see how the inclusion of these other lords and their households could have been avoided. By the early twelfth century, lords were in fact willing to pay for pardons from murder fines levied on their hundreds; and by the thirteenth century, this burden had been shifted entirely onto the shoulders of the hundreds.[95] One very likely time between Æthelred and William I for the hundred to have assumed some liability for the fine was when the fine was established at its exceptionally high level, which, as will be argued below, probably happened at its creation by Cnut.

I cannot, of course, produce Cnut's laws creating the murder fine or offer incontrovertible proof of its links to communal accusation and frankpledge, but I can suggest that an inability to do so is not all that great an objection to attributing the murder fine to Cnut. Against the combined testimony of context and pipe rolls, whose evidence makes most sense if the fine had been Cnut's, such a gap in the records is at worst an inconvenience rather than an impenetrable barrier.

How then does Cnut's murder fine fit into what is known of Anglo-Saxon legal and social developments of the ninth, tenth, and eleventh centuries? The story begins with a few words: *morð, morðor,* and their compounds, which sit behind some of the postconquest Latin forms.[96] The immediate difficulty is both mor-

[95] Hamil, "Presentment of Englishry," pp. 285, 291–92, and Maitland, *Domesday Book,* p. 148. The pipe roll records pardons by royal writ from payment of portions of murder fines for specific murders. While these references do show lords receiving, probably through payment or favor, pardons, and do generally support the underlying liability of the hundred, they leave most questions concerning the administration of the fine unanswered: E.g., why were the amounts pardoned so irregular, or what determined an individual baron's liability? Were the listed amounts for a murder fine all that was assessed? Where are the contributions of the hundreds listed? I intend to explore these questions further in another paper.

[96] This approach was suggested with a more restricted goal by Yntema, "*Lex Murdrorum,*" pp. 150–51, n. 20. For my work on Old English, I have been aided a great deal by Richard L. Venezky and Sharon Butler, eds., *A Microfiche Concordance to Old English* (Toronto, 1985). The entries for *murder* (noun and verb) in the new edition of the *Oxford English Dictionary* are of some value, though the etymologies remain relatively unchanged from the old edition. Of exceptional value for making sense of the development of Old English internally and in response to outside influence has been Kastovsky's "Semantics," pp. 290–408, as well as Lass, *Old English.* For Old French *mordre,* a development from Frankish **morþor* and **murþrjan,* I have relied on A. Tobler and E. Lommatzsch, *Altfranzösisches Wörterbuch,* 6 (Wiesbaden, 1965), cols. 255–62; W. Meyer-Lübke, *Romanisches etymologisches Wörterbuch* (Heidelberg, 1935), p. 474; E. Gamillscheg, *Etymologisches Wörterbuch der französischen Sprache* (Heidelberg, 1969), p. 619; and W. Von Wartburg, *Französisches etymologisches Wörterbuch,* 16 (Basel, 1959), pp. 582–84. Specific Anglo-Norman usage can be sampled in W. Rothwell et al., *Anglo-Norman Dictionary* (London, 1992). Ascertaining Old Danish influence is highly conjectural as it would be very difficult to distinguish Old Danish/Old Norse *morð* from Old English *morð* and consequently impossible to argue which of the two was behind a reference to *morthrum* of some sort: on the difficulty of disentangling these two languages/dialects, see Roberta Frank, "Skaldic Verse and the Date of *Beowulf,*" in *The Dating of Beowulf,* ed. Colin Chase (Toronto, 1981), pp. 138–39.

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phological and semantic. It is traditional to identify *morð* as West Saxon and *morðor* as Anglian in dialect and to ascribe to them slightly different semantic fields.[97] The identification of dialectical origin, however, is not especially persuasive since, as D. G. Scragg has observed concerning dialect words in tenth-century texts of some homilies, "[t]he terms early West Saxon, late West Saxon, Kentish and Mercian [i.e., Anglian] are themselves very inexact, and they relate more to scriptorium traditions than to spoken dialects or geographical areas."[98] Whether Anglian *morðor* became by the tenth century part of the essentially West Saxon literary koine used in these scriptoria because of Mercian domination during the eighth century can be conjectured, but it is a moot point.[99] By the tenth century the words *morð* and *morðor* appear to be synonyms and exhibit no significant dialectical or semantic variation in use, except that *morð,* unlike *morðor,* is seldom used in uncompounded form outside of the works of the homilists.[100] By c. 850 *morðor* is the usual form found in all the sources, no matter what their provenance.

Both words have been misunderstood consistently by historians and linguists. Throughout the Anglo-Saxon period *morð* and *morðor* do not mean exclusively, or even generally, secret killings, as has often been argued.[101] This is a very rare

[97] Identifications of *morðor* as Anglian are common and often unqualified: e.g., Angus Cameron et al., "A Reconsideration of the Language of Beowulf," in *The Dating of Beowulf,* ed. Chase, p. 74. Franz Wenisch, *Spezifisch anglisches Wortgut in den nordhumbrischen Interlinearglossierungen des Lukasevangeliums,* Anglistische Forschungen 132 (Heidelberg, 1979), pp. 184–89, cites previous work. Fr. Klaeber, ed., *Beowulf and the Fight at Finnsburgh,* 3rd ed. (Lexington, Mass., 1950), p. xcv, is one of the few to voice doubts; he claims it as "possibly primarily" Anglian. The identification itself seems to rest on the fact that where the late-tenth-century West Saxon Gospels use *mansliht,* the Northumbrian glosses to the Rushworth and Lindisfarne Gospels favor *morðor,* by itself or in compounds. However, all of these Gospel texts postdate the creation of the Old English literary language (as is discussed later in this paragraph), and *morð* and *morðor* are already present side by side in the earliest poetry: see, e.g., *Genesis B,* lines 755–58, in *The Saxon Genesis: An Edition of the West Saxon Genesis B and the Old Saxon Vatican Genesis,* ed. A. N. Doane (Madison, Wis., 1991), p. 227. The usual explanation for such occurrences of assumed West Saxon words in Anglian texts is that later West Saxon scribes introduced their more familiar forms; however, it is a matter of faith, not fact, to consider all use of *morð* in Anglian texts to be West Saxon scribal emendations, given that the scribes normalized only some, not all, occurrences of *morðor.* On this and other relevant issues, see Thomas E. Toon, "Old English Dialects," in *Cambridge History of English,* 1 (above, n. 48), pp. 409–51, who employs a cautious and historically sensitive approach.

[98] D. G. Scragg, *The Vercelli Homilies and Related Texts,* EETS OS 300 (Oxford, 1992), p. lxxi.

[99] Toon, "Dialects," pp. 423–26, 450–51.

[100] Compare the list of various deaths in two Old English prose texts; the first a tenth-century sermon that includes "on morðe ofslagene" ("slain by murder"), in M. Förster, "Der Vercelli-Codex CXVII nebst Abdruck einiger altenglischer Homilien der Handschrift," in *Festschrift für Lorenz Morsbach,* ed. F. Holthausen and H. Spies, Studien zur englischen Philologie 50 (Halle, 1913), p. 93, and the second, a translation of the *Poenitentiale Theodori,* no. 199, "Gyf wif hire bearn þurh morðor acwælleð, xv wintr fæste," in Franz Joseph Mone, *Quellen und Forschungen zur Geschichte der teutschen Literatur und Sprache* (Aachen and Leipzig, 1830), p. 526. A better example may come from *Beowulf,* where the dragon struggled until, helped by Beowulf's sword, "he morðre swealt" ("he died by murder"), *Beowulf,* line 2782, p. 104.

[101] This definition is fairly standard: e.g., *Oxford English Dictionary,* s.v. murder sb., where the strict sense "denoted secret murder." See also Bosworth and Toller, *Anglo-Saxon Dictionary,* pp. 698–99, s.v. morþ, III, murder "as a technical term, *slaying with an attempt at concealment of the dead,*" though distinguished from *morþor,* which can be sin but is never secret; the compounds with *morþ-* all then carry this baggage: e.g., *morþ-slaga* 'murderer, assassin'; *morþ-sliht* 'murder, assassination'; *morþ-weorc* 'act which causes death (by witchcraft or poison)'; and *morþ-wyrhta* 'one who causes death (by witchcraft

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sense, even in the law codes, and does not appear to be in any way technical.[102] Only in a small group of works, primarily homilies and laws, do *morð* and *morðor* take on any sinister supernatural meaning whatsoever.[103] In these works *morð*-compounds appear with witchcraft, an association that has given rise to the usual understanding of its meaning. However, murderers are grouped most often with *wiccan* 'wizards, witches' and *mansworan* 'perjurers' as well as *forlegenan* 'adulterers' and *þeofas* 'thieves', not because all of these criminals are linked to witchcraft, but rather because they all appear in the Decalogue's list of criminals, which includes *colentes deos alienos* 'worshipers of strange gods', *occisores* 'killers', *moechi* 'adulterers', *fures* 'thieves', and those who bear *falsum testimonium* 'false witness'.[104] Similar

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or poison)'. Liebermann, *Gesetze,* 2:149, defines *morð* as "heimlicher Mord, Tötung nicht in offenem Kampfe." Reinhold Schmid, *Die Gesetze der Angelsachsen* (Leipzig, 1858), p. 633, links it to murder through poison or magic. Bethurum, *Homilies,* p. 310, argues that "the associations of this word are all with witchcraft." This denotation is usual in the surveys as well: e.g., Barrow, *Feudal Britain,* p. 50, n. 1; Plucknett, *Concise History,* p. 445; W. S. Holdsworth, *A History of English Law,* 3rd ed., 7 vols. (Boston, 1923), 2;48, 359.

[102] The Vulgate's "maledictus qui clam percusserit proximum suum" (Deut. 27.24) becomes in the English translation, "Sy ælc morðslaga awyrged": S. J. Crawford and N. R. Ker, eds., *The Old English Version of the Heptateuch,* EETS 160, rev. ed. (London, 1969), p. 358. This translation implies that *morðslaga* includes the notion of *clam* 'secretly' but introduces the problem of why the translator would equate *percutio* with *morðslean,* which are not approximate. *Percutio* in most senses means only "to strike" or "to hit"; only in rare places, not likely familiar to the translator, does it mean "to kill." There is then a possibility that the translator took the "clam" as identifying the usage of *percutio,* and so chose "morðslaga awyrged" because it was also a kind of secret slaying. The problem is that there is not enough context to support this reading, and, in any case, *morð* need not involve a killing as long as the crime involved betrayal: for a discussion of this point, see below, pp. 346–47 and n. 117–21.

[103] Outside the works of Ælfric and Wulfstan, discussed below, see the following: *The Old English Orosius* 1.8, ed. Janet Bately, EETS SS 6 (London, 1980), line 14, p. 27; A. J. Robertson, ed., *Anglo-Saxon Charters,* 2nd ed. (1956; repr. Holmes Beach, Fla., 1986), pp. 68–69 (no. 37). In this latter document, the only example of the actual practice of what the editor called "pin-sticking magic" in Old English sources, the context suggests that the crime was as much practicing magic as treason against a lord (whose figure was the target for the staves); for this crime the estate was forfeited, and the two convicted of the crime, mother and son, were respectively drowned and outlawed. One work of Ælfric is more direct in its association of *morð* with sorcery. In his version of the *Passio Chrisanti et Dariae* Ælfric makes the jailer, surprised by Chrysanthus's escape from his chains and the appearance of a bright light in his dark cell, ask the saint, "hwæt is seo micele miht þinre morð-cræfte / þæt þu þyllic gefremast þurh feondlicne dry-cræft?": see *Ælfric's Lives of Saints,* ed. Skeat, 2:388 (no. 35).

[104] Noted by others, e.g., Bethurum, *Homilies,* p. 310, but not allowed to shape the understanding of the individual Old English terms. These sinners are not simply close by position but are also associated by act: all took something not theirs to take (rival gods, life, spouse, goods, and honor or reputation); I owe this point to a personal communication from Rabbi Steve Weisman. Murder also shows up in the New Testament in connection with adultery, theft, perjury, and parental respect: see the Lindisfarne gloss to Matt. 19.18 in *The Gospel according to Saint Matthew in Anglo-Saxon, Northumbrian, and Old Mercian Versions,* ed. Walter W. Skeat (Cambridge, Eng., 1887). Many instances may appear at first glance to associate *morðor* with evil—e.g., the Blickling homily for the fifth Sunday in Lent lists those who live *be his* [the Devil's] *larum* as "myrþran and mánswaran and þa þe wóhhæmed ny begangaþ mid oþerra ceorla wífum"—all of whom had been taught these sins by Satan. The collection, however, derives, like most others, from the Decalogue. The recognition of this link sets a very different context for defining *morðor* in such passages: see Richard Morris, ed., *The Blickling Homilies of the Tenth Century,* EETS 58, 63, 73 (London, 1874–80; repr. as one vol., 1967), p. 61.

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groupings occur elsewhere in the Bible, most notably in the Apocalypse,[105] and these lists of sinners provided a model for Wulfstan in his sermons. Turning from homilies to laws, Wulfstan continued to associate *wiccan* (read "worshipers of strange gods") with *morðwyrhtan* in the codes of Cnut and Æthelred, as that is certainly how they were associated in the law that God had given to Moses on Mt. Sinai.[106] The influence of the Mosaic code of law had not ended with Alfred's long preface to his law code but continued to direct the legal vision of ecclesiastical writers like Wulfstan into the eleventh century.[107]

Instead of meaning secret killing or poisoning, or having some semantic association with witchcraft, *morð* and *morðor* from a very early date had two special meanings, both of which are common in the texts and linked together conceptually, most prominently in the verse of the late seventh, eighth, and ninth centuries.[108] First, the terms might mean a kind of killing for which there could be no compensation.[109] Instead of requiring a wergild as settlement, a slaying by *morðor* called for a feud. The early-eighth-century Cædmonian poem *Exodus* describes the mood of the Egyptian kinfolk upon the departure of the Israelites as *graman* 'angry, wroth', because they remembered the plague *morðor* the Israelites had committed against the *mægwinum* 'dear kinsmen' of the Egyptians.[110] Driven by this anger, the Egyptians broke their deal with the Israelites and sought revenge on the battlefield. In *Beowulf,* which may be as early as the eighth or as late as the tenth century, the killings in feuds that are beyond compensation or that, if compensated, are doomed to erupt into renewed violence are called *morðras,* and the anger that drives this violence is *morðorhete,* which can only be relieved "by the

[105] Rev. 21.8.

[106] On Wulfstan's approach to his subjects and dependence on Ælfric, see Bethurum, *Homilies,* introduction and passim. Wulfstan was not alone in making this association: Ælfric, *Homilies,* ed. John C. Pope, 2 vols., EETS 259, 260 (London, 1967–68), 1:436 (no. 11), 2:550 (no. 16), 2:743 (no. 23); *Old English Homilies,* ed. Irvine, p. 105 (no. 4). Ælfric in turn derived his lists of sinners from St. Paul, who himself took them from earlier biblical models. Bethurum lists works that derive their lists of tortures and blessings from Wulfstan in *Homilies,* pp. 309–10. The influence of Wulfstan on eleventh-century homilies is discussed by Jonathan Wilcox, "The Dissemination of Wulfstan's Homilies: The Wulfstan Tradition in Eleventh-Century Vernacular Preaching," in *England in the Eleventh Century: Proceedings of the 1990 Harlaxton Symposium,* ed. Carola Hicks (Stamford, Eng., 1992), pp. 199–218. For the appearance of these lists of sinners and sins in the law codes, see V Atr 24–25; VI Atr 36; Cn 1020, c. 15 (which even has *mægslagan* 'parricides', reminiscent of those who do not honor their father and mother); II Cn 4a, 5.1, 6.

[107] Af, prol. in Liebermann, *Gesetze,* 1:26–47. See also F. Liebermann, "King Alfred and Mosaic Law," *Transactions of the Jewish Historical Society of England* 6 (1908–10), 21–31; Simon Keynes and Michael Lapidge, *Alfred the Great* (Harmondsworth, Eng., 1983), p. 304. Cf. Paul Fournier, "Le *Liber ex lege Moysi* et les tendances bibliques du droit canonique irlandais," *Revue celtique* 30 (1909), 221–34. Mary Richards conjectures that the interest in Mosaic law came from Alfred, who had to convince his churchmen that a link between his code and Moses' was legitimate: M. Richards, "The Manuscript Contexts of the Old English Laws: Tradition and Innovation," in *Studies in Earlier Old English Prose,* ed. P. E. Szarmach (Albany, N.Y., 1986), p. 176.

[108] Bosworth and Toller, *Anglo-Saxon Dictionary,* note some of these broader usages, though they think only *morðor,* not *morð,* can mean generally "murder" or "killing": cf. *morþ* III and *morþor* I, p. 698.

[109] Bosworth and Toller offer this as one possibility: s.v. *morþ,* p. 698.

[110] *The Old English Exodus,* ed. J. R. R. Tolkien and Joan Turville-Petre (Oxford, 1981), lines 144–46, pp. 5 and 48 (commentary).

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edge of a sword."[111] Cain could make no compensation for his brother and so was *morðre gemearcod* 'marked by murder'.[112] Nor could Hæðcyn ever make amends for the slaying of his own brother; though it was an accident, nevertheless Herebeald had been laid out on his *morðorbed* by his brother's poor aim with bow and arrow.[113]

Some might see the ninth- or tenth-century poem *Andreas* as an exception to this rule, since the Mermedonians are said to be under *feondes facen* 'the deceit of the Devil' in their murderous practices.[114] What is really at work here, however, is the grand feud between God and Satan in which the apostle Matthew, captured and being held over as the main course for a later feast, is one of God's thegns, while his captors are Satan's.[115] This reading makes sense of the final casting of the fourteen worst Mermedonian warriors into the abyss because they were *mane faa, morðorscyldige* 'outlawed by [their] crimes, guilty of murder'.[116] Here the outlawry suggests that the murders these cannibal warriors had committed were *botleas.*

In addition to covering slayings without possibility of compensation, and often alongside it, *morð* and *morðor* also meant both a crime of betrayal against one's lord and the sympathetic punishment for such treason. In *Genesis B* (c. 850), the earliest betrayal, Lucifer's rebellion against God, constituted *ealra morðra mæst* 'most dreadful of murders'.[117] In *Christ and Satan* (early-ninth-century), *morðer* [*sic*]

[111] *Beowulf,* line 1105 (*-hete*). While I find the arguments in favor of a tenth-century date more persuasive than those that would place the poem earlier, the dating does not significantly affect my argument: see Nicolas Jacobs, "Anglo-Danish Relations, Poetic Archaism, and the Date of Beowulf: A Reconsideration of the Evidence," *Poetica* (Tokyo) 8 (1977), 23–43; Walter Goffart, "*Hetware* and *Hugas:* Datable Anachronisms in *Beowulf,*" in *The Dating of Beowulf,* ed. Chase (above, n. 97), pp. 83–100; Alexander Callander Murray, "*Beowulf,* the Danish Invasions, and Royal Genealogy," ibid., pp. 101–11; R. I. Page, "The Audience of *Beowulf* and the Vikings," ibid., pp. 113–22; Frank, "Skaldic Verse," ibid., pp. 123–39; and E. G. Stanley, "The Date of *Beowulf:* Some Doubts and No Conclusions," ibid., pp. 197–211. There are still many who would place it in the eighth century. See Colin Chase, "Opinions on the Date of Beowulf, 1815–1980," ibid., pp. 3–8. For the use of the term to explain uncomposable feuds, see the context of line 1079, p. 41; line 1105, p. 42 (feud of Finn and Hnæf); line 2055, p. 77 (Hrothgar's feud with the Heathobards, where composition through marriage fails); and line 2742, p. 103 (as he is dying, Beowulf claims that God cannot charge him with the murder of kinsmen, killings that presumably would be, like Cain's, unatonable). Even the references to *morðor* in Beowulf's battles with the monsters occur in the context of an uncomposable feud between God's forces and the *Godes ansacan* 'enemies of God' (line 1682, p. 63) created by the Fall, which itself was the grand betrayal (lines 136–37, p. 6, where the *morðbeala* Grendel did was part of his *fæhð* with Hrothgar).

[112] *Beowulf,* line 1264, p. 48. *Genesis A,* dating to the early eighth century, tells how Cain, *ordbanan Abeles* 'slayer of Abel', was himself slain by his descendant Lamech (Lameh in text), though by accident. Lamech laments, "Ic on morðor ofsloh minra sumne hyldemage" ("I slew my loyal kinsman by murder"), an accidental death whose tragedy is magnified, as an English audience would know, by the fact that the slaying was unatonable: see *Genesis A,* line 1093, ed. A. N. Doane, *Genesis A: A New Edition* (Madison, Wis., 1978), p. 251.

[113] *Beowulf,* line 2436, p. 91.

[114] *Andreas,* line 20, ed. Kenneth R. Brooks, *Andreas and the Fates of the Apostles* (Oxford, 1961), p. 5.

[115] This feud is what governs relations between God, the Devil, and sometimes man (on one side or the other) in, e.g., *Genesis A* and *B, Christ and Satan, Beowulf,* and *Guthlac.*

[116] *Andreas,* line 1599, p. 51.

[117] *Genesis B,* line 297, p. 210. The same sense of *morð/morðor* as both treason and its punishment is at lines 342 (p. 212), 755 (p. 227), and 758 (p. 227).

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was what the fallen angel had to suffer for treason against God.[118] In revenge, Satan in *Genesis B* tempted man to betray God in order to drive mankind *on þæt micle morð* 'to utter death'.[119] This is the devil's guise: in the works of the ninth-century West Saxon poet Cynewulf, he is *morðres mánfrea* 'the evil prince of murder' because he encouraged such disloyalty and disobedience.[120] In a more terrestrial setting, tenth-century Northumbrian translators chose *morðor* to signify *homicidium* in the Gospels when that killing was a product of *siditio* [*sic*] 'treason'.[121] A killing with no hope of effective compensation or a betrayal of one's lord was what English poets and prose writers most commonly meant when they used *morðor* and *morð*.

These two terms, then, represented crimes whose villainy must have increased as lordship grew in strength in the ninth, tenth, and eleventh centuries.[122] During

[118] *Christ and Satan,* line 183, ed. George Philip Krapp, *The Junius Manuscript,* Anglo-Saxon Poetic Records 1 (New York, 1931), p. 141. The message seems to be that *morð* is the same state as exile when one has lost the favor of one's lord.

[119] *Genesis B,* line 691, p. 225. The Devil was clearly successful in this attempt: men and women pay the penalty of death ("mæg and mæcgas morðres ongyldon") for Adam and Eve's sin of disobedience to their Lord. Cf. *Guthlac B,* line 861, in *The Guthlac Poems of the Exeter Book,* ed. Jane Roberts (Oxford, 1979), p. 109, with commentary on pp. 160–61. The poem is "not much later than the Alfredian period," though possibly much earlier, pp. 70–71. In the Bible the Devil was able to entice Eve by claiming that, as soon as she had tasted the fruit, "you will be like God himself," or in other words a *hlaford,* no longer a *gesith.* Adam and Eve are exiled from Eden not strictly as a consequence of their first sin but because God fears they will sin again by eating from the tree of life and will then live forever like the gods (Gen. 3.22, "unus ex nobis"), which would constitute a further betrayal. An anonymous eleventh-century Old English homily defines heaven by what it does not have: thirst, hunger, weeping, gnashing of teeth, "ne morþer [*sic*], ne man," ("and no one dies there"), thereby confirming the persistence up to the conquest of the association of *morðor* in this case with the punishment for sin: *Old English Homilies from MS Bodley 343,* ed. Susan Irvine, EETS OS 302 (Oxford, 1993), p. 200 (no. 7, line 88).

[120] Cynewulf, *Elene,* ed. P. O. E. Gradon (London, 1958), line 941, p. 61, and idem, *Juliana,* ed. Rosemary Woolf (New York, 1966), line 546, p. 46. In the Old English life of St. Margaret, preserved in a twelfth-century manuscript (Cambridge, Corpus Christi College, MS 303) and written according to its latest editor "not very long before the manuscript," the Devil, admittedly under duress with Margaret's foot on his neck, confesses to Margaret that he has "turned many of God's servants (*þeowas*) away from God." He wooed them away from loyal service by various means, including "sume mid slehte and sume on some; sume on morðdædum" ("some by slaughter and some in reconciliation; some in murders"): Mary Clayton and Hugh Magennis, eds., *The Old English Lives of St. Margaret* (Cambridge, Eng., 1994), pp. 164–65 (c. 15). Note that slayings are linked to reconciliation, or compensation, but no such option is implied for murders. Incidently, at the point in the story where this conversation occurs, Margaret as a servant of God is praying to her lord for protection, asking specifically that her *leofa Drihten* never allow her enemies to overcome her because she is a loyal follower who loves her lord (pp. 154–59 [cc. 5, 8]); thus the Devil's list of those he has deceived is especially focused on those who are expected to show loyalty to their lords.

[121] Luke 23.19 in *The Gospel according to Saint Luke in Anglo-Saxon and Northumbrian Versions,* ed. Walter W. Skeat (Cambridge, Eng., 1874), p. 221, for the Lindisfarne and Rushworth glosses and their Latin texts. The West Saxon texts use *manslyhte:* ibid., p. 220. On the use and significance of *morðor* in the Anglian glosses, see Wenisch, *Spezifisch anglisches Wortgut,* pp. 184–89. An eleventh-century *ordo confessionis,* possibly compiled under the direction of Wulfstan, makes the link between treason and murder quite clear; some men lose their lives by judgment, "þæt bið þeof and morðwyrhta and hlafordswica," in Roger Fowler, "A Late Old English Handbook for the Use of a Confessor," *Anglia* 83 (1965), c. 4, lines 162–63, p. 22.

[122] In a similar fashion, as these kings invested more and more energy in controlling, if not elim-

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those centuries kings began assuming more responsibility for ensuring justice and eliminating crime and, as a matter of public peace, tried to establish mechanisms that would ensure that *borh* and *teoðung* were shouldered by local people.[123] This extension of royal command into the lives of free Englishmen is the implicit, and at times explicit, goal of II Æthelstan, II Edmund, and Edgar's Hundred Ordinance, all of which have echoes in Æthelred's and Cnut's laws. Through the agency of *borh* and *teoðung* and the consequent diminishing of kinship obligations, kings were able to extend their *mund* 'protection', including breaches of the peace as well as strangers and kinless men.[124] Alfred, for example, split the wergild paid for a slain kinless man with the man's associates, a division that implies an assumption by both artificial kin groups and the king of some or all of the kin's obligations to protect or avenge.[125] Later kings extended their responsibility to defend such men through an expansion of royal *grið* 'peace', which might in part have been enlarged by reformers like Wulfstan who were influenced by the Continental Peace of God.[126] To slay a kinless man protected by this *grið* became a crime against his artificial lord, the king, and therefore a species of treason.[127] English kings were supposed to act against treason or *morðor:* in the Gospel of Matthew's parable of the wedding feast, a late-tenth-century Northumbrian glossator called the slayers of the king's messengers, who had all presumably been under his *mund* or protected by his *grið, morðorslagan,* who are punished by death at the hands of the avenging warriors of the king.[128] In Anglo-Saxon society, to

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inating, feud, the kind of killing that feuds perhaps too often generated, *morðras,* would have taken on much more negative overtones. On the role of feud in this world and later, see Paul Hyams, "Feud in Medieval England," *Haskins Society Journal* 3 (1991), 1–21; J. S. Beckerman, "Adding Insult to *Iniuria:* Affronts to Honor and the Origins of Trespass," in *On the Laws and Customs of England: Essays in Honor of Samuel E. Thorne,* ed. Morris S. Arnold et al. (Chapel Hill, N.C., 1981), pp. 159–81; and Pollock and Maitland, *History,* 1:46–47. II Em 7 orders the *witan* to end feuds, but royal action against feud, or kin groups who could support it, was often much more practical: see II and VI As, which show royal command (II) and local application of that command (VI).

[123] Morris, *Frankpledge,* pp. 10–25.

[124] II Em 6. For a consideration of the development of kingship that lays considerable stress on the extension of the royal peace by Cnut and William I, see H. R. Loyn, "*De iure Domini Regis:* A Comment on Royal Authority in Eleventh-Century England," in *England in the Eleventh Century,* p. 21. T. M. Charles-Edwards, *Welsh and Irish Kinship* (Oxford, 1994), pp. 470–71, offers a gentler interpretation of the aims of neighboring Celtic kings with respect to their manipulation of "peace-guilds" and "the rights of lordship." As he sees it, kings did not exalt "the rights of lords in order to weaken kinship; rather, they preserved peace by means of criss-crossing loyalties which depended upon both the variety and also the continuing strength of social ties," a practice that did significantly, though indirectly, strengthen kingship.

[125] Af 28 (*recte* 31: see Liebermann, *Gesetze,* 1:64, n*).

[126] On Wulfstan's use of the Continental peace, see Lawson, *Cnut,* pp. 56–59.

[127] VIII Atr 33–34. Wulfstan places *open morð* with plotting against a lord or king, *borhbryce* of the king, and *griðbryce,* all of which are crimes defined primarily with respect to royal lordship: see II Cn 56–58, 61.

[128] See the Northumbrian glosses to the Lindisfarne and Rushworth Gospels for Luke 23.19 in *The Gospel according to Saint Luke,* ed. Skeat, p. 221, and III Atr 1, where breach of the king's *grið* is *botleas.* Matt. 22.7 in *The Gospel according to Saint Matthew,* ed. Skeat, p. 177: the Lindisfarne gloss reads "and weron gesendeno hergas his, fordyde vel losade morðorslago ða ilco and byrug vel burug hiora gebarn"; the Rushworth gloss has ". . . hergas his and abriodde myrðra heora and burg heora forbernde." Both glosses translate the Vulgate passage: "Rex autem cum audisset iratus est et missis

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commit such a slaying against one's lord was *morðor,* and it was a killing that required vengeance.

Cnut stepped into what had already been set in place by his English predecessors and became the kin and lord of his men since they were legally strangers in England.[129] Once they were in Cnut's *borh,* protected by his *mund* or *grið,* the killing of any of them was treason and compelled their royal lord to punish the malefactors, or *morðwyrhtan.* Even this was not enough given the additional enmity between Cnut's men and the English that was a by-product of the invasion and occupation. In order to give them greater protection in the more hostile parts of the realm, I suggest, Cnut established an unusually high, though not unprecedented, fine for any who were slain and laid liability for this on those most likely to have been either responsible or in a position to prevent it: the English lords. If the murderer fled or could not pay, his lord paid. When lords could not pay the full amount, the remainder was paid, it seems most likely, by the hundred to which they belonged. The procedure for the imposition of this *morð* fine was built on a developing system of *borh* and *teoðung* and in turn helped to align these institutions even further. If novel in its construction in 1017 or 1018, the murder fine's parts were all well known to the *Angli.* Cnut's most significant change to existing customs was a result of his political wisdom; he allowed crimes of this nature to be compensated by a payment of wergild, and this allowance may explain Wulfstan's emphasis on *morð* as *botleas* in the law codes, an oblique criticism of Cnut's innovation.

It is likely that the murder fine survived at some level under Cnut's Danish successors and Edward the Confessor even though the sources from the period do not mention it. The limitations of the extant sources may explain this silence. No English kings after Cnut produced law codes that have survived.[130] Nor was much historical writing produced beyond entries in the *Anglo-Saxon Chronicle* and a few saints' lives.[131] However, William I's use of the murder fine suggests some continuity of practice between Cnut's creation of the fine and its Norman revival.

William I had a similar need to Cnut's and so, perhaps with English help,[132]

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exercitibus suis perdidit homicidas illos et ciuitatem illorum succendit." See below, n. 166, on kings compelled to seek revenge for crimes against foreigners. In their discussion of the king's power to pardon criminals put into his mercy, ECf places a limit on this power only for *murdritores* or *traditores,* "who will not remain in the country if the king grants life and limb to them" but will go into exile: ECf 18.2, Liebermann, *Gesetze,* p. 644. Note the linkage of *murdrum* with *traditio,* on which Liebermann remarks, *Über die Leges Edwardi,* pp. 107–8.

[129] The Danish warriors' need for status in England was not, of course, simply a question of legal protection: see Svein's request to Cnut just before his death in England that "neue pateretur se ali⟨g⟩enigenam in externis tumulari terris; nouerat enim, quia pro inuasione regni illis exosus erat populis," *Encomium Emmae reginae* 1.5, ed. Alistair Campbell, Camden Society, 3rd ser., 72 (London, 1949), p. 14.

[130] The final section of book 3 of In Cn includes a list of royal pleas that looks like it originated sometime between Cnut and Henry I, but since it is a translation from Old English, it most likely predates the conquest and so may reflect the situation under Edward the Confessor.

[131] Gransden, *Historical Writing,* p. 82.

[132] Individual acts and cases reported in charters and chronicles show the king and the Normans generally relying on the advice of the English almost as a matter of course. This reliance is not surprising, given the language barrier and importance to the Normans of having some understanding

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resurrected or maintained Cnut's murder fine, adopting a mulct to effect his aims. This, at least, was what the author of the *Leges Henrici Primi* believed of Henry I's position: "The king must act as kinsman and protector to all Frenchmen and foreigners, if they have no one else at all to take care of them."[133] If true for Henry I, then how much likelier that William I accepted this obligation even more readily when the need was greater? Moreover, it is not mere semantics that this law provides protection for "Frenchmen and foreigners," rather than protection against the English. William probably imposed the fine on English lords to compel them to control the excesses of their men who might, in the wake of Hastings, have longed for revenge. As these lords were quickly replaced by Normans, however, the fine remained in place because it probably had proven an effective way to control any violence against the men on whom the control of the kingdom rested: the Norman and other Continental *milites.* After all, the protection of the Normans was a matter of prohibiting not simply potential English violence but any violence, even that of other *francigenae,* against them.[134] That this liability was a burden seems clear from the pipe roll evidence, where barons not exempt from the fine can be seen obtaining pardons, which must have helped shift the burden onto what had originally been the backup for lords who could not make up the entire fine: the hundred.[135] By the later twelfth century this shift had been completed, helped along by the regularization of justice under Henry I and Henry II.[136]

What was the origin of the amount of William I's fine? Richard Fitz Nigel implies that William established the amount of the fine to fit the frequency of the crime in each region. The amounts he supplies, however, are, as has been shown, wrong. Garnett, rightly ignoring the numbers in the *Dialogus,* may have the best suggestion as to the origin of the amount of the fine.[137] By his analysis, the fine was most likely a product of the joining of two separate wergilds. The forty-mark part, which went to the king, seems to have come from a Danish wergild as recorded in the treaty between Alfred and Guthrum (c. 886?). There Danes are measured at eight half-marks of gold, which was equivalent to forty marks of

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of the system from which they were going to derive so much profit. Their very rights and obligations were for the most part defined by a language and by traditions that for political reasons they would want to honor and uphold, a task with which the English were able and willing to offer a hand. This reliance on the English is what the author of the apocryphal ECf thought the most persuasive context for the creation of his treatise: see ECf prol. See also below, n. 157.

[133] Hn 75.7a. This is a traditional statement in general coming from an English king but with the important addition of Frenchmen as a special category of strangers.

[134] Wl art 3 does not restrict itself to English lords; it mentions the ethnicity of the victim only. In the postconquest context the imposition of the fine may simply be a reflection of the fact that William was trying to limit the violence between men of different (rival?) lords—Anglo-Norman Montagues and Capulets.

[135] That the French as French were not exempt from payment of a murder fine is confirmed by the many pardons from the fine purchased by French barons: see, e.g., *Pipe Roll of 31 Henry I,* p. 10, where Ingelran, Richard Basset, Geoffrey de Clinton, Baldric, Rannulf fitz Ingelran all purchased writs pardoning their share of the fine imposed for one murder in Thurgarton Wapentake, Nottinghamshire.

[136] On the significant impact of these two monarchs on the development of English land law, see now John Hudson, *Land, Law, and Lordship in Anglo-Norman England* (Oxford, 1994).

[137] Garnett, "*Franci* and *Angli,*" pp. 123–28, esp. pp. 126–28.

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silver.[138] Two of the treatises describing the murder fine specify that the forty-six-mark fine was to be paid in silver.[139] The second part, consisting of the six marks which, according to some of the treatises, was to be paid either to the person who reported the crime or to the kin of the slain man, was probably a later 196-shilling understanding of the more usual 200-shilling wergild of a West Saxon *ceorl;* the source for this reckoning, the *Leges Henrici Primi,* seems to take great care to get the numbers right in other places, and so there is no reason to suppose that the numbers are incorrect here.[140] If Garnett has correctly identified the origins of the two parts of the later fine, then the only significant question remaining is when they were combined into one fine and levied on the hundred. While Garnett concludes that William I's reign is the only plausible context for this union, the parentage of the forty-mark wergild may help place this combination earlier. It might have been William's idea to combine these two wergilds into a newly established murder fine, but it is difficult to see why a Norman king would adopt a Danish wergild specifically for the royal share.[141] It makes much better sense to see at least the forty-mark part of the fine as originating with a Danish, rather than a Norman, king.

One final point on *morðor* and *mordre:* the language of William I's followers introduced a semantic confusion that has forever after obscured the meaning of *morðor* and *morð* and consequently the origins of the fine itself. Old English *morð/morðor* and Old French *mordre* are cousins, but each had not surprisingly developed different semantic fields by the late eleventh and early twelfth centuries. *Morð/morðor,* as I said above, had come to mean an unatonable killing or a betrayal of one's lord; Old French *mordre* had developed the sense of assassination or secret murder.[142] The Frankish ancestors, **morþor* (noun) and **murþrjan* (verb), had this meaning where we can see them; the Frankish terms preserved in the Mallberg glosses to the *Pactus legis Salicae* laconically identify the crime of taking a fee in order to kill someone as *morter.*[143] One manuscript of the *Pactus* equated moving the corpse of a slain person with *muther* [*sic*].[144] Subsequent barbarian law codes followed this lead: the *Lex Baiuariorum* elaborates that if someone killed a freeman in a furtive way and tried to dispose of the body, this would be called *murdrida* by

[138] AGu 2, Liebermann, *Gesetze,* 1:126–29.

[139] Wl art 3 and Hn 91.1.

[140] Hn 70.1, and discussion by Garnett, "*Franci* and *Angli,*" pp. 123–24.

[141] ECf 34 records that William wished to impose Norwegian and Danish law on all of the English but that his *compatriote* (intended to mean the English) begged him to allow them to keep their ancestral customs and he acquiesced. There is a chance that this remembers William's wish to utilize Danelaw customs throughout England, but it is the only evidence for such a case; it more likely remembers William's search for older customs that would strengthen and legitimize his rule.

[142] The Frankish **morþor* and **murþrjan* behind these Latinized forms are conjectural and posited primarily from analogy and from legal loans into Vulgar Latin or early Romance. See Tobler and Lommatzsch, *Altfranzösisches Wörterbuch,* 6:258–59 (s.v. *mordrier,* meaning *sicarius*); Von Wartburg, *Französisches etymologisches Wörterbuch,* 16:582 (**murþrjan,* 1a. *multrir* 'assassinate') and 16:583 (2a. *murdrir* 'assassinate, kill'). The difference between this Old French meaning and Old English is that, while the Old English word derives its meaning from the status of the victim and his relationship to the slayer, the Old French *mordre* is dependent on the actual means employed in killing.

[143] *Pactus legis Salicae,* ed. K. Eckhardt, MGH LL I 4/1 (Hannover, 1962), p. 110.

[144] Ibid., p. 205 (c. 55.1).

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the Bavarians.[145] That the term *mordre* keeps this meaning of secret killing or assassination in Old French is clear; Geoffrey Gaimar uses it in this sense in his *Brut.*[146] So, too, does Wace when he describes how the Saxons, wishing to strike back at Uther but not trusting in their weapons, hired poisoners as assassins, and these men eventually poisoned the well from which Uther drank:

> Murdrir le vulent par puisun,
> par venim u par traïsun
> kar en lur armes ne se fient
> tant, que par lur armes n'ocient.[147]

(They wished to murder him by poison / by venom, or by betrayal / for in their weapons they did not trust / that they could kill him with their weapons.)

This denotation of *mordre* as "assassination, secret murder" is how French speakers understood *morðor* and *murdrum.* This misunderstanding appears to be, for example, the cause of Richard Fitz Nigel's defining the crime by the anonymity or secrecy of some of its instances rather than by what must have been more common before and after the conquest: flight. Glanvill, no doubt another Francophone, also defined murder as a killing that "is done secretly, out of sight and knowledge of all but the killer and his accomplices."[148] In the *Dialogus* and *Glanvill* the authors imported the meaning of the French *mordre* into the existing Old English cognate, *morðor,* which itself stood behind the Latin *murdrum.*[149] This type of influence is neither exceptional nor conscious; but this particular equation never effected a permanent semantic loan into Middle English, where the association of *morðor* with treason and its punishment remained, for example, in Laȝamon's *Brut* (1199

[145] See *Lex Baiuariorum* 19.2, ed. E. M. Augustin, MGH LL IV 5/2 (Hannover, 1926), p. 455. The Ripuarian and Alamanic laws share this usage: *Lex Ribuaria* 16, ed. F. Beyerle and R. Buchner, MGH LL I 3/2 (Hannover, 1954), p. 80, and *Leges Alamanorum* 48, ed. Karl Lehmann, rev. K. A. Eckhardt, MGH LL I 5/1 (Hannover, 1966), p. 107, though here referring more broadly to any furtive killing of a freeman.

[146] Geoffrey Gaimar, *L'estoire des Engleis,* ed. Alexander Bell, Anglo-Norman Text Society 14–16 (Oxford, 1960), line 3540.

[147] Wace, *Le roman de Brut de Wace* 8957–60, ed. Ivor Arnold, Société des Anciens Textes Français 82, 2 parts (Paris, 1938–40), p. 471.

[148] Glanvill 14.3: "Unum quod dicitur murdrum, quod nullo uidente nullo sciente clam perpetratur preter solum interfectorem et suos complices," in *The Treatise on the Laws and Customs of England Commonly Called Glanvill,* ed. G. D. G. Hall, rev. ed. (Oxford, 1993), p. 174. The other kind of homicide is labeled *simplex homicidium.*

[149] Kastovsky, "Semantics," p. 311. Fitz Nigel and Glanvill are not the only French-speakers to misunderstand the origins and meaning of *murdrum.* The *Statuta et consuetudines Normanniae,* a late-twelfth- or early-thirteenth-century Latin translation of the *Très ancien coutumier,* placed first in a list of ducal pleas "homicidium, siue clam factum fuerit, quod lingua Dacorum murdrum dicitur, siue palam": *Statuta et consuetudines Normannie,* c. 70, ed. Ernest Joseph Tardif, in *Le très ancien coutumier de Normandie,* 1: *Texte latin* (Paris, 1881), p. 64. As already argued, such secrecy had no place in the meaning of the original Old English term, though in the context of a Norman *coutumier,* this definition should probably be seen as referring to the Danes in England rather than in Denmark. The author, by associating *murdrum* with the Danes in England, could, in fact, be reflecting a tradition current in Normandy, much like that which is recorded in ECf 16, that the Danish king Cnut established the murder fine in England.

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x 1225) and the anonymous *Ancrene Wisse* (c. 1225).[150] In the *Brut* Mordred's seizure of the kingdom and queen during Arthur's absence fighting the Romans appears interchangeably as *morð* and *swikedom* 'treason', but *morð* here carries no sense of secrecy or assassination.[151] Scholars, however, have for the most part understood Old English *morð* and *morðor* through Richard Fitz Nigel's explanation of *murdrum* and so have in essence introduced a semantic shift that never actually took place in English, a shift by which *morð* and *morðor* denoted secret killing and assassination, neither of which was a noticeable part of any of their Old or Middle English meanings.[152]

If the murder fine is Cnut's, then it is possible to revise some conventional descriptions of the relations between Danes, English, and French in the eleventh and twelfth centuries or at least to offer reasonable conjectures about the fine's implications. While it is much more difficult to speak with certainty about Cnut's England than William I's, a few generalizations can be suggested. First, the current views of Cnut's rule, which characterize his lordship as initially unforgiving, are little changed by an early date for *murdrum*.[153] Cnut's first years of lordship were ruthless; unlike William I, the Danish king did not even wait for a rebellion before executing English nobles whom he feared. Second, his relationship to his

[150] Laȝamon, *Brut,* ed. G. L. Brook and R. F. Leslie, 2 vols., EETS 250, 277 (London, 1963, 1978), 2:512–13 (line 9849), 544–45 (line 10460), 596 (line 11429), 682–83 (line 13024), etc. Laȝamon translated Wace's poisoning scene but found *morð* by itself inadequate to convey the sense of assassination and so used *morð-spelle* 'murder-speech or incantation' (British Library, MS Cotton Caligula A.IX), pp. 510–11 (line 9807). This much-neglected text has recently received new attention in Françoise Le Saux, ed., *The Text and Tradition of Layamon's Brut* (Cambridge, Eng., 1994). See especially the articles by Rosamund Allen, "The Implied Audience of Layamon's *Brut,*" pp. 121–40; Lesley Johnson, "Reading the Past in Layamon's *Brut,*" pp. 141–60; and Neil Wright, "Angles and Saxons in Layamon's *Brut:* A Reassessment," pp. 161–70.

Morþre shows up four times in *Ancrene Wisse,* ed. J. R. R. Tolkien, EETS 249 (London, 1962), pp. 105, 143, 157, and 160. It is in all but one place linked to the death of a soul through sin. In the exception to this rule (p. 160), *morðre* has been qualified *luðer morðre* 'evil murder', which at least suggests that some murders might not be so evil. In general on the language of the period, see Norman Blake, ed., *The Cambridge History of the English Language,* 2: *1066–1476* (Cambridge, Eng., 1993). The chapter "Lexis and Semantics" by David Burnley is especially relevant. See also the *Dictionary of Middle English,* s.vv. *morth* and *morther,* which reports no "secrecy" or "assassination" in any denotation.

[151] Laȝamon, *Brut* 14079, 2:738.

[152] See above, pp. 343–45 and n. 101. See also Pollock and Maitland, *History,* 1:52–53, where killings are distinguished between those done "openly" and those done "in secret." Here *morth* "originally meant killing by poison or witchcraft," which was unatonable. Finally Garnett, "*Franci* and *Angli,*" p. 125: "In Cnut's fulsome legislation *murdrum* or *morth* means no more than secret homicide, as it did in earlier Anglo-Saxon codes and in pre-Conquest Normandy." For Normandy, Garnett cites (p. 125, n. 134) J. Yver, "Les premières institutions du Duché de Normandie," in *I Normanni e la loro espansione in Europa nell'alto medioevo,* Settimane di Studio del Centro Italiano di Studi sull'Alto Medioevo 16 (Spoleto, 1969), p. 320, who himself traces the presence of a ducal plea of *murdrum* in Norman legislation before 1066 by way of the later twelfth- and thirteenth-century treatises on Norman law. Clanchy, *England,* p. 45, simply tells it from Fitz Nigel's perspective ("the crime of murder now meant killing Normans") since his overall goal in the study is to reveal the attitudes of the conquerors rather than the conquered: ibid., p. 18.

[153] E.g., A. Williams, " 'Cockles amongst the Wheat': Danes and English in the Western Midlands in the First Half of the Eleventh Century," *Midland History* 11 (1986), 1–22.

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ecclesiastics, in particular to Wulfstan, may have involved more layers than previously thought. If *open morð* is indeed implicit criticism of royal policy to make *morð* emendable, then the codes written by Wulfstan illuminate the disagreements between a Danish king intent on securing his hold and powerful bishops who were willing to help, but not quietly acquiesce to, every royal initiative. Last, moving the murder fine to Cnut's reign reveals less about relations between *Dani* and *Angli* than about *Franci* and *Angli* for several reasons. The English and Danes in 1016 had a tradition of treaties that protected both sides with artificially high wergilds; considering the slaughter of Danes on St. Brice's day in 1002, which must have been on Cnut's mind during his campaigns and after his victory, such protection for the Danes must have appeared a necessity.[154] His worry that once his Danes were settled in his new kingdom they would be targeted for retaliatory killings by the English would have held mainly for the south; in the northern Danelaw in particular, but also elsewhere in the Danelaw, the presence of Scandinavians in significant enough numbers to shape the political and legal development of the area must have done much to mitigate such fears.[155] In the north the Danes were no longer a conquering minority. In addition, Cnut in the years immediately following his accession actively attempted to secure his rule by marrying Æthelred's widow, Emma; by promoting certain English noble families, such as that of Godwine, whom the author of the *Vita regis Ædwardi* calls "primus inter summos regni proceres" as well as "dux et baiulus" of almost the entire kingdom;[156] and by patronizing churches such as Ely, Christ Church, and Glastonbury. Cnut operated in both politics and law with reason and tradition behind his actions.

An earlier date for the fine has greater implications for Anglo-Norman than for Anglo-Danish history, for much more of the accepted portrayal of relations between Normans and English has been built up around it. First, the reimposition of the murder fine after 1066 can no longer be taken as proof of hostility between the "races"; it is not a given that *ceorlas* looked on their Norman *seignurs* with distrust and hatred. Nor is the fine necessarily evidence of some policy devised to isolate and exploit the conquered English during the troubled times of William's early years as king. Instead, William's reimposition of Cnut's murder fine should be seen as one more sign of his respect for his inherited Anglo-Saxon royal rights and his conservative goal to rule through traditional powers.[157] The murder fine, by 1066, was a traditional English institution, and its use by William I is not

[154] *Anglo-Saxon Chronicle,* s.a. 1002. The memory of this massacre might have fueled his anxiety when he was trapped in London, which had already submitted to him; fearing the citizens, he escaped: *Encomium Emmae* 2.7, pp. 22–24.

[155] This significance from numbers and dominance is one of the claims of Hart, *Danelaw,* pp. 281–89.

[156] Frank Barlow, ed., *Vita Ædwardi regis qui apud Westmonasterium requiescit,* 2nd ed. (Oxford, 1992), 1.1, pp. 8–10. Godwine's status has been discussed most recently by Simon Keynes, "Cnut's Earls," in Rumble, *Reign of Cnut,* pp. 71–73.

[157] This certainly is the case with the jurisdictional rights, inter alia, of lords after 1066; these Normans continued the practices of their *antecessores.* On this, see D. Roffe, "From Thegnage to Barony," *Anglo-Norman Studies* 12 (1989), 158–59, which fortifies and extends R. R. Reid, "Barony and Thegnage," *English Historical Review* 35 (1920), 169–77.

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surprising given William's political strategy to minimize the disruption of the succession and conquest by behaving like his predecessors. William was no cynic when he confirmed between 1066 and 1069 rights and possessions to Aldred, archbishop of York, "swa ful and swa forth swa he firmest haefde on Eadwerdes daege kinges mines maeges on eallan thingan" ("as completely and so on as he most firmly held them in all things in the day of King Edward, my kinsman").[158] Given this goal, it would have been surprising not to find the murder fine revived with the conquest, since the Normans were, after all, strangers in the land and English precedent made the king a lord and protector of such men. As Alfred had become *mægð* for kinless men and as Cnut had become *mægð* and lord of the Danes in England, so, too, in his turn William became *mægð* and lord for those of his *Franci* not already protected by *lex Anglorum.*[159] William had no need to Anglicize the murder fine; rather, his use of it allowed him to Anglicize the Normans who had fought for him by integrating them into the scheme of protection that defined persons in English law.[160]

Whether it was ever collected at the prescribed rate of forty-six marks is impossible to know, but if it was, it would not have been for long since William had few reasons to worry about English loyalties after 1070. The king was able to rely on English levies in a number of tight spots. They not only defeated, without any royal pressure or commands, the rebellion of the earls in 1075 but also fought in at least some of William's overseas ventures. The *Anglo-Saxon Chronicle* boasts that, with all of their pillaging and destruction in the 1073 invasion of Maine, the English had acquitted themselves well.[161] This English support for the king does not appear to have been strictly personal, for not only did the *Angli* assist an otherwise financially oppressive ruler but their support continued into the reign of his son, William II, who overcame an initial baronial rebellion in support of his brother Robert only with massive English military aid.[162] What this support reveals is not the good behavior of the new Norman lords, but the recognition of William as king of the English, with all that that recognition traditionally entailed. William I, enjoying this support, would have had every incentive to diminish the murder fine as the need to compel English assistance in governance—in this case through communal accusation—grew less and less. Nor would William wish to continue a fine at a level that prohibited collection. By 1129–30 at latest, for that is the first evidence on actual collection, the fine had been much reduced in practice, with most hundreds or wapentakes paying far less than forty-six marks *pro murdro.*[163] For these reasons it is unlikely that the law was enforced to the letter for very long under the Norman kings.

[158] *Regesta,* 1:118, no. 33.

[159] But not for those who had come over earlier under the Confessor and who were presumed no longer to be strangers according to English law: see Wl art 4.

[160] Where Garnett's reading of the murder fine causes him to emphasize the significance of the dual *ordo* for the coronation, my reading of the fine suggests that much less should be made of the *ordo* as a statement of policy.

[161] *Anglo-Saxon Chronicle,* s.a. 1073 (D [1074] and E). For English opposition to the earls' rebellion in 1075, see ibid., s.a. 1075 (D and E), and Douglas, *William the Conqueror,* pp. 228–29, 231–33.

[162] Frank Barlow, *William Rufus* (London, 1983), pp. 70–83, and *Anglo-Saxon Chronicle,* s.a. 1088 (E).

[163] E.g., for one murder in Framland Wapentake (Leics.), the fine was 10 marks, over a third of

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Lastly, we should recognize that the Danish and Norman use of the murder fine was more a development of lordship than a legislative innovation to deal with an epidemic of "secret murders," whether from rebellions or as a species of common homicide. Good lords would not slay their kinsmen nor allow them to be slain without exacting vengeance. As Beowulf said, disparaging Unferth for having ridiculed his deeds,[164]

> þeah ðu þinum broðrum to banan wurde,
> heafodmægum; þæs þu in helle scealt
> werhðo dreogan, þeah þin wit duge.

(Nevertheless you became a slayer of your brothers / of your dear kinsmen; for this, you shall in hell / suffer damnation, despite your clever mind.)

Later in the poem, with his last words, Beowulf rejoices that God can charge him with no *morðorbealo maga* 'murder of kinsmen'.[165] The real kings and lords of *Beowulf*'s audience knew that, when the king was by law *mægð* and *mundborh* for a man and that man was injured or killed, the king was obliged to avenge it "to the uttermost."[166] This *morðor* was a crime against lords and consequently ever more narrowly against kings as their power and jurisdiction over violent crimes grew. It was also a killing beyond compensation. Its developing use to emphasize a lord's obligations as well as his hierarchical place in English society complements the visible growth of Anglo-Saxon kings' *misericordia* during these same centuries. When Edmund's code ordained that for those who violate the king's *mund* "sy on cyniges dome hwæðer he lif age" ("it shall be for the king to decide whether his life shall be preserved"), the author meant the king to appear as a truly powerful monarch.[167] By the time of Cnut *murdrum* was a plea that pertained to the Crown, a fruit of the cultivation of English kings like Æthelstan, Edmund, Edgar, and Æthelred, all of whom had a keen interest in extending the power and responsibility of lords in their kingdom and of their own lordship over their subjects most of all.[168] Consequently, William I's use of the murder fine marked him not as a foreign tyrant but as a good and traditional lord of the English.

The imposition of the murder fine in or after 1066 could have perpetuated a division between *Franci* and *Angli* under the Norman rulers; that it did not do so was the result of politics and intermarriage, both of which brought the two peoples quickly into the same camp, where all owed allegiance to the same king.[169] This

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which was pardoned: *Pipe Roll of 31 Henry I,* p. 88. See above, n. 55, for citations to the rest of the murder fines in the pipe roll. Murder fines produced £122 (versus £318 pardoned) for the entire realm in 1129–30: see Judith Green, " '*Praeclarum et Magnificum Antiquitatis Monumentum*': The Earliest Surviving Pipe Roll," *Bulletin of the Institute of Historical Research* 55 (1982), 7 and 16 (table 3).

[164] *Beowulf,* lines 587–89, p. 23.

[165] *Beowulf,* line 2742, p. 103.

[166] VIII Atr 33; II Cn 40 (Æthelred and Cnut as *mægð* and *mundborh* of strangers); "Treaty between Edward and Guthrum" (EGu) 12 (trans. Robertson, *Laws,* pp. 108–9).

[167] II Em 6 (trans. Robertson, *Laws,* p. 11).

[168] For lordship under Edward the Confessor, see now Clarke, *English Nobility,* pp. 90–98.

[169] See, e.g., Cecily Clark, "Women's Names in Post-Conquest England: Observations and Speculations," *Speculum* 53 (1978), 223–51. A curiously overlooked study is Percy Van Dyke Shelly, *English and French in England, 1066–1100* (Philadelphia, 1921).

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accommodation was not to last long; the Angevin lords and their empire completely inverted the political and linguistic equation that had produced this sum, placing England within a multilingual empire that ipso facto made French the lingua franca of court and courts.[170] By this shift, *Franci* and *Angli* were once again created both politically and linguistically, at a time when the Normans had been well on their way to becoming *Angli.* If before the Angevin invasion the Normans and the English had reached so early an accommodation, why then did the murder fine in its postconquest guise survive so long? It endured because it was a source of revenue in an age whose bureaucracy had gained written memory, where older laws were trapped by a hardening literacy, which sometimes indiscriminately preserved traditional customs like the murder fine alongside Norman and Angevin legal experiments within the amber of texts. When the bureaucracy of the Norman and, especially, Angevin kings chose to memorialize their customs, some previously flexible statutes, as the murder fine had been under Cnut, stiffened in halting fashion into the formalism in law that characterized the thirteenth century but that was virtually foreign to the early eleventh.[171]

[170] See Maitland's very suggestive remarks along this line in Pollock and Maitland, *History,* 1:80–87. I intend in the near future to discuss this point more fully, in an article entitled "Normans and Angevins: The Use of French in the Multilingual English Kingdom of the Twelfth Century."

[171] M. T. Clanchy, *From Memory to Written Record: England, 1066–1307,* 2nd ed. (Oxford, 1993).

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