Public Order and State Violence

A View from Tenth-Century England

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Across the tenth century, England's ruling elite repeatedly gathered to consider how best to improve public order. The new laws that were promulgated in many of these open-air meetings, usually held on royal estates in the kingdom's West Saxon heartlands, survive and provide an invaluable window on the way that well-informed contemporaries imagined the operation of policing and justice in their society.[1]

Though superficially the measures outlined in these laws appear conventional—the continual restatement of a handful of procedural prescriptions associated with the suppression of theft—on close inspection it is almost always possible to discern some significant innovation emerging from each law-making session: a seemingly small departure from precedent that, when thought through in practical terms, makes sense as an attempt to render local justice more effective. The legislative edict known as "III Edmund" was the first to specify punishments for failure to participate in the communal pursuit of thieves, for instance, while "I Æthelred" established strict and detailed rules governing which modes of proof defendants with poor reputations should be permitted to undertake.[2]

Collectively, the corpus of laws tells a story of sustained legislative experimentation, sometimes crude and direct but more often subtle and imaginative, focused on what today would be termed "criminal" law. It shows that tenth-century kings, senior churchmen, and the highest-ranking secular noblemen deemed it

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important to engage with the technical niceties of law enforcement, crime prevention, and judgment as they were practiced on the most local level. Though at no point did they attempt to legislate for the high-stakes land disputes that seem to have sapped a great deal of their time and energy, they sought through rulemaking to bring the routine operation of community-based justice—matters in which men of their wealth and status would rarely have needed to involve themselves—closer to an ideal of perfectly maintained order that they seem to have imagined everyone would recognize and accept.

This sustained, upper-elite interest in local order is somewhat surprising for the period but fits well in its political context. The tenth century saw the extension of the West Saxon royal dynasty's rule so that it encompassed not only King Alfred's (r. 871–99) "greater Wessex" but also the former kingdoms of East Anglia, Mercia, and Northumbria, which in the preceding decades had been dominated by Scandinavian settler societies.[3] This agglomeration of territories, finally secured with the expulsion of the last Scandinavian king of York in 954, had crystallized as the unitary kingdom of England by the end of the century. Throughout the period, this growing polity's increasingly multiethnic upper elite—the families who provided the realm's ealdormen, bishops, and abbots, and whose transregional landholdings gave them a stake in the kingdom's fragile unity—had a practical interest in rallying the population behind a collective public-order improvement project. Their sustained campaign focusing on the persecution of thieves could be read as an effort to unite West Saxons, Mercians, Danes, and Britons against traditional "enemies within." The laws' carefully crafted preambles show successive kings actively promoting an image of themselves as dutiful custodians of their people's "peace" (*frið*).[4] Deeply concerned about its poor state (whether real or imagined, we cannot tell), they were now the driving force behind the major collective effort that the kingdom's leading figures had devised for its improvement. There can be no doubt that legislation was self-conscious royal image-making, but it would be a mistake to think of it only in those terms, dismissing laws as empty political rhetoric. Their detail and ingenuity provide good reason to think that England's lawmakers approached the task of improving order earnestly. They made their legislative interventions in a spirit of down-to-earth idealism that renders the texts they produced particularly helpful for historians, in that they preserve a sense both of what the lawmakers were hoping to achieve and of the practical obstacles they thought they needed to work around.[5]

In the present context it is important to stress that while these texts demonstrate sincere concern about problems with order, at no point was any institution remotely similar to a modern police force imagined as a way to solve them. This was not because tenth-century England was some sort of "stateless" society, characterized by the absence of centralized political authority. In fact, there is a strong historiographical tradition of arguing quite the opposite: pointedly insisting that

late Anglo-Saxon England deserves the label "state" because of the unusual sophistication of its monetary system, its orderly structures of local government, its ability to impose taxation upon the population to pay for a standing military force, and the strong sense of national identity supposedly discernible in the prominence of ideas of Englishness in contemporary discourse.[6] The precise chronologies of all of these aspects of the much-vaunted tenth- and eleventh-century "late Anglo-Saxon state" are debatable, but there is no doubt that the English state had access to overwhelming coercive force throughout this period.[7] The kingdom's military apparatus, however, served as a means to secure political submission and was only very exceptionally repurposed as an instrument of social discipline. Our main source for political narrative, the *Anglo-Saxon Chronicle*, reports that in 952 King Eadred (r. 946–55) "ordered a great slaughter to be made in the borough of Thetford in vengeance for the abbot Ealdhelm, whom they had slain."[8] This is one of a handful of instances during the period in which kings can be seen launching punitive expeditions against their own populations in response to what we might classify as political violence.[9] Yet however significant these occasional demonstrations of the state's coercive potential may have been for the projection of kings' authority beyond their heartlands, they are radically at odds with the laws' assumptions about routine policing at a local level.

Indeed, the laws promulgated in tenth-century assemblies make it fairly clear that instead of envisioning order as the product of state coercion, England's upper-elite legislators understood society to attend to its own ordering on a local scale through a combination of individual action and communal self-regulation.[10] Victims of offenses, or those closely associated with them, were expected to pursue their own grievances by bringing accusations against people who had harmed them. For the most part, the onus was on them to investigate offenses, identify malefactors, and bring charges against them.[11] Disagreements over issues of fact in such cases were resolved on the basis of proof procedures that for the most part were weighted heavily in favor of free defendants, and judgments ordering some combination of the payment of compensation and the imposition of punishment were issued on the collective authority of the assembled local community.

In the mid-tenth century these local assemblies were reconceptualized as a kingdom-wide system of "hundreds,"[12] a word that could refer to a geographical subdivision of a county, to the monthly legal assemblies held by these areas' free residents, or to those residents acting collectively in other contexts (a hundred could ride in pursuit of a thief, for instance). Though it has long been imagined that hundred assemblies constituted a state-run network of law courts, their business directed by a royal official known as the "hundredman," on close inspection this vision of local assemblies as the bottom rung of a state administrative hierarchy proves to be a mirage.[13] The authors of our tenth-century texts felt no need to explain who hundredmen were, but an early twelfth-century attempt to render

England's native legal system comprehensible to its francophone settler-colonial elite is quite explicit: "one of the most substantial men shall preside over the whole hundred and be known as the alderman."[14] Justice was overseen by prominent members of local communities, and seemingly not by the "reeves" employed by kings (and other great landowners) to act as local agents. Indeed, the way that the laws imagine enforcement action being taken against fleeing thieves and others who refused to submit to their judgments underscores how hundreds and their predecessors were envisaged as communal entities: collective expeditions led not by the king's reeves but by the "leading men" associated with the assembly concerned.[15]

The practical business of maintaining order in the tenth century did not, then, depend in any significant way on personnel employed by kings. There was neither the equivalent to a professional police force, nor a state judicial hierarchy distinct from society itself.[16] We should not suppose that tenth-century men and women were able to maintain a functional society because they had created for themselves a Leviathan, a state apparatus capable of suppressing people's naturally selfish inclination to pursue their interests through violence. This is neither what they did, nor something that they imagined to be necessary for the maintenance of order. That such ideas have in the past been projected onto the period perhaps reflects the extent to which modern historians' interpretative assumptions have been, and continue to be, shaped by a cultural environment in which human beings' need to be subjected to powerful institutions of social control is taken as axiomatic.[17] As Marilyn Strathern pointed out in 1985, we need to recognize that this supposedly universal truth about human nature is in fact an ideological position derived from "a model of social and human behaviour which belongs very much to the industrial west, as well as to state systems of government."[18] Though alternatives to this model are scarce in the modern world, dominated as it is by a nation-state framework rooted in early modern European political thought, more distant historical periods can offer a much richer diversity of ways of thinking about order and its maintenance. Radical imaginations seeking food for thought may well find medieval Europe holds just as much interest as the precolonial Global South in this respect. (Indeed, Europe's deep seams of archival evidence and long national traditions of professional historical inquiry—however unappealingly conservative—have made this part of human history unusually accessible to open-minded nonspecialists.)

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What positive lessons the example of tenth-century England has to teach us remain unclear, however. It certainly serves to disrupt the assumption that police are necessary, but any attempt to argue that order-maintenance practices developed for this predominantly rural society might sensibly be adapted for modern urban contexts would have to overcome a great deal of skepticism. And even if that were not an issue, the desirability of such a project would be questionable.

The underlying problem is that most of the ideals that make England's tenth-century legal order distinctive are at odds with modern sensibilities. For although institutionalized state violence was absent, the assumptions about masculinity around which the early English legal world was arranged are shot through with violence in a way that few would find palatable today. The laws anticipated that men would offend one another in a range of ways—taking or damaging their property, physically attacking or insulting them, interfering with people under their protection—and this would inevitably lead to violent, vengeful anger on the part of the victims of such public humiliations. (Though offenses against women had the potential to elicit violent responses, the expected avengers were their male protectors.) The law's role was to provide an authoritative framework within which peace settlements incorporating the payment of compensation could be negotiated. The law recognized enraged men who resorted to violence hastily and thereby denied their adversaries the opportunity to make amends as a threat to order. But while tenth-century lawmakers did try to place legal obstacles in such figures' paths, they implicitly endorsed revenge killing as the ultimate sanction in cases where wrongdoers brazenly refused to compensate their victims. Indeed, in these scenarios retaliatory homicide was accepted as legitimate even when directed against other members of the original perpetrator's family, though the model of socially responsible masculine conduct that the laws promoted stressed the importance of containing conflict by targeting only those personally responsible. The compensatory peace-making ideals of tenth-century justice represent the obverse of an assumption that free men must remain, as they traditionally had always been, autonomous weapon-bearing men with a right to use lethal violence if they felt their honor demanded it. Their decisions about when, where, and why to attack others might prove catastrophically ill judged, provoking reciprocal violence or incurring ruinous compensation liabilities, but lawmakers seem to have accepted that these were their decisions to make.[19] The anthropologist Paul Dresch's formulation captures the situation well: our tenth-century texts, like the early modern Yemeni ones he discusses, "assume a set of minor, often personal, sovereignties that in a pressing sense precede the law."[20]

These radically libertarian ideals coexisted with an authoritarian communitarianism that modern Western audiences would probably find equally difficult to stomach. Put bluntly, while openly harming other people in response to perceived affronts was a legitimate activity—indeed, a fundamental feature of a free society that needed to be upheld even as laws were framed to limit its disruptive effects—sneakily taking other people's property and then lying about it was a different matter entirely. By acting secretly, thieves sought to make it impossible for their victims to bring charges against them; they sowed suspicion within communities, potentially turning neighbors against one another, harming not just their immediate victims but also the very fabric of society. Tenth-century laws do sometimes address matters

unrelated to theft but not often. It is their one overriding concern, and their aims remain consistent throughout: to maximize the number of thieves who were securely identified and punished, to ensure that as many of these as possible faced execution, and by these and other means to deter theft. In pursuit of this agenda, potentially onerous obligations were imposed on ordinary people. They were to gather together to pursue and kill thieves whenever this was feasible. Neighbors were to monitor one another's livestock, compelling those who acquired new animals to declare publicly from whom they had been purchased, and before which witnesses, so that buyers of stolen animals would be forced into making dishonest statements that, when discovered, would justify their execution. Every freeman (women seem to have been excluded) was to find sureties who committed to pay a large fine should he commit an offense (theft is almost certainly what is envisaged) and flee the area, a sum that could only be reclaimed if the sureties hunted the offender down within a year.[21] (The precise extent of the sureties' liability was determined by the value of the offender's life, but was substantial: two hundred shillings for an ordinary freeman, well over a kilogram of pure silver if paid in coin or approximately two hundred sheep.)[22] This last measure in particular would have represented a major imposition—the acceptance of potentially crippling financial liabilities for others' actions—and all were backed by threats of punishment for noncompliance.

The actual punishment of theft occupied lawmakers far less than the detail of procedural measures designed to ensure it happened, but our texts make plain that it was a long-standing principle that thieves should face execution, at least if they were caught in the act. Indeed, the harsh punitive ethos of late tenth-century law is now very well known to medievalists, having been emphasized heavily as one of the English kingdom's impressively state-like qualities. This passage from Lantfred of Winchester's *Translation and Miracles of St. Swithun*, written in the early 970s, is often quoted by way of illustration.

> At the aforesaid time and at the command of the glorious King Edgar, a law of great severity was promulgated throughout England to serve as a deterrent against all sorts of crime by means of a dreadful punishment: that, if any thief or robber were found anywhere in the country, he would be tortured at length by having his eyes put out, his hands cut off, his ears torn off, his nostrils carved open and his feet removed; and finally, with the skin and hair of his head flayed off, he would be abandoned in the open fields, dead in respect of nearly all his limbs, to be devoured by wild beasts and birds and hounds of the night.[23]

There is reason to worry about the representativeness of this passage. No law matching this description survives from Edgar's reign (957–75) and it jars with the much less elaborate way execution is discussed in the tenth-century laws we can read for ourselves, where demands for unusually painful deaths are extremely rare.[24] But it

would be a mistake to dismiss it.[25] There is nothing to suggest that tenth-century lawmakers would have disapproved of such a punishment; the cruelty is entirely in accordance with the constant and bitter hostility with which they persecuted thieves, and it could easily be that they refrained from specifying elaborate forms of execution in their legislative edicts only because they recognized that their demands needed to be acceptable to the local assemblies that would have to carry them out.[26] That is, lawmakers may have thought such exemplary spectacles desirable for their deterrent effects but, conscious that inducing rural communities to kill their thieving neighbors was already a challenge, decided that demanding prolonged agonies in their general legislative pronouncements would not be helpful. This need not, however, have prevented enthusiastic members of the elite from trying to enact the laws' underlying punitive ideals more fully in places where it was practical to do so. Winchester—the political, religious, and military hub of the kingdom's West Saxon heartlands—is exactly the sort of place we might expect local power dynamics to be heavily skewed in favor of the elite, leaving low-status individuals vulnerable to having cruel retributive fantasies visited upon their bodies.[27] There is a strong possibility that a real episode of horrifying violence lies behind the circumstantial, if heavily stylized, story that follows in Lantfred's account: a wrongly convicted robber somehow survives most but not all of these mutilations (his scalp and feet are spared, and one dangling eyeball is returned to its socket), and then has his sight and hearing miraculously returned to him after he seeks the intercession of St. Swithun in Latin verse.[28]

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Perhaps the most obvious lesson we might be tempted to draw from this is an essentially functionalist one. The example of early medieval England may disrupt the assumption that public order is dependent on institutionalized state coercion, but it will do nothing to dissuade those who take it as axiomatic that human beings can be induced to live together peacefully only if there is some threat of violence compelling them to do so. From such a perspective, England's tenth-century legal order could serve as a nice illustration of the idea that if this necessary violence does not come from state institutions it must be found somewhere else instead. We could thus read public order in tenth-century England as created and sustained by violence: the product of a dominant conception of masculinity that shamed men who failed to react violently to public affronts and of a moralizing discourse that constituted thieves in particular as threats to society, uniting communities in their destruction. Even viewed in such a way, the period could perhaps still offer inspiration to those willing to think radically and unsentimentally about alternatives to the twenty-first-century nightmares of militarized overpolicing and mass incarceration that prompted this special issue. But whether innovative thought along these lines is likely to lead anywhere good is another matter.

My own experience, at least, is that imagining future legal orders based on tenth-century ideals and practices can yield uncomfortably plausible but dystopian results. Tenth-century suretyship systems, for instance, were attempts to embed law enforcement and crime prevention in social networks using economic rationalism: people were forced to ask their families and friends to underwrite their good behavior financially. Such systems would probably be more practical to implement with today's technology than they were in the face-to-face contexts for which they were originally created. One could imagine a compulsory state-run online social network in which "friends" mutually guarantee one another's lawful conduct, such that whenever an individual is convicted of an offense all their guarantors assume shared liability for the fine imposed (in a criminal law regime reoriented toward financial penalties).[29] My bleak fascination with this fundamentally authoritarian idea worries me slightly. The tenth-century legislative measures on which it is based have embedded in them, in various ways, the value system of the patriarchal, slave-owning society that produced them; they were designed to make it possible to impose sanctions on socially isolated individuals who were unable to find sureties, and to make life much more difficult for the poor than for the rich. But the idea that these unappealing features could be designed out of a modern system refuses to go away, leaving nagging doubts about how just deeply our societies are wedded to the principle that individuals bear sole responsibility for their own criminality.[30]

But fixating darkly on the possible revival of old forms of intrusive social control is probably a mistake. A different perspective ultimately yields more humane lines of thought. The example of tenth-century England does not, of course, serve to confirm that the threat of violent coercion is the one true basis of public order. That the English may have imagined this to be so, in their own quite distinctive way, is not in itself a reason to accept the idea. Indeed, though we have no way of knowing for sure, we should probably suspect that the tenth-century lawmakers who believed that the problem of theft could be solved through increasing the effectiveness of their punitive legal regime, or that violence could be reduced by making it easier for families to take vengeance on the specific individuals who killed their relatives, were just as misguided as the modern American legislators who imagine that public-order problems can be solved through the deterrent effects of increasingly severe prison terms. The more pertinent lesson may be that the principle of retribution—as something both rightful in itself and useful as a deterrent to wrongful action—exercises a strong cross-cultural appeal to humans, and that because of this, human societies across time and space have often understood the maintenance of order in primarily retributive terms, both exaggerating the extent to which peaceful coexistence is an unnatural phenomenon that needs special explanation and failing to appreciate the significance of forces other than coercive violence that actively underwrite public order.[31]

On one level, framing the matter in this way does not get us very far. It simply provides another angle from which tenth-century England appears unexceptional. As in many other societies, including our own, it seems that the conventional wisdom of the day held that the main force guaranteeing public safety was the threat of violence that ultimately underpinned both the compensatory and punitive sides of the tenth-century legal regime. It was therefore natural for those who sought to improve order to fantasize about the socially beneficial effects that would arise from fine-tuning the systems by which violence was brought to bear on wrongdoers: the fact of more efficient and severe enforcement would make this underlying threat of violence more real to potential wrongdoers, a bigger factor in their risk-reward calculations, and rates of offending would thus be reduced. Importantly, there is nothing to suggest that tenth-century lawmakers anticipated any objections to this logic from their audience. There is every reason to think the proposition that problems with order could be fixed by more systematically ensuring that wrongdoers faced retribution was widely persuasive. That is, it is likely that a popular fantasy of violently imposed order underlaid elite attempts to realize it through lawmaking in the tenth century, much as it does in the modern world. We can perhaps glimpse this in our record of London's response to the early tenth-century antitheft campaign orchestrated by King Æthelstan (r. 924–39), described below, which shows the city's leading figures zealously embracing the king's objectives and establishing a series of local rules and institutions that went well beyond what his general legislation required.[32] Where the tenth-century example offers a glimmer of hope is in the many hints that when these fantasies became concrete decisions about real human beings—not faceless thieves and killers, but people embedded in the same local networks as the decision makers—assemblies balked at their cruelty.

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The most striking example of this is King Æthelstan's sustained campaign against theft, which has left us a series of five law texts.[33] Traditionally, English law held that thieves who were caught in the act could legitimately be killed by those who caught them, and that if the captors chose not to do this themselves they were duty-bound to hand the thief over to someone who would. People accused of theft who either admitted the charge or failed in their efforts to make a valid denial faced fines and procedural disqualifications that would make it more difficult for them to deny future accusations, but they were not to be executed. Æthelstan's first attempt at reform sought simply to make this existing system function strictly. Presumably because of a perception that local discretion meant too many thieves were being allowed to escape with their lives despite being caught in the act, a rule was established demanding execution in all cases where red-handed thieves were over twelve years of age and where the value of the goods they stole was over eight pence.[34] Likewise, the law on procedural disqualifications was set down in strict terms.

Normally anyone accused of an offense was entitled to respond with a collective oath of denial, a mode of proof advantageous to the defendant in which innocence was established through a specified number of other community members swearing that his oath of denial was true. Æthelstan's earliest law text seems to demand that if a defendant with even a single past conviction for theft wished to deny an accusation, this option was not open to him. His only choice was trial by ordeal, a much less favorable mode of proof which involved either plunging a hand into boiling water or grasping a red-hot piece of iron: the finding of guilt or innocence turned on whether the resulting burn was judged "clean" after three days.[35]

These initial efforts to insist on rigorous application of traditional rules were not judged satisfactory, however, so the king and his advisers embarked on a much more radical second round of legislation. The law was to change so that all proven thieves would henceforth face execution, regardless of whether they were caught in the act or convicted by other means.[36] To prepare the ground for this newly merciless regime, a short-term amnesty was proclaimed, giving thieves the opportunity to make amends to their victims without punishment before the new laws were enacted.[37] The law-making elite even sought to limit their own power to intercede on behalf of thieves who came to them as supplicants, upholding high-status secular and ecclesiastical figures' right to provide inviolable protection for a set number of days (precisely how many depended on rank) but declaring that once these periods had elapsed thieves were to die regardless.[38]

It is possible that all this effort achieved something. Æthelstan's successor, Edmund (r. 939–46), can be found thanking his people for their efforts in securing the *friþ* ("peace") they now enjoyed from theft, and attempting to move the law-making agenda onto violence.[39] But there can be no doubt that much of this anti-theft campaign was misconceived. Even in Æthelstan's lifetime it was necessary to climb down from the demand that twelve-year-olds be executed—the minimum age was raised to fifteen—and reluctance to kill lightly presumably underlies the simultaneous raising of the value threshold for stolen goods to twelve pence.[40] The law that all proven thieves who met these criteria should die, regardless of how their guilt was established, seems also to have turned out to be unworkable. When we next find lawmakers considering procedural disqualifications in late tenth- and early eleventh-century texts, they are once again envisaging a world containing people who had previously paid *þeofgyld* (a fine or compensation for theft), who therefore needed to be prevented from swearing oaths of denial and forced to undergo trial by ordeal if they were accused of further wrongdoing.[41] And indeed, even these procedural demands look like they may have been overambitious. The law code of King Cnut (r. 1016–35) allows oaths to be sworn by even by those considered untrustworthy, their poor reputations reflected in much more stringent parameters for success in these oaths rather than the insistence on ordeal familiar from tenth-century texts.[42] Again, the most plausible implication is that local communities,

acting in hundred assemblies, often proved unwilling to put their neighbors in a position where any vexatious accusation would compel them to undergo a humiliating and painful ordeal, necessarily suffering a third-degree burn, because of some half-forgotten historic offense.

It is easy to accumulate examples along these lines. We can find lawmakers insisting that fines and compensations be levied in full, again indicating anxiety that local discretion on sentencing was resulting in too much mercy and undermining the law's deterrent effects. They can be seen having to go to ingenious lengths to work around the free man's right, providing he had no record of dishonesty, to establish his innocence through a collective oath. (Despite its representing a major obstacle to successful prosecution, it was evidently thought dubious to attempt any reform that directly challenged this right, as the elaborate rhetoric of royal frustration that accompanied a short-lived attempt to impose internal exile on notorious but unconvicted thieves under Æthelstan shows.)[43] We even have a handful of case narratives, preserved in documents relating to aristocratic landed property, which perhaps illustrate some of the dynamics that led to the amelioration of supposedly strict punishments.[44]

The most famous of these, recorded in a text known as the "Fonthill Letter" (c. 899–924), allows us to see a minor nobleman named Helmstan escaping severe legal penalties through the intervention of his godfather, an ealdorman (a top-tier secular magnate subordinate only to the king) named Ordlaf, who wrote the letter to explain his involvement.[45] Helmstan was twice caught thieving. We know little of the first instance except that he was convicted of stealing a belt—whether he paid a fine for this act, as the laws suggest he ought to have done, is not stated—but the fact of his conviction prompted one of his rivals to reopen an inheritance dispute, pressing his claim to Helmstan's estate at Fonthill. It seems that Helmstan's status as a proven thief had (as the laws suggest it ought) negative consequences for his ability to defend himself legally; his patron, Ealdorman Ordlaf, needed to intercede with the king for it to be judged that Helmstan did indeed have the right to prove his ownership of Fonthill through a collective oath. Even then Helmstan was in trouble, as he was not in a position to make the oath. This could be because unusually stringent requirements as to the number or identity of his oath helpers had been set, but we are not told this; all we know is that he, again, had to turn to Ordlaf, and that on this occasion the ealdorman exacted a price for his assistance. After the oath had been made, presumably with the help of Ordlaf's clients, Helmstan surrendered the disputed estate at Fonthill to Ordlaf and received it back as a life tenancy. There the matter rested until Helmstan's second recorded theft, a year or two later. This time he was caught in the act, making off with some untended oxen, but managed to escape capture. He was outlawed and therefore forfeited his estates. Helmstan did not flee into exile, however, nor was he tracked down and executed. Instead, he made his way to the tomb of King Alfred in Winchester and from there,

under ecclesiastical protection and again with the help of Ordlaf, he was able to petition the king and obtain something close to a pardon. He was permitted to return home and retain his goods. Ordlaf was not so generous; rather than allow Helmstan back to the Fonthill estate he gave it to the Bishop of Winchester, receiving other lands in exchange.

The Fonthill Letter is famous among early medievalists because it is much more richly detailed than other surviving narratives, but in many ways Helmstan's case is typical. It shows how significant sociopolitical networks generally, and patron-client relationships specifically, could be in manipulating legal outcomes. It also demonstrates a merciful tendency in authority figures when dealing with members of their own political community, even when their guilt appears undisputed. Our motley collection of case narratives together paint a similar picture of politically malleable judicial decision making and of an elite with no great enthusiasm for imposing the death penalty on people from within their own social world. Indeed, as Andrew Rabin's recent review of this material has shown, if we were to limit ourselves to case narratives alone it would be difficult to demonstrate that judicial executions took place at all.[46] In fact, archaeological evidence establishes that they did happen, though not with any regularity.[47] We cannot be fully certain, but the dynamics of the more localized, lower-status communities that conducted their legal affairs in hundred assemblies probably mirrored those of aristocratic society. Few, if any, people at this social level had ealdormen for godfathers, but most would have had families living locally, and virtually all would have had lords—often men of roughly Helmstan's status—whose local political significance rested in large part on their effectiveness as patrons in legal contexts.[48] There is no reason to think minor lords were any less assiduous in supporting their clients than Ordlaf was in Helmstan's case. Indeed, the laws occasionally show concern that lords might be tempted to go too far in shielding their men (an accusation that Ordlaf takes pains to forestall in his letter). One case narrative even provides an extreme example of this happening in practice: three brothers of roughly Helmstan's status resorted to violence in defense of their client, a man apparently caught in the act of stealing a bridle, and lost everything as a result.[49]

It thus seems likely that the fact that justice was embedded in communal institutions and local political networks proved a formidable barrier to the practical implementation of the harsh retributive vision underlying the tenth-century's long public-order campaign. Though it is probable that in the abstract people bought into the idea that order could be improved through the deterrent effects of increased severity and therefore approved of elite law-making efforts, when it came to applying these principles to specific individuals all manner of additional considerations came into play, and legally straightforward decisions became morally complex. Wrongful acts that from a disinterested perspective might have appeared—to elite

and nonelite observers alike—symptomatic of a wider problem with order may often have seemed otherwise to the local men who shaped communal decision making. Clear-cut cases of theft, prime candidates for severity in theory, might look more justifiable and forgivable when framed as retaliation for previous maltreatment, as the collection of a disputed debt, or as an ill-conceived prank born of youthful exuberance. Exactly how it played out in practice we cannot know, as we lack sources to show local legal practice in detail, but embedded in the laws themselves is a story of lawmakers struggling, and often failing, to overcome local assemblies' propensity to leniency.

For the most part, tenth-century people were thus shielded from the full force of their culture's violent fantasies of retribution and deterrence. The main exceptions would have been outsiders—not just people from elsewhere but all those who for some reason found themselves isolated from local social and political networks—who would have been vulnerable to scapegoating and less able either to defend themselves legally or to appeal to the merciful sentiments of those judging them.[50] Additionally, there may well have been a growing number of centers of elite power, like Lantfred's Winchester, where law could be applied in its full idealistic severity by figures distant from the communities they sought to discipline.

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The lesson I suggest we take from this is not dissimilar to the one offered in William J. Stuntz's *Collapse of American Criminal Justice*, a work recommended to me as food for comparative thought in the later stages of writing my book, and which I found unexpectedly fruitful in suggesting new angles from which to approach early Medieval mechanisms of prosecution and defense.[51] In a long historical perspective, it is not unusual for societies collectively to adopt simplistic understandings of public order that overemphasize, sometimes drastically, how significantly the deterrent effects of retributive sanctions contribute to its maintenance. Stuntz's account of the American experience of the last fifty years is a chilling case study of what can happen when a political elite goes to great lengths to give practical legal force to such conventional wisdom, creating a punitive apparatus of unprecedented efficiency in the ultimately forlorn hope of thereby securing a major improvement in order. Tenth-century England is in some respects a good parallel in that the two societies' political elites show both a similar legislative zeal and a similar ingenuity in circumventing inconvenient legal principles in pursuit of their ideals. For instance, both societies' legislators can reasonably be suspected of consciously enshrining disproportionately harsh punishments in law so as to incentivize guilty pleas and minimize the use of formal proof procedures.[52]

But on the whole, the tenth-century example is probably a rather closer analog to Stuntz's account of the way policing and justice were firmly under local

democratic control in northern cities during America's "Gilded Age" (c. 1880–1930), an era of low murder rates and small prison populations. The fact that the political machines that ran these northern cities tended to rely on the votes of the poor immigrant and nonwhite communities who bore the brunt of policing made them responsive to those communities' views, and the likelihood that jurors (whose moral assessments of an offender's deserts were central to verdicts in a way that is no longer the case) would be drawn from neighborhoods similar to the accused's meant they were more often inclined to sympathize and show mercy.[53] More than 80 percent of Chicago women who killed their husbands were acquitted in the period, seemingly on the strength of juries' willingness to grant them rights of self-defense in the context of abusive relationships much broader and looser than those enshrined in legal doctrine.[54] It is hard not to suspect that the long-term inefficacy of King Æthelstan's insistence that all proven thieves be executed reflects local sentiment being woven into tenth-century judicial processes in a similar way.

For Æthelstan, of course, local assemblies' unwillingness to implement lawmakers' commands was intolerable. He opens the second round of his antitheft campaign by declaring, "my councillors say that I have borne it too long," and then goes on to enact a series of measures on local corruption.[55] Indeed, it seems likely that a great deal of leniency toward well-connected individuals was secured by means that would have appeared morally dubious even to contemporaries accustomed to the operation of a political order openly based on patronage networks. The justice system in northern cities during the United States' Gilded Age was corrupt and discriminatory too, as Stuntz acknowledges, but even so he argues that "for all its complications and all its vices, . . . [it] worked better than today's more bureaucratic system, and did so without today's massive and unstable prison populations."[56] Whether the same could be said of tenth-century England is uncertain—we have no way of assessing the changing scale of the public-order issues that prompted lawmakers' concerns about theft—but this medieval example does at least help reinforce the case that embedding the operation of justice in local communities, despite all the injustices it can create, often serves to protect human beings from culturally dominant fantasies of violently imposed order. The centralized, professionalized, and depersonalized policing and justice systems of the modern world, by contrast, are all too capable of turning those fantasies into cruel realities.

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Notes

1. Medieval historians now tend to cite early English laws using the system of titles, abbreviations, and clause numbers set out in Liebermann, *Gesetze der Angelsachsen* (hereafter cited as *Gesetze*). For the sake of clarity this essay uses the longer titles rather than the abbreviations, which typically results in references in the following form: II Æthelstan 20:1–20:7. Æthelstan is the name of the king under whom the law was issued, the II indicates which of the six surviving texts from his reign is intended, and the numbers refer to a passage from clause 20:1 to clause 20:7. All such citations are accompanied by direct references both to Liebermann's edition of the original text (which usually remains the most authoritative) and to an accessible English translation, often that in Whitelock, *English Historical Documents I* (hereafter cited as *EHD I*), which is available online (www.englishhistoricaldocuments.com). However, the standard referencing system is common to all modern editions and translations, of which there are several, and English translations of all the texts referred to here can easily be found in Attenborough, *Laws of the Earliest English Kings* (covering laws up to 939), or Robertson, *Laws of the Kings of England* (covering laws from 939 onward). The Early English Laws Project website (www.earlyenglishlaws.ac.uk) contains a database of editions and translations of law texts from the period. On assembly locations see Roach, *Kingship and Consent*, 67–69.
2. III Edmund; I Æthelred; *Gesetze* I: 190–91, 216–21; Robertson, *Laws of the Kings of England*, 12–15, 52–55.
3. This is something of a simplification. Western Mercia and northern Northumbria did not experience substantial Scandinavian settlement, and the extent to which tenth-century English kings exercised political control over Northumbria beyond Yorkshire is questionable. Indeed, it is likely that it was in this period that the northernmost part of Northumbria—Lothian, seemingly an ethnically English region—entered the orbit of Scottish kings. On the political context, see Molyneaux, *Formation of the English Kingdom*; Stafford, *Unification and Conquest*.
4. On *frið*, see Lambert, *Law and Order*, 207–10.
5. This account of the character and interpretative promise of royal legislation is potentially controversial. Patrick Wormald, the dominant figure in the field of early medieval law throughout the last quarter of the twentieth century, presented legislation as a primarily ideological enterprise, stressing the absence of evidence for the surviving texts being consulted in practice. The classic statement of this case, framed in a wider early medieval context, is Wormald, "*Lex Scripta* and *Verbum Regis*," but see also Wormald, *Making of English Law*, 477–83. This essay draws extensively on the more positive interpretation of laws' usefulness as evidence for contemporary legal culture and practice offered in Lambert, *Law and Order*, 12–19, which itself is probably best understood as part of a broader historiographical reassessment, taking place in the last decade, of the orthodoxy that law texts offer us little access to social realities. See, for instance, Taylor, "*Lex Scripta* and the Problem of Enforcement"; Rio, "Introduction"; Heather, "Law and Society in the Burgundian Kingdom"; Innes, "Charlemagne, Justice and Written Law"; Roach, "Law Codes and Legal Norms"; Cubitt, "'As the Lawbook Teaches.'" (However, a great deal of this was quietly anticipated in Charles-Edwards, *Early Irish and Welsh Kinship*, 3–4, 17–20.) In the context of this wider literature it is important to stress that using laws as evidence for lawmakers' assumptions about practice and their reforming ambitions does not require us to assume that laws were widely transmitted or routinely consulted in

written form. In the absence of any explicit statements on the issue we can only assume that the laws issued in these assemblies were intended to be observed in perpetuity, unless repealed, but there is nothing to suggest that an official, centralized record of the kingdom's laws was ever maintained (as it was for later medieval statute law). Though we know that written copies were made and kept by senior ecclesiastical (and possibly also lay) aristocrats, it is plausible that legislative edicts reached the localities primarily by word of mouth—probably through oral promulgation in shire assemblies at which senior local figures were expected to be present—and that the changes they sought to introduce needed to become embedded in local custom if they were to exist in the long term.

6. See especially Campbell, "The Late Anglo-Saxon State"; Wormald, *"Engla Lond."* Molyneaux, *Formation of the English Kingdom*, is a recent critical reappraisal.
7. Though the use of the term *state* in the medieval period has been much debated, it is only a problem if unduly reified. See Reynolds, "Historiography of the Medieval State."
8. Cubbin, *Anglo-Saxon Chronicle: MS D*, 44–45 (s.a. 952). Translation: *EHD I*, 223 (no. 1, s.a. 952D).
9. See Molyneaux, *Formation of the English Kingdom*, 77–79.
10. What follows summarizes the conclusions drawn in Lambert, *Law and Order*, especially chs. 3 and 6. See also Hudson, *Oxford History*, chs. 2, 4, 7.
11. "Reeves" (revenue collectors and farm overseers) who worked for the king and other great lords do, however, seem to have been expected to perform an investigatory and prosecutorial role in situations where, for instance, a thief was captured but induced his captor to cover up the offense in return for payment, thereby depriving the king or lord of a punitive fine. See VI Æthelstan 11; *Gesetze* I: 182; *EHD I*, 427 (no. 37); Lambert, *Law and Order*, 150–51.
12. Or "wapentakes" in regions dominated by Scandinavian diaspora communities.
13. As argued in Lambert, *Law and Order*, 243–50. See Hundred Ordinance 2 and IV Edgar 8:1; *Gesetze* I: 192, 210–12; *EHD I*, 430, 436 (nos. 39 and 41). For the opposing view—that pre-1066 England was characterized by a dense network of royal administrators who controlled local courts—see Wormald, "Lordship and Justice in the Earliest English Kingdom"; Campbell, "Some Agents and Agencies of the Late Anglo-Saxon State."
14. Downer, *Leges Henrici Primi*, 102–3 (c. 8, 1a).
15. A good example is II Æthelstan 20:1–20:7; *Gesetze* I: 160; *EHD I*, 420–21 (no. 35). The introduction of sheriffs ("shire-reeves"), powerful officials with authority over entire counties, may have brought more law enforcement activities under direct state control in the eleventh century; see Lambert, *Law and Order*, 251–52.
16. There were functional equivalents to state and private prisons, however: offenders who lacked the resources to pay punitive fines could be subject to penal enslavement, working off their debt on farms owned by the king or by privileged aristocrats, deterred from absconding by the threat of the death penalty. See Lambert, *Law and Order*, 284–85.
17. See Lambert, "Anthropology, Feud and *De obsessione Dunelmi*."
18. Strathern, "Discovering 'Social Control,'" 113.
19. See Lambert, *Law and Order*, 224–35. This interpretation was inspired at an early stage in its development by, and to an extent aligns with, that of Hyams, *Rancor and Reconciliation*. However, the stress laid here on laws' recognition of the legitimacy of violence goes beyond Hyams's argument, which often frames feuding as a phenomenon lawmakers sought to suppress and explains its persistence as the product of entrenched opposition from conservative elites. See also Hudson, *Oxford History*, 171–80.

20. Dresch, "Aspects of Non-State Law," 152.
21. Lambert, *Law and Order*, 269–73, 277–82; Hudson, *Oxford History*, 153–59, 169–72.
22. On silver: Naismith, *Medieval European Coinage,* 193–95. On sheep: VI Æthelstan 6:2; *Gesetze* I: 176; *EHD I*, 424 (no. 37).
23. Lapidge, *Cult of St. Swithun*, 310–13.
24. A possible partial exception is IV Æthelstan 6:4–6:7; *Gesetze* I: 172; Attenborough, *Laws of the Earliest English Kings*, 150–51. However, this passage survives only in a late eleventh- or early twelfth-century Latin translation and seems to represent a different version of the text than that which survives in an Old English fragment, so there is more room than usual to doubt whether its rules about gender- and status-specific forms of execution (drowning for free women, stoning for slave men, burning for slave women) were enacted by the law-making council to which they are attributed or were added to the text by a later editor with a lurid imagination. Rabin, "Capital Punishment and the Anglo-Saxon Judicial Apparatus," 184–93, reviews the seventy-eight references to capital punishment in the surviving texts.
25. As Lambert, *Law and Order*, might reasonably be accused of doing by not commenting on it. In early medieval historiographical terms, this essay's main contribution is perhaps the way it attempts to reconcile passages such as this (which make Anglo-Saxon justice appear as something imposed by elites with the power to act arbitrarily and cruelly) with the communal vision of legal practice implicit in royal legislation.
26. References to mutilation become more prominent in eleventh-century law texts authored by Archbishop Wulfstan II of York. In his official law code for King Cnut, however, mutilation features as an alternative to execution rather than as an additional suffering inflicted on someone sentenced to die. (From a salvific perspective it was a kinder punishment because it allowed the offender time to atone for his sins through penance and avoid eternal damnation.) What Lantfred describes has a different logic. However, in another unofficial text, which purports to record a fictional Anglo-Viking legal agreement a century previously, there is a reference to a rule permitting people to go to the aid of mutilated offenders only after three days. This rule seems to belong to the same moral world as the law described by Lantfred. For these passages: II Cnut 20:4–20:5 and "Edward and Guthrum" 10; *Gesetze* I: 132–34, 332–34; *EHD I*, 459 (no. 49); Attenborough, *Laws of the Earliest English Kings*, 106–7. For discussion, see O'Brien O'Keeffe, "Body and Law"; Marafioti, "Punishing Bodies"; Wormald, *Making of English Law*, 125–28. Richards, "Body as Text in Early Anglo-Saxon Law," draws out how this early eleventh-century material contrasts with the way bodily injury is framed in earlier law texts.
27. A more conventional inference here would be that tenth-century laws' frequent threats of punishment against corrupt reeves imply that routine local justice was dominated by figures whose offices gave them readily abused powers to impose their will arbitrarily on ordinary people; see Wormald, "Charters, Law and the Settlement of Disputes in Anglo-Saxon England," 164. My reasons for dissenting from this are set out in Lambert, *Law and Order*, 262–68.
28. Lapidge, *Cult of St. Swithun*, 312–15.
29. See Lambert, "Anglo-Saxon Law, Social Networks and Terrorism."
30. US felony murder doctrine suggests particular cause for concern on this point. See, e.g., Robinson and Williams, *Mapping American Criminal Law*, ch. 6.
31. Some anthropology I have found helpful on this theme: Scheele, "In Praise of Disorder"; Ewart, "Categories and Consequences in Amazonia."

32. See VI Æthelstan, *Gesetze* I: 173–83; *EHD I*, 423–27 (no. 37). However, it is worth stressing that this text attests only to enthusiasm in the abstract, and that the thieves it targets are imagined as outsiders. We cannot safely infer that the Londoners' zeal for harsh punishment of thieves in theory meant they were sanguine about executing members of their own community in practice.
33. See Lambert, *Law and Order*, 174–77; Wormald, *Making of English Law*, 291–308; Keynes, "Royal Government"; Roach, "Law Codes and Legal Norms"; Pratt, "Written Law and the Communication of Authority."
34. II Æthelstan 1; *Gesetze* I: 150; *EHD I*, 417 (no. 35).
35. II Æthelstan 7, 26; *Gesetze* I: 150, 164; *EHD I*, 417, 422 (no. 35). See Lambert, *Law and Order*, 263. On ordeal, see Hudson, *Oxford History*, 84–87.
36. IV Æthelstan 6; *Gesetze* I: 172; Attenborough, *Laws of the Earliest English Kings*, 148–49.
37. III Æthelstan 3 and V Æthelstan 3:1; *Gesetze* I: 168, 170; Attenborough, *Laws of the Earliest English Kings*, 144–45, 154–55.
38. IV Æthelstan 6:1–6:3; *Gesetze* I: 171–72; Attenborough, *Laws of the Earliest English Kings*, 148–51.
39. II Edmund 5; *Gesetze* I: 188; *EHD I*, 428 (no. 38).
40. VI Æthelstan 12:1, 12:3; *Gesetze* I: 183; *EHD I*, 427 (no. 37). See Rabin, "Capital Punishment and the Late Anglo-Saxon Judicial Apparatus," 189–91.
41. I Æthelred 1:2 and II Cnut 30:1; *Gesetze* I: 216, 330–32; *EHD I*, 458 (no. 49); Robertson, *Laws of the Kings of England*, 52–53.
42. II Cnut 22:1; *Gesetze* I: 324; *EHD I*, 457 (no. 49).
43. On these points, see Lambert, *Law and Order*, 261, 268–74, 283–84.
44. See, for instance, *EHD I*, 544–46, 571–73, 575–79 (nos. 102, 118, 120); Robertson, *Anglo-Saxon Charters*, 90–93, 128–31 (nos. 44, 63); Brooks and Kelly, *Charters of Christ Church Canterbury*, 852–62 (no. 104); Baxter, "Lordship and Justice," 410–11.
45. See *EHD I*, 544–46 (no. 102); Brooks and Kelly, *Charters of Christ Church Canterbury*, 852–62 (no. 104); Keynes, "The Fonthill Letter."
46. Rabin, "Capital Punishment and the Anglo-Saxon Judicial Apparatus," 193–99.
47. See Reynolds, *Anglo-Saxon Deviant Burial Customs*, but cf. Buckberry, "Osteological Evidence of Corporal and Capital Punishment," 148: "It is quite likely that the corporal and capital punishments in Anglo-Saxon law codes constitute a deterrent rather than a reality. Most individuals were fined for their crimes, whereas more severe punishments appear to have been meted out infrequently."
48. See Baxter, "Lordship and Justice."
49. I Æthelred 1:10–1:13; II Cnut 31–31:2; *EHD I*, 571–73 (no. 118).
50. On outsiders, see Lambert, "Hospitality, Protection and Refuge."
51. It is perhaps worth stressing that, for me, Stuntz's book is significant as one of a number of comparative historical and anthropological case studies that I have found useful in sharpening my thinking about my own period. His discussion of criminal justice in the USA thus occupies a similar place to Scheele's account of "anarchy" among the Tubu or Ewart's explication of human/nonhuman categorization among the Panará. (See Scheele, "In Praise of Disorder"; Ewart, "Categories and Consequences.") My purpose in using it here is simply to provide a helpful analogy—one that will probably be familiar to many readers of this special issue—that will clarify the tentative conclusion offered here.

Though I found Stuntz's book riveting, I am obviously in no position to pass judgment on its merits as historical interpretation.

52. Lambert, *Law and Order*, 286–87; Stuntz, *Collapse of American Criminal Justice*, 257–60.
53. Stuntz, *Collapse of American Criminal Justice*, 131–42.
54. Stuntz, *Collapse of American Criminal Justice*, 136. If only white women are considered the figure is over 90 percent.
55. V Æthelstan prologue, 1:2–1:4; *Gesetze* I, 166–68; *EHD I*, 422–23 (no. 36).
56. Stuntz, *Collapse of American Criminal Justice*, 142.

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