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Legal culture in the Danelaw: a study of III Æthelred

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ABSTRACT

Viking invasions and settlements left substantial legacies in late Anglo-Saxon England, attested in legal texts as a division between areas under *Dena lage* and those under *Ængla lage*. But how legal practice in Scandinavian-settled England functioned and differed from Anglo-Saxon law remains unclear. III Æthelred, the 'Wantage Code', provides critical evidence for legal customs being practised in the Danelaw at the close of the tenth century. An investigation into the code's peace protections re-examines the argument for occurrences of communal liability in England before the Normans. Wantage's restrictions on access to law and the need to 'buy law' suggest a departure from English conceptions of rights. Provisions on proof in legal cases, including a 'jury' of thegns, denote alternative measures of the truth. These analyses depict a Danelaw legal culture that reflects viking army origins, a Scandinavian preference for informal dispute-settlement ('love') and the concerns of a landholding Anglo-Scandinavian elite.

In common usage the term 'Danelaw' refers to those areas of England conquered by viking armies, most famously the *Micel Here* 'Great Army' of *c.* 865–78, which were subsequently settled by Scandinavians, likely in multiple waves.[1] As seen above, this article will attempt to selectively use 'viking' only as a designation for ship-based raiders and warriors like those of the *Micel Here*, not as a blanket term for Scandinavians in the period.[2] The Danelaw region was a vast and heavily populated territory, here defined as encompassing East Anglia, eastern Mercia (including the 'Five Boroughs') and parts of Northumbria.[3] The exact magnitude

[1] L. Abrams, 'Edward the Elder's Danelaw', *Edward the Elder 899–924*, ed. N. J. Higham and D. H. Hill (London, 2001), pp. 128–43, at 128–33; D. M. Hadley, 'The Creation of the Danelaw', *The Viking World*, ed. S. Brink and N. Price (London, 2008), pp. 375–8, at 375.

[2] See C. Downham, 'Viking Ethnicities: a Historiographic Overview', *Hist. Compass* 10 (2012), 1–12, at 1; cf. L. Abrams, 'Diaspora and Identity in the Viking Age', *EME* 20 (2012), 17–38, at 18; J. Jesch, *The Viking Diaspora* (Abingdon-on-Thames, 2015), pp. 4–7.

[3] Scholars differ on how they define the exact boundaries of the Danelaw, the most common general framework, used here, is largely drawn from F. M. Stenton, *Anglo-Saxon England*, 3rd ed. (Oxford, 1971), p. 508; cf. D. M. Hadley, *The Northern Danelaw: its Social Structure, c. 800–1100* (Leicester, 2000), pp. 2–3; K. Holman, 'Defining the Danelaw', *Vikings and the Danelaw*, ed. J. Graham-Campbell, R. Hall, J. Jesch and D. N. Parsons (Oxford, 2001), pp. 1–11, at 5–6. Despite the somewhat problematic nature of the terms Danelaw and Five Boroughs, for the sake of simplicity

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of the Scandinavian settlement has been heavily debated within the historiography, with the influential historian Peter Sawyer envisioning limited numbers of male viking warriors supplanting the Anglo-Saxon ruling class and leaving an overall minimal impact on the native population, while other scholars back Frank Stenton's premise of a mass migration involving many thousands of settlers.[4] This debate about scale continues to a degree, but has also evolved as increased attention is directed towards the nuanced social dynamics and fluid concepts of identity among Danelaw inhabitants.[5] The diverse and politically disunified communities of the Danelaw retained a distinct Scandinavian character for the next century and a half, including a pattern of dense Norse place-naming, an impact on spoken language and their own legal system, to which the Old English term *Dena lage* refers.[6] According to the *Anglo-Saxon Chronicle*, by the time of his death in 899 Alfred the Great held sway over all *Angelcynn* who were not '*under Dena*

this article will use these concepts in their broad geographical sense; see the caution advised in B. Raffield, 'The Danelaw Reconsidered: Colonization and Conflict in Viking-Age England', *Viking and Med. Scandinavia* 16 (2020), 181–220, at 210–11.

4 P. H. Sawyer, *The Age of the Vikings* (London, 1971), pp. 123–8, at 173; F. M. Stenton, 'Presidential Address: the Scandinavian Colonies in England and Normandy', *TRHS* (1945), 1–12, at 2–3. On the polarizing debate between these views, see S. Trafford, 'Ethnicity, Migration Theory, and the Historiography of the Scandinavian Settlement of England', *Cultures in Contact: Scandinavian Settlement in England in the Ninth and Tenth Centuries*, ed. D. M. Hadley and J. Richards (Turnhout, 2000), pp. 17–39, at 18–21; M. Townend, 'Scandinavian Place-Names in England', *Perceptions of Place: Twenty-First-Century Interpretations of English Place-Name Studies*, ed. J. Carroll and D. N. Parsons (Nottingham, 2013), pp. 103–26, at 106–8.

5 E.g., Hadley, *Northern Danelaw*, pp. 298–300; S. Roffey and R. Lavelle, 'West Saxons and Danes: Negotiating Early Medieval Identities', *Danes in Wessex: the Scandinavian Impact on Southern England, c. 800–c. 1100*, ed. R. Lavelle and S. Roffey (Oxford, 2015), pp. 7–34, at 14 and 17; C. Downham, '"Hiberno-Norwegians" and "Anglo-Danes": Anachronistic Ethnicities and Viking-Age England', *MScand* 19 (2009), 139–69, at 140; Holman, 'Defining the Danelaw', pp. 7–8; S. McLeod, 'Migration and Acculturation: the Impact of the Norse on Eastern England, c. 865-900' (unpubl. DPhil thesis, Univ. of Western Australia, 2011), p. 231.

6 D. M. Hadley, 'In Search of the Vikings: the Problems and the Possibilities of Interdisciplinary Approaches', *Vikings and the Danelaw*, ed. J. Graham-Campbell, R. Hall, J. Jesch and D. N. Parsons (Oxford, 2001), pp. 13–30, at 23; R. Poole, 'Crossing the Language Divide: Anglo-Scandinavian Language and Literature', *The Cambridge History of Early Medieval English Literature*, ed. C. A. Lees (Cambridge, 2012), pp. 579–606, at 579–81. For an analysis of the place-name historiography, see Townend, 'Scandinavian Place-Names', pp. 103–12. See the convincing argument that Norse place-naming for small-scale geographical features indicates significant non-elite settlement and landholding by Norse speakers forming local majorities, L. Abrams and D. N. Parsons, 'Place-names and the History of Scandinavian Settlement in England', *Land, Sea and Home: Proceedings of a Conference on Viking Period Settlement*, ed. J. Hines, A. Lane and M. Redknap (Leeds, 2004), pp. 379–431, at 402–4; G. Fellows-Jensen, 'Light Thrown by Scandinavian Place-Names on the Anglo-Saxon Landscape', *Place-Names, Language and the Anglo-Saxon Landscape*, ed. N. J. Higham and M. J. Ryan (Martlesham, 2011), pp. 69–84, at 82. Cf. earlier conclusions in G. Jones, 'Early Territorial Organization in Northern England and its Bearing on the Scandinavian Settlement', *The Fourth Viking Congress*, ed. A. Small (Turnhout, 1965), pp. 67–84, at 77 and 83.

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onwalde'; he had previously defined a border with parts of the Danelaw in the 886 × 890 Treaty of Alfred and Guthrum.[7] West Saxon expansion began in earnest with Edward the Elder's conquest of Scandinavian England, except for Lincolnshire and Yorkshire, completed in 924, with many seemingly autonomous Danelaw boroughs submitting to him peacefully.[8] In *c.* 959 the Cerdicing dynasty of Wessex had united almost all of modern England under their banner.[9] Edgar inherited control over these territories and made significant advances in consolidating kingdom-wide administration.[10] Setting an important precedent in his 'Whitbordesstan code', Edgar also explicitly respected legal autonomy 'among the Danes', who retained 'good laws as they can best decide on'.[11]

The term 'Danelaw' first appears after the turn of the millennium, within the legal writings of Archbishop Wulfstan II of York where he makes *Dena lage* the equivalent to *Ængla lage* 'law of the English'.[12] From this point on, forms of the

[7] *ASC* 900 A, 900 B, 901 C: 'He was king over the whole English people except for that part which was under Danish rule', trans. *English Historical Documents c. 500–1042*, ed. D. Whitelock, Eng. Hist. Documents 1, 2nd ed. (London, 1979) [hereafter *EHD*], no. 1; all *Anglo-Saxon Chronicle* references are from this translation. For dating of the Treaty, see *EHD*, no. 34. See also S. Foot, 'The Making of Angelcynn: English Identity before the Norman Conquest', *TRHS* 6 (1996), 25–49, at 25.

[8] The *Chronicle* depicts independent military and political actions by armies belonging to different Danish boroughs, including individual submission to Edward by the 'army which belonged to' towns such as Northampton and Cambridge, see *ASC* 917 [920] A, trans. *EHD*, no. 1. See G. Molyneaux, *The Formation of the English Kingdom in the Tenth Century* (Oxford, 2015), p. 28; Holman, 'Defining the Danelaw', p. 7. Individual Danelaw boroughs also seem to have been minting their own coins, M. Blackburn, 'Expansion and Control: Aspects of Anglo-Scandinavian Minting South of the Humber', *Vikings and the Danelaw*, ed. J. Graham-Campbell, R. Hall, J. Jesch and D. N. Parsons (Oxford, 2001), pp. 125–42, at 137 and 139.

[9] P. H. Sawyer, 'Danelaw', *The Oxford Dictionary of the Middle Ages* (Oxford, 2010).

[10] Edgar's reforms included making coinage uniform, increasing the role of royal agents and standardizing land divisions into hundreds/wapentakes and shires, Molyneaux, *Formation of the English Kingdom*, pp. 121–2, 141, 173 and 193. See L. Abrams, 'King Edgar and the Men of the Danelaw', *Edgar, King of the English 959–975: New Interpretations*, ed. D. Scragg (Woodbridge, 2008), pp. 171–91, at 171.

[11] IV Eg 2:1, cf. 12, 13:1, trans. *EHD*, no. 41. All Anglo-Saxon and Anglo-Norman laws in this article are cited using Liebermann's system of abbreviation established in *Die Gesetze der Angelsachsen*, ed. F. Liebermann, 3 vols. (Halle, 1903–16), and found on the 'Early English Laws' website (www.earlyenglishlaws.ac.uk/laws/texts/). All translations will be specified but are primarily drawn from *EHD*, as well as *The Laws of the Earliest English Kings*, ed. and trans. F. L. Attenborough (Cambridge, 1922), and *The Laws of the Kings of England from Edmund to Henry I*, ed. and trans. A. J. Robertson (Cambridge, 1925).

[12] VI Atr 37. Cf. EGu 7:2; II Cn 15:1a, 62, 65. Wulfstan may have been inspired by '*Dene be lagum*' in IV Eg 13:1, cf. 2:1, 12; see S. Pons-Sanz, *Norse-derived Vocabulary in late Old English Texts: Wulfstan's Works, A Case Study* (Odense, 2007), p. 72; cf. M. Battaglia, 'Identity Paradigms in the Perception of the Viking Diaspora', *Journeys Through Changing Landscapes: Literature, Language, Culture and the Transnational Dislocations*, ed. C. Dente and F. Fedi (Pisa, 2017), pp. 279–316, at 287; D. M. Hadley, 'Viking and Native: Re-thinking Identity in the Danelaw', *EME* 11, no. 1 (2002), 45–70, at 47.

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word 'Danelaw' are frequently invoked in English royal law-codes, usually to describe minor legal differences for areas that adhere to alternative practices. This continues even after the Norman Conquest, at which point the Danelaw is explicitly delineated as a legal region within the kingdom.[13] Most commonly, these legal differences are in the form of a distinctive fine payment in the Danelaw called *lahslit*, which equates to the punitive wergild forfeitures and *wite* of West Saxon districts.[14] Despite these references, little is known about actual legal notions or practices in Anglo-Scandinavian society, particularly during the political independence of the territories concerned in the tenth century, on which this article will centre.[15] This is exacerbated by the lack of earlier legal records in the Danelaw areas, making it difficult to evaluate the impact of the pre-existing Anglo-Saxon kingdoms of the region on later laws.[16]

Given the dearth of contemporaneous written records from the region, archaeology has been critical in evolving our overall impression of the Scandinavian settlement of England and life in the Danelaw.[17] Recent findings have increasingly challenged Sawyer's previously dominant 'minimalist view'. Historians are now much more receptive to the possibility of large-scale Scandinavian settlement in England, likely carried out in multiple waves following the first land-sharing of the viking armies in the late ninth century.[18] Not only have these armies been

On the 'Treaty of Edward and Guthrum' as a Wulfstanian forgery, see D. Whitelock, 'Wulfstan and the So-called Laws of Edward and Guthrum', *EHR* 56 (1941), 1–21, at 18; N. P. Schwartz, 'Wulfstan the Forger: the 'Laws of Edward and Guthrum'', *ASE* 47 (2018), 219–46, at 219 and 222.

[13] See Leis Wl 2:2–2:4, 3:3, 17b:1, 21:2–21:4; Hn 6:1, 9:10–9:10a, 11:11; cf. Holman, 'Defining the Danelaw', p. 5.

[14] EGu 2, 6–6:1; V Atr 31; VI Atr 51; II Cn 15a:1a, 46, 48, 49; Northu 20–2, 51–4; Leis Wl 39:2, 42:2; Hn 11:11, 34:1a. *Lahslit* is literally 'law-breach' but the legal use can be more broadly as a fine, see Pons-Sanz, *Norse Vocabulary in Wulfstan*, p. 70. On wergild and *wite*, see T. Lambert, *Law and Order in Anglo-Saxon England* (Oxford, 2017), pp. 54 and 59–61; A. Rabin, *Crime and Punishment in Anglo-Saxon England* (Cambridge, 2020), pp. 31 and 52.

[15] This work uses the term 'Anglo-Scandinavian' in a general sense to refer to the peoples who inhabited the Scandinavian-settled areas of England in *c.* 900 × 1100 and the cultural output associated with them. Following scholars from multiple disciplines, especially material culture, I believe that this term is useful in indicating features which blend English and Scandinavian elements, often forming a new identity distinct from either origin point. The actual ethnic identities of the individuals involved will always remain elusive to us and we must be careful not to overestimate the currency of such hyphenated labels, see comments in Abrams, 'Diaspora and Identity', p. 37.

[16] Lambert, *Law and Order*, p. 74, n. 33; K. Cross, *Heirs of the Vikings: History and Identity in Normandy and England, c.950–c.1015* (Woodbridge, 2018), p. 194.

[17] V. Garver, 'Material Culture and Social History in Early Medieval Western Europe', *Hist. Compass* 12 (2014), 784–93, at 785.

[18] Abrams, 'Diaspora and Identity', p. 30; Hadley, 'Viking and Native', p. 47; Townend, 'Scandinavian Place-Names', pp. 110 and 115; E. van Houts, 'Invasion and Migration', *A Social History of England, 900–1200*, ed. J. Crick and E. van Houts (Cambridge, 2011), pp. 208–34, at 209–10.

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reassessed as having been of significant size, in line with the claims of contemporary chroniclers, there is also growing evidence for the disruption of traditional landholding patterns and the settling of large numbers of Norse-speaking non-elites, including women.[19] Convincing arguments have been made that some homestead sites encapsulate distinct periods of viking raiding, destruction and resettlement as Anglo-Scandinavian farms.[20] Partnerships with metal-detectorists since the 1997 Portable Antiquities Scheme have swelled the amount of confirmed Scandinavian finds, allowing for new studies on population density in the Danelaw, patterns of exchange and gender.[21] Studies reliant upon emerging technologies, such as DNA and isotopic analyses, have already shown their exciting potential to further illuminate our picture of Scandinavian England.[22]

See the estimation for migrant numbers at roughly 20,000–35,000 in J. Kershaw and E. C. Røyrvik, 'The "People of the British Isles" Project and Viking Settlement in England', *Antiquity* 90, no. 354 (2016), 1670–80, at 1678–9. See anticipation for the decisive impact of archaeology, R. A. Hall, 'The Five Boroughs of the Danelaw: a Review of Present Knowledge', *ASE* 18 (1989), 149–206, at 205.

19 D. M. Hadley and J. Richards, 'The Winter Camp of the Great Viking Army, AD 872–3, Torksey, Lincolnshire', *AntJ* 96 (2016), 23–67, at 58–9, cf. 26; which critiques the theory laid out in Sawyer, *Age of Vikings*, pp. 129–31. On settlement, see D. M. Hadley and J. Richards, 'In Search of the Viking Great Army: Beyond the Winter Camps', *Med. Settlement Research* 33 (2018), 1–17, at 3–5; S. Wrathmell, 'Sharing Out the Land of the Northumbrians: Exploring Scandinavian Settlement in Eastern Yorkshire Through *-bý* Place-Names and Township Boundaries (Part One)', *Med. Settlement Research* 35 (2020), 16–25, at 24; G. Thomas, 'The Prehistory of Medieval Farms and Villages: from Saxons to Scandinavians', *Medieval Rural Settlement: Britain and Ireland, AD 800–1600*, ed. N. Christie and P. Stamper (Oxford, 2012), pp. 43–62, at 59; cf. above, n. 6. For female Scandinavian settlers, see discussions in J. Kershaw, 'Culture and Gender in the Danelaw: Scandinavian and Anglo-Scandinavian Brooches', *Viking and Med. Scandinavia* 5 (2009), 295–325; S. McLeod, 'Warriors and Women: the Sex Ratio of Norse Migrants to Eastern England up to 900 AD', *EME* 19 (2011), 332–53.

20 D. Haldenby and J. Richards, 'The Viking Great Army and its Legacy: Plotting Settlement Shift Using Metal-detected Finds', *Internet Archaeol.* 42 (2016), at no. 4.2; J. Richards and D. Haldenby, 'The Scale and Impact of Viking Settlement in Northumbria', *MA* 62, no. 2 (2018), 322–50, at 327.

21 E.g., about ninety per cent of all Scandinavian brooch finds in England were the result of metal-detecting, mostly in the last twenty years, Kershaw, 'Culture and Gender: Scandinavian Brooches', p. 297.

22 For viking genetics see S. Leslie, B. Winney, G. Hellenthal *et al.*, 'The Fine-scale Genetic Structure of the British Population', *Nature* 519 (2015), 309–14; and the critiques in Kershaw and Røyrvik, 'PoBI and Viking Settlement', pp. 1670–4; McLeod, 'Migration and Acculturation', p. 25. See the most recent large-scale analysis of viking DNA in A. Margaryan, D. J. Lawson, M. Sikora *et al.*, 'Population Genomics of the Viking World', *Nature* 585 (2020), 390–6. For major takeaways from isotopic analysis, see J. Buckberry, J. Montgomery, J. Towers, G. Müldner, M. Holst, J. Evans, A. Gledhill, N. Neale and J. Lee-Thorp, 'Finding Vikings in the Danelaw', *Oxford Jnl of Archaeol.* 33, no. 4 (2014), 413–34, at 414; P. Budd, A. Millard, C. Chenery, S. Lucy and C. Roberts, 'Investigating Population Movement by Stable Isotope Analysis: A Report from Britain', *Antiquity* 78, no. 299 (2004), 127–41, at 138; C. Jarman, M. Biddle, T. Higham and C. B. Ramsey,

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In congruence with contemporary reassessments necessitated by all of this ground-breaking work, it is time to attempt a similar project for law in the Danelaw, especially since *Dena lage* is the basis by which our sources differentiate the region. If as Glanville Jones says, 'a predominantly Danish aristocracy administered Danish laws', as seems to be the case, what can be revealed about law in the Danelaw, and how it contrasted with West Saxon law, will yield valuable insights into this ruling elite and Danelaw society more generally.[23] There is a sprinkling of stand-alone legal texts that seem to represent Danelaw practices; by far the most extensive and promising is a royal code of Æthelred II known as III Æthelred, the 'Wantage Code'. This document, typically under-valued by modern scholarship, is full of untapped potential; this article will draw on Wantage's deviations from English law in order to build insights into Danelaw legal culture.[24]

The text was most likely written and enacted at a council meeting in Wantage (Berkshire, now Oxfordshire) in *c.* 997 and seems to be a counterpart to another Æthelredian code, I Æthelred, the 'Woodstock Code'.[25] Several passages of the two works closely parallel each other. The preamble of I Æthelred declares that it is to be in effect 'wherever English law prevails' (*æfter Engla lage*), explicitly limiting its application to non-Danelaw areas.[26] The opening clauses of the Wantage Code soon suggest its own parallel jurisdiction with a provision regarding peace in a

'The Viking Great Army in England: New Dates from the Repton Charnel', *Antiquity* 92, no. 361 (2018), 183–99, at 197.

[23] G. Jones, 'Celts, Saxons and Scandinavians', *Historical Geography of England and Wales,* ed. R. A. Dodgshon and R. A. Butlin, 2nd ed. (London, 1990), pp. 45–68, at 59. Following Jones here, this article will occasionally use the words 'Dane' or 'Danish' in the way these ethnonyms were used in the period, to refer generally to Scandinavians, with no meaningful designation of nation of origin; see comments in Downham, 'Anachronistic Ethnicities and Viking-Age England', pp. 142–4; Roffey and Lavelle, 'West Saxons and Danes', pp. 9–11; Battaglia, 'Identity Paradigms', pp. 283–4 and 287; Hadley, 'In Search of the Vikings', pp. 23–4; O. Timofeeva, 'The Viking Outgroup in Early Medieval English Chronicles', *Jnl of Hist. Sociolinguistics* 2, no. 1 (2016), 83–121, at 94 and 97, n. 13.

[24] For examples of the terse modern treatments of Danelaw legal questions, see the discussions in J. Hudson, *The Oxford History of the Laws of England*, II: *871–1216* (Oxford, 2012), pp. 248–9; Lambert, *Law and Order*, p. 169, n. 25.

[25] S. Keynes, 'Æthelred II [Ethelred; known as Ethelred the Unready] (c. 966x8–1016), King of England', *Oxford Dictionary of National Biography* (Oxford, 2004). There is majority agreement on this dating, since a charter of Æthelred indicates that the *witan* gathered in Wantage in spring of 997, and this is the likely context: S. Keynes, *The Diplomas of King Æthlred 'the Unready' 978–1016* (Cambridge, 1980), p. 196. See the charter S 891 from *Codex Diplomaticus ævi Saxonici*, ed. J. M. Kemble, 6 vols. (London, 1839–48), no. 698. Charters will be cited by their 'S number' from P. H. Sawyer, *Anglo-Saxon Charters: an Annotated List and Bibliography* (London, 1968), accessible in its revised form in the 'Electronic Sawyer' (www.esawyer.org.uk).

[26] I Atr Pre. Liebermann argued that the original text of Wantage contained '*æfter Dena lage*' in balance to this, Liebermann, *Die Gesetze* I, 228. See this suggestion also in P. Wormald, *The Making of English Law: King Alfred to the Twelfth Century*, I: *Legislation and its Limits* (Oxford, 1999), p. 328.

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meeting of the Five Boroughs, a core section of the Danelaw.[27] Wantage also distinguishes itself by addressing a wide-ranging compilation of legal questions compared to the focused purpose of Woodstock.[28] Many of these provisions contrast strongly with English legal norms, only Scandinavian currencies are used, and there is a littering of Norse-derived vocabulary (many making their first appearance in Old English).[29] Not only do we see a divergent set of legal practices, the evidence suggests that these have a clear Scandinavian bent.[30] Wantage seems to have been written for the areas of England where Scandinavian legal customs were being practised and which came to be known as the Danelaw, likely specifically the Five Boroughs region.[31] But with this being the case, scholarly opinion varies widely in how to interpret the code's context and intent. One camp argues that Æthelred is here overruling the laissez-faire approach of Edgar by asserting his authority over the Danelaw's legal practices, forcefully bringing it into the fold of West Saxon law through the issuance of a royal code.[32] Niels Lund takes this further and sees the king (with a famously tumultuous reign) committing 'flagrant encroachment' over a previously independent legal system, with the text even showing Æthelred making punishments much harsher on the Danelaw, likely

[27] III Atr 1:1. The Five Boroughs referenced here are the major Scandinavian-settled towns of the East Midlands: Derby, Leicester, Lincoln, Nottingham and Stamford, see N. J. Higham, 'The Five Boroughs', *The Wiley Blackwell Encyclopedia of Anglo-Saxon England*, ed. M. Lapidge, J. Blair, S. Keynes and D. Scragg, 2nd ed. (Chichester, 2014), pp. 191–2; D. M. Hadley, '"Hamlet and the Princes of Denmark": Lordship in the Danelaw, c. 860–954', *Cultures in Contact: Scandinavian Settlement in England in the Ninth and Tenth Centuries*, ed. D. M. Hadley and J. Richards (Turnhout, 2000), pp. 107–32, at 113.

[28] Wormald characterizes Woodstock as a 'single-issue law', while Wantage is dealing 'with a much wider range of issues', Wormald, *Making of English Law*, p. 326.

[29] *Ibid.* p. 327; C. Hart, *The Danelaw* (London, 1992), p. 20.

[30] It is difficult to determine causes behind the Danelaw region's particularities, and Blair cautions against indiscriminately giving primary agency to viking invaders regarding regional differences which may have predated their arrival, J. Blair, *Building Anglo-Saxon England* (Princeton, 2018), pp. 267–9, 281 and 305–8; cf. Trafford, 'Ethnicity, Migration Theory and Historiography', p. 20. In this vein, we cannot completely rule out the possibility of pre-viking legal traditions in Danelaw areas influencing the legal culture that developed here, but Wantage reveals a decidedly Scandinavian grounding in its terminology and conceptions as will be discussed; see comments on the Scandinavian legal legacy in D. M. Stenton, *English Justice between the Norman Conquest and the Great Charter, 1066–1215* (Philadelphia, 1964), p. 16; cf. Hudson, *Oxford History of the Laws*, p. 249; Hadley, 'In Search of the Vikings', p. 23; Cross, *Heirs of the Vikings*, p. 194.

[31] C. Neff, 'Scandinavian Elements in the Wantage Code of Æthelred II', *The Jnl of Legal Hist.* 10, no. 3 (1989), 285–316, at 285; Hudson, *Oxford History of the Laws*, pp. 66 and 248.

[32] H. G. Richardson and G. O. Sayles *Law and Legislation: from Aethelberht to Magna Carta* (Edinburgh, 1966), p. 25; A. Lemke, '"Ealla þas ungesælða us gelumpon þuruh unrædas": Voices from the Reign of Æthelred II', *Von Æthelred zum Mann im Mond: Forschungsarbeiten aus der englischen Mediävistik*, ed. J. Müller and F. Reitemeier (Gottingen, 2010), pp. 13–120, at 65. Hudson is more neutral but concludes that Wantage is 'best interpreted as the English king imposing measures', Hudson, *Oxford History of the Laws*, p. 248; cf. Holman, 'Defining the Danelaw', p. 4.

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as retribution for the rebellious tendencies of the region.[33] By contrast, the dissenting camp, including Stenton and Simon Keynes, envisions III Æthelred as the royal recognition of legal customs that originated in the Danelaw.[34] This approach is strengthened by the observation that significant parts of the code clearly diverge from West Saxon law to the degree that they must have developed independently.[35] The text as a whole rings true as a fusion of West Saxon and Scandinavian-derived legal practices of the Danelaw.[36]

This article favours the view that significant sections of the Wantage Code are reflective of Danelaw legal practices that are here being preserved in a West Saxon royal text, not buried. If Æthelred wanted to impose English law upon the Danelaw, he would have written a cross-jurisdictional code that explicitly included both regions. Instead, in separate councils, he made one code 'under English law' and another under what seems to be the law of the Danelaw.[37] Wantage's *c.* 997 dating, long after the submission of the Five Boroughs to Cerdicing rule, casts great doubt on a retributory aspect to the code; the region had been incorporated into the English kingdom for decades and any resident 'Danes' were likely deeply intertwined with the Anglo-Saxon population.[38] Lastly, if this was a top-down assertion of royal legal authority, the apparent concern and sensitivity for local custom would not be present. The Scandinavian legal terms alone, many of which are first attested here and overlap with English meanings, were most likely incorporated by consulting someone with knowledge of Danelaw legal

[33] N. Lund, 'King Edgar and the Danelaw', *MScand* 9 (1976), 181–95, at 194; cf. M. Innes, 'Danelaw Identities: Ethnicity, Regionalism, and Political Allegiance', *Cultures in Contact: Scandinavian Settlement in England in the Ninth and Tenth Centuries*, ed. D. M. Hadley and J. Richards (Turnhout, 2000), pp. 65–88, at 72–3.

[34] Stenton, *Anglo-Saxon England*, p. 508; Keynes, *Diplomas of Æthlred*, p. 197, n. 159.

[35] Wormald, *Making of English Law*, p. 329.

[36] E. van Houts, 'The Vocabulary of Exile and Outlawry in the North-Sea Area around the First Millennium', *Exile in the Middle Ages: Selected Proceedings from the International Medieval Congress, Univ. of Leeds, 8–11 July 2002*, ed. L. Napran and E. van Houts (Turnhout, 2004), pp. 13–28, at 18.

[37] I Atr 1:2; III Atr 4. Both Wantage and Woodstock refer back to an assembly at '*Bromdune*' (which occurred at an unidentified place on some unknown previous occasion) and seem to be implementing decisions from this meeting in different ways, see Robertson, *Laws*, p. 312, n. 1:2.1.

[38] Intermarrying and assimilation seemed to be occurring from an early point, so being able to differentiate and punish ethnic Danes in the Danelaw seems unlikely by the late tenth century, see McLeod, 'Migration and Acculturation', p. 231. Swift conversion to Christianity is certainly affirmed by the burial record, see J. Richards, 'Pagans and Christians at the Frontier: Viking Burial in the Danelaw', *The Cross Goes North: Processes of Conversion in Northern Europe, AD 300–1300*, ed. M. O. H. Carver (Woodbridge, 2003), pp. 383–95, at 383; S. McLeod, 'The Acculturation of Scandinavians in England: a Consideration of the Burial Record', *Jnl of the Australian Early Med. Assoc.* 9 (2013), 61–87, at 84 and 87.

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vocabulary.[39] The code's content, especially these terms, reveals the hands of Danelaw elites in some stage in the composition of a text that was promulgated by the king's court in Wantage in 997.[40] Significant numbers of nobles from throughout the kingdom (including Danelaw Anglo-Scandinavians) attended royal assemblies by this period, especially when their own interests were concerned, so men from the Five Boroughs were very likely present at Wantage.[41]

This work will argue not only that Anglo-Scandinavian elites influenced the Wantage Code, but that they were the initiators of at least some of its sections, thus gaining royal codification of legal practices that helped maintain a Danelaw *status quo* benefitting those at the top of the social hierarchy.[42] The complexities of III Æthelred do not simply represent procedural differences that formed side notes in later English codes, they are clues to fundamental differences in how the law was construed by the inhabitants of the Danelaw.[43] The following sections will illuminate this through three areas of focus: the code's protection clauses and their implications on divergent Danelaw understandings of liability, references to 'buying law' and how law was accessed, and Wantage's use of proof in legal cases. Threads of the Danelaw's viking-army context, a proposed Scandinavian emphasis on private settlement and the self-interested agenda of Anglo-Scandinavian aristocrats will be critically woven into these discussions. This integrated approach will make comparisons to and analogies with Scandinavian and Icelandic laws but will recognize the later dating of these texts and the limited conclusions that can be drawn from them.

PEACE-BREACH AND COLLECTIVE LIABILITY

A means of decreasing and controlling violent confrontations is a central concern of Anglo-Saxon royal legislation and the legal corpus is full of provisions for the establishment of 'peace'. At the core of this is the protective power that can be

[39] Especially the compilation of legal terms in III Atr 3, introduced below, p. 181. See P. Wormald, 'Æthelred the Lawmaker', *Ethelred the Unready: Papers from the Millenary Conference*, ed. D. Hill (Oxford, 1978), pp. 47–80, at 61–2.

[40] Hadley, 'Viking and Native', p. 49.

[41] Tenth-century ealdormen from the far north of England with Scandinavian names regularly attended assemblies and those from 'the more southerly reaches of the Danelaw' likely attended even more but this presence may not have been consistently recorded: L. Roach, *Kingship and Consent in Anglo-Saxon England, 871–978: Assemblies and the State in the Early Middle Ages* (Cambridge, 2013), pp. 38–9. By my own very rough calculation, the closest of the Five Boroughs, Leicester, is about eighty miles from Wantage, which seems to be within reasonable travelling distance, about a two-day ride; cf. E. G. Stanley, *Imagining the Anglo-Saxon Past: the Search for Anglo-Saxon Paganism and Anglo-Saxon Trial by Jury* (Woodbridge, 2000), p. 141.

[42] Hadley, 'Viking and Native', p. 50. On hierarchies and elites in Viking Age Scandinavia, see Hadley 'Hamlet: Lordship in the Danelaw', esp. p. 111.

[43] In contrast to Neff, 'Scandinavian Elements', p. 311.

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offered to individuals and the ability to punish breaches.[44] An examination of the protection clauses at the beginning of the Wantage Code soon reveals that they stand out from the norms of this tradition. The code's very first clause, in a manner to be expected from an English royal law-code, establishes that it is *botleas* ('unpardonable') to breach peace that was personally granted by the king and it cannot be compensated for.[45] The term for peace here is *grið*, a Scandinavian loanword, where elsewhere we would expect the native Old English term *mund* or as Woodstock uses, *frið*.[46] The next two subclauses of Wantage are focused on peace in cases of less severity than the king's, here to prevent the violent disruption of assemblies. Clause 1:1 states, 'And [for breach of] the peace (*grið*) which the ealdorman and the king's reeve give in the meeting of the Five Boroughs, that is to be atoned for with twelve hundred'.[47] The next subclause specifies protections down to increasingly local levels of administrative meetings. There is establishment of *grið* in the gathering of one borough (*burhgaþinðe*), in a wapentake (*wæpentake*) assembly and in an alehouse (*ealahuse*).[48] These meetings were likely open-air affairs at a local landmark and are more aptly termed assemblies rather than courts.[49]

[44] T. Lambert, 'Introduction: Some Approaches to Peace and Protection in the Middle Ages', *Peace and Protection in the Middle Ages*, ed. T. Lambert and D. Rollason (Durham, 2009), pp. 1–16, at 3.

[45] III Atr 1, trans. the website of the Toronto *Dictionary of Old English* [hereafter *DOE*], '*botleas*'. This is a standard procedure for king's *mund*-breach, see earlier examples of total forfeiture, Ine 6; II Em 6. Harshness for breaches of the king's peace is reinforced later in the text, III Atr 13.

[46] I Atr Pre. See Lambert, *Law and Order*, p. 185; S. Pons-Sanz, *The Lexical Effects of Anglo-Scandinavian Linguistic Contact in Old English* (Turnhout, 2013), p. 178. For the linguistic challenges around this issue, see C. Fell, '*Unfrið*: an Approach to a Definition', *SBVS* 21, no. 1–2 (1982–3), 85–100. Because this is the first time *grið* is included in an English law-code, 'there is linguistic sensitivity in that use; and more than that, it shows rare administrative respect for ethnic difference', Stanley, *Imagining Anglo-Saxon Past*, p. 144. For the later popularity of the term see its use in the *Battle of Maldon* 29 in *EHD*, no. 10; and within the codes of Wulfstan (VIII Atr 1:1; I Cn 2:1–2:2; II Cn 61) including one short work devoted to the subject, known as *On Grið*.

[47] III Atr 1:1, trans. *EHD*, no. 43. See the shift towards the empowerment of local agents to establish peace in a bureaucratic fashion beyond that granted personally by the king, T. Lambert, 'Protection, Feud and Royal Power: Violence and its Regulation in English Law, c. 850 – c. 1250' (unpubl. PhD thesis, Durham Univ., 2009), pp. 93–7.

[48] III Atr 1:2. OE *wæpentake*, from ON *vápnatak* 'taking of weapons', is a territorial and administrative unit, a division of a riding or shire, that is the Danelaw equivalent of the Anglo-Saxon hundred, Hart, *Danelaw*, pp. 281–3; A. Sanmark *et al.*, 'Debating the Thing in the North I: Introduction and Acknowledgments', *Jnl of the North Atlantic* 5 (2013), 1–4, at 4.

[49] Hart, *Danelaw*, p. 281. For greater context on rendering a term as 'assembly' instead of 'court' see the discussion of translating the related Old Danish and Old Frisian term *thing*, H. Vogt and H. Nijdam, 'Translating a Medieval Legal System into Modern English', *Translation and Medieval Documents. Voices of Law: Language, Text and Practice*, ed. J. Benham and M. Julian-Jones (Cardiff, 2018), pp. 34–46, at 41.

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This final location given peace protection is one of Wantage's most anomalous inclusions: 'that [peace] which is given in an alehouse, is to be atoned for, if a man is killed, with six half-marks, and if no one is killed, with twelve ores'.[50] For men of several rural villages that together form an administrative unit like a wapentake or smaller, an alehouse would be a logical place to hold meetings.[51] David Rollason suggests a general early medieval northern European connection between drinking/feasting and the handling of legal affairs.[52] We even see a sprinkling of evidence to suggest this strand within a few other English legal sources. An early Kentish law delineates extra breach-payment for fighting 'where men are drinking' while the post-Conquest *Leges Henrici Primi* includes peace established in a 'drinking assembly' where men can bring charges against each other.[53] Since the Wantage alehouse provision is textually placed after the establishment of peace protections in larger assemblies and the payment amounts decrease accordingly, the administrative unit referenced here is more local than that of the hundred/wapentake.[54] Possibly related is what seems to be a significant connection between sub-hundred administration and elite drinking practice in a brief snippet of VI Æthelstan, written by the bishops and reeves of London. These local leaders hold their monthly meetings whenever they can: 'whether it be when the butts [i.e. barrels of ale] are being filled, or on any other occasion that may be convenient for us'.[55] Given III Æthelred's context, it is also worth considering the Scandinavian connotations of drinking and legal work, such as ale-feasts that gather participants for a legal event and celebrate an outcome.[56] We certainly see heightened penalties (here doubled) for 'quarrels in an alehouse' in the later

[50] III Atr 1:2, trans. *EHD*, no. 43.

[51] An alehouse might be the best communal meeting-place for dispersed agricultural communities, see Hart, *Danelaw*, p. 23; A. Williams, 'A Place in the Country: Orc of Abbotsbury and Tole of Tolpuddle, Dorset', *Danes in Wessex: the Scandinavian Impact on Southern England, c. 800–c. 1100*, ed. R. Lavelle and S. Roffey (Oxford, 2016), pp. 158–71, at 164; Stenton, *Anglo-Saxon England*, p. 510. Rollason implies the organizational significance here with 'Why should an alehouse have been treated in the same sort of way as a legal court?', D. Rollason, 'Protection and the Mead-Hall', *Peace and Protection in the Middle Ages*, ed. T. Lambert and D. Rollason (Durham, 2009), pp. 19–35, at 31.

[52] Rollason, 'Protection and the Mead-Hall', pp. 32–3.

[53] Hl 12–14, trans. Attenborough, *Laws*, p. 21; Hn 81:1, trans. *Leges Henrici Primi*, ed. L. J. Downer (Oxford, 1972), p. 253. Not recognizing these instances, Bullough pointed to the Wantage Code as the only 'reference to a drink-related offence in English law' to suggest that regulating this kind of conduct was generally not of interest to early medieval lawmakers, D.A. Bullough, 'Friends, Neighbours and Fellow-drinkers: Aspects of Community and Conflict in the Early Medieval West', *H. M. Chadwick Memorial Lecture* 1 (1990), 1–27, at 26.

[54] Hudson, *Oxford History of the Laws*, p. 63.

[55] VI As 8:1, trans. Attenborough, *Laws*, p. 163.

[56] Neff, 'Scandinavian Elements', pp. 306–7.

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Norwegian *Gulaþingslǫg* to a similar degree as other protected spaces, such as a legal assembly (*thing*).[57]

With no solid indication of specialized taverns or pubs in this period, the *ealahuse* referenced in Wantage is most likely the private hall of a local notable who would host other elites.[58] In relevance to this, there are a number of standard Anglo-Saxon protections for homes, such as that against fighting in a house (*flettegefeohte*) and the royal penalty on *hamsocn* ('house-breaking').[59] While broadly comparable to these protections, the alehouse peace is a different assembly-oriented *grið*, nor is it simply prevention of drunken brawling. The 'house' concerned gains a level of protection in addition to what it already has, presumably only when there are administrative duties being carried out. Protection need not be mutually exclusive and 'was clearly a complex concept, and the hall may have benefited from different levels of it in different circumstances'.[60] These observations raise the possibility that the alehouse in this provision represents a sparsely attested level of local administration smaller than that of a hundred or wapentake, a theory that will be developed below.[61]

The specific payments laid out in 1:1 and 1:2 further deepen this discussion. They are outlined solely in Scandinavian currency: 12 'hundreds' for breaking peace of ealdorman or king's reeve, 6 hundreds in the court of a borough, 1 hundred in a wapentake, 6 half-marks for killing in an alehouse and 12 ores for an alehouse disturbance that leaves none slain.[62] Taking these hundreds as the 'long hundred' of 120 ores of silver, 12 hundreds for breach of ealdorman or reeve's peace equates to £96 or 4608 West Saxon shillings.[63] Likewise, 6 hundreds

[57] There is double compensation paid compared to that in a home, the incident is either immediately prosecuted or referred to the next *thing* and the accused brawlers are required to take an oath that they have 'drunk decently', *Gulaþingslǫg* 187, cf. 157; trans. *The Earliest Norwegian Laws: Being the Gulathing Law and the Frostathing Law*, trans. L. M. Larson (New York, 1935), p. 140; all references to the text are from this translation. In general, protection and the compensation for breaking it is doubled if one goes 'to a thing or to a church service or to an alehouse', *Gulaþingslǫg* 198, trans. Larson, *Norwegian Laws*, p. 144; cf. Neff, 'Scandinavian Elements', p. 307.

[58] While there is some circumstantial evidence suggesting Anglo-Saxon origins for the English pub, the consensus seems to be that the ale-drinking being legislated in Wantage is within the context of feasting in the (private) halls of elites, see Rollason, 'Protection and the Mead-Hall', pp. 21–3.

[59] Alfred's *Domboc* specifies penalties for fighting in a house all the way from the king's hall (*cyninges healle*), to a meeting of an *ealdorman*, down to the house of a common freeman (*ceorle*): Af 7–7:1, 38–38:2, 39–39:2; cf. In 6–6:5. For examples of *hamsocn* regulations and their role in mediating feuds, see Af 42–42:1; Lambert, *Law and Order*, pp. 184–5. For greater context on Anglo-Saxon feuding, see J. Niles, 'The Myth of the Feud in Anglo-Saxon England', *JEPG* 114, no. 2 (2015), 163–200.

[60] Rollason, 'Protection and the Mead-Hall', p. 35.

[61] See speculation of this, Hudson, *Oxford History of the Laws*, p. 63; Hart, *Danelaw*, p. 23.

[62] III Atr 1:1–1:2.

[63] III Atr 1:1. Neff, 'Scandinavian Elements', pp. 300–1; cf. Hart, *Danelaw*, p. 20.

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in a borough court comes to £48 or 2304 shillings and the single hundred for a wapentake is £8 or 384 shillings.[64] These fines stand out from the rest of English law because of how strikingly expensive they are, significantly higher than the Anglo-Saxon norm for similar peace-breaches. From Alfred's *Domboc* onward, a standard fine of £5 for breaches of the king's peace (*griðbryce*) in English lands appears.[65] Of course, there is no ability to make up for breaches of king's peace in Wantage while in other codes from Æthelred's reign, the £5 fine for king's peace-breach is specified.[66] This serious royal offence is hence cheaper in West Saxon districts than the fine for breaking a lower peace, such as that of a wapentake meeting, in the Danelaw.[67] In another example, the 120 shilling fine for fighting at a meeting in the presence of an ealdorman in Alfred's laws is dwarfed by the 4608 charged for the corresponding crime in III Æthelred.[68]

The extraordinarily large fines of Wantage have left historians speculating as to their origin and purpose in the Five Boroughs. They could bolster the top-down interpretation of the text as a royal imposition, with the fines as a harsh policy enforcing order in a tumultuous area.[69] Alternatively, perhaps the peace of meetings was highly regarded by Scandinavians and there was traditionally heavy enforcement against breaches. While either of these suggestions could explain relatively minor differences in currency and amounts, neither can sufficiently justify the tremendous disparity of fines, at many times the English amount paid for the same crime. Though neglected in recent scholarship, the most convincing explanation for the massive fines may be that offered by Frederic Maitland over a century ago: they were intended to be paid collectively by those within a unit of land.[70] He likened this to the 'frank-pledge' enacted after the Norman Conquest wherein certain instances an entire district paid for the transgressions of one of its inhabitants, especially when a Frank/Norman was harmed.[71] If some fines were intended to be paid collectively in the Wantage Code, then this would be the earliest example in English law of involuntary and territory-based collective liability. Most eminent English legal scholars rejected the possibility of a pre-Norman influence on collective punishment policies, hence its contemporary

[64] Neff, 'Scandinavian Elements', p. 301. The alehouse fines convert to 76.8 shillings for a slain man and 38.4 for no deaths, *ibid.* p. 305. A hundred is also used for a security payment in III Atr 7.

[65] Af 3; IV Atr 4:1; VIII Atr 5:1; I Cn 3a:2; II Cn 58; cf. Lambert, *Law and Order*, p. 185.

[66] IV Atr 4:1; VIII Atr 5:1. For issues with IV Atr and the heavy Wulfstanian character of VIII Atr, see Wormald, *Making of English Law*, pp. 322 and 336.

[67] Cf. III Atr 1:2

[68] Af 38.

[69] See Neff, 'Scandinavian Elements', p. 305.

[70] The penalty is 'imposed not on the criminal but on the district, and that district is a large one', F. W. Maitland, 'The Criminal Liability of the Hundred', in his *The Collected Papers of Frederic William Maitland*, I (Cambridge, 1911), pp. 230–46, at 244–5; cf. Stenton, *Anglo-Saxon England*, p. 507.

[71] Maitland, 'Criminal Liability', p. 230; cf. Wl art 3:2.

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obscurity.[72] But there is some evidence that complicates this generalization, as Frederick Hamil pointed to and which Bruce O'Brien took up much more recently in his theory of a pre-Conquest English origin for the *murdrum* fine.[73] Building on the Anglo-Saxon precedent of lords compensating for crimes committed by men in their military retinues, O'Brien suggests that a type of *murdrum* fine 'with corporate liability' existed in the reign of Cnut in connection with geld payment.[74] This could have led to a shift whereby even a unit of local administration could be looked upon for compensation payment in certain situations.[75]

Critical support for Maitland's theory of pre-Norman collective fines in the Danelaw comes to us from the Domesday Book. There are three entries in near-identical language that state: 'If peace, given by the hand of the king or by his seal, be broken, a fine is paid to the king alone by 12 hundreds, each hundred £8'.[76] The 'hundreds' here seem not to be a currency paid to the king, but are instead collectives from whom the king is being paid 'by' (*per*). Even more suggestive, the £8 paid by each of the twelve comes to £96, the same amount for the same crime (breaking peace granted by a king's agent) in Wantage. These entries only appear in the core Danelaw districts of Yorkshire (quoted above), Lincolnshire and Nottinghamshire/Derbyshire.[77] Just like the Wantage peace-fines, these penalties are many times higher than that paid for identical peace-breaking in English districts as attested in Domesday, where only 100 shillings is demanded.[78] J. Horace Round

72 See discussion in F. C. Hamil, 'Presentment of Englishry and the Murder Fine', *Speculum* 12 (3) (1937), 285–98, at 286.

73 *Ibid.* p. 287; see next note.

74 III As 7–7:2; III Em 7–7:1. The local hundred could have been expected to pay the remainder of the egregiously high compensation for the killing of one of Cnut's soldiers if the slayer's lord could not afford it, which had precedent from the payment of geld, see B. O'Brien, 'From Morðor to Murdrum: the Preconquest Origin and Norman Revival of the Murder Fine', *Speculum* 71 (2) (1996), 321–57, at 325, 341 and 349. On geld, see J. A. Green, 'The Last Century of Danegeld', *EHR* 96, no. 379 (1981), 241–58, at 241. For complications and additions to O'Brien's argument, see A. Cooper, 'The Rise and Fall of the Anglo-Saxon Law of the Highway', *The Haskins Soc. Jnl* 12 (2002), 39–70, at 55–8; Lambert, 'Protection, Feud, Royal Power', pp. 172–9; Lambert, *Law and Order*, p. 361.

75 O'Brien, 'Morðor to Murdrum', p. 341.

76 *DB i.* 298V, cf. 336V, 280V. All Domesday folio numbers and translations are from *Domesday Book: a Complete Translation*, ed. A. Williams and G. H. Martin (London, 2003), here trans. p. 786. See transcription in J. H. Round, *Feudal England: Historical Studies on the XIth and XIIth Centuries* (Cambridge, 2010), p. 72.

77 Respectively: *DB i.* 298V, 336V, 280V. This final example identifies itself as applying to both Nottingham and Derby (two of the Five Boroughs) by beginning with '*In Snotingehamscyre et in Derbinscyre*', 'In Nottinghamshire and in Derbyshire', transcription from Round, *Feudal England*, p. 72; trans. Williams and Martin, *Domesday Complete Translation*, p. 758.

78 See this Cheshire entry: 'If the peace given by the hand of the king or by his writ or through his commissioner be broken by anyone, the king had 100s for this', *DB i.* 262V; trans. Williams and Martin, *Domesday Complete Translation*, p. 716.

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in the 1890s was one of the first to identify the 'hundreds' in these entries as a Danelaw unit of land division below the level of wapentake, which we shall refer to as a 'small hundred'.[79] By charting the use of the term in Danelaw sections of Domesday, particularly in Lincolnshire, it becomes clear that these hundreds were standardized units of twelve carucates (a land parcel ploughed by one team of oxen).[80]

David Roffe argues for the small hundred as a subdivision of the Danelaw wapentake, detailing its thirty-nine appearances in the Lincolnshire folios of Domesday and its consistent description in the Lindsey Survey of 1115–18.[81] There is a consistent system of twelve carucates per small hundred, although the number of these hundreds per wapentake can vary.[82] The primary purpose of the small hundred was for the collection of geld, a tax for military expenditures that had become a key royal revenue by this period.[83] For example, one of the Five Boroughs, Stamford, paid geld 'for 12½ hundreds for military service by land and sea and for danegeld'.[84] Accordingly, the small hundreds were the lowest level of royal administration but nevertheless very important, likely performing other

[79] Round, *Feudal England*, pp. 69–70. Not to be confused with the (larger) hundred that was the standard land division and local administrative district of non-Danish England from the mid-tenth century. The unit concerned has been termed by various historians as either the 'Danelaw hundred', 'twelve-carucate hundred', 'Lincolnshire hundred' or 'small hundred'. For the sake of simplicity and differentiation from the other hundred of English land valuation, this work adopts the term 'small hundred' as coined in *God's Peace and King's Peace: the Laws of Edward the Confessor*, ed. B. O'Brien (Philadelphia, 1999), p. 89.

[80] D. Roffe, *Decoding Domesday* (Woodbridge, 2007), p. 190; D. Roffe, 'The Lincolnshire Hundred', *Landscape Hist.* 3 (1981), 27–36, at 29. See Round, *Feudal England*, p. 73; J. Baker and S. Brookes, 'Governance at the Anglo-Scandinavian Interface: Hundredal Organization in the Southern Danelaw', *Jnl of the North Atlantic* 5 (2013), 76–95, at 76.

[81] The small hundred mostly appears in the Lincolnshire Domesday folios, *DB i.* 337V–71, esp. the concentration at *DB i.* 348–8V. See also Roffe, *Decoding Domesday*, p. 187. See the hundred within the nineteen wapentakes mentioned in the Lindsey Survey, Round, *Feudal England*, p. 75.

[82] Roffe, *Decoding Domesday*, p. 192. See entries such as one for Rutland where the wapentakes of Alstoe and Martinsley are made of three small hundreds in total and explicitly 'in each [are] twelve carucates to the geld', *DB i.* 293V, trans. Williams and Martin, *Domesday Complete Translation*, p. 782. See Roffe's compiled data on the wapentake of Elloe (Roffe, *Decoding Domesday*, p. 84, Table 3.2), Rutland (*ibid.* p. 92, Table 3.4) and the Isle of Axholme (*ibid.* p. 93, Table 3.5). The number of small hundreds per wapentake ranges from one to twenty-one, but there are about fifty hundreds per Lincolnshire Riding, Roffe, 'Lincolnshire Hundred', p. 34.

[83] Domesday indicates that geld was calculated by carucate and the hundreds were then a unit by which this was collected. Mentions of the geld in these Danelaw sections seem to follow a formula where an area owes a certain number of 'carucates of land to the geld' as in the Rutland example (*DB i.* 293V, trans. Williams and Martin, *Domesday Complete Translation*, p. 782) but also in a great bulk of entries in the Lincolnshire folios (esp. *DB i.* 337V–71); cf. Green, 'Danegeld', p. 243.

[84] *DB i.* 336V, trans. Williams and Martin, *Domesday Complete Translation*, p. 883. Cf. Green, 'Danegeld', p. 241.

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unattested functions akin to those of a township.[85] Most pertinent to our discussion, there is good reason to see these hundreds as constituting a local administrative body that collected taxes as stated in Domesday, but also maintained law and order within its bounds.[86] This could include organizing the payment by hundreds of communal fines sent down by the king or earl, as the three Domesday references to peace-breaking suggest.[87] It seems probable that these hundreds making payments are the same small hundreds of land division and local governance found throughout the Danelaw folios. The next step in this logic is to connect these Domesday peace provisions explicitly to what is likely their earlier iteration: the first clauses of the Wantage Code, particularly the 'twelve hundreds' (*XII hund*) for earl or reeve's peace.[88] If there is a linkage here, we are presented with a unique practice of payment by those within a jurisdiction rather than a colossal cash payment made by an individual.[89] O'Brien sees the long hundred of silver in use here but notes that 'the structure of the fine implies a district that would be responsible for paying those 120 oras'.[90] This explanation carries greater weight than its alternatives because rather than a scholarly shrug of the shoulders regarding these fines, it leads us towards corporate liability as a workable and probable solution to the puzzle.

There are other surviving attestations that depict the continuous presence of payments with or by hundreds in the Danelaw. Possibly predating the Wantage Code is the *Historia de Sancto Cuthberto*.[91] The *Historia* records that in the 930s, the army of Æthelstan donated '*XII. hundred, et eo amplius*' to the shrine of St Cuthbert.[92] In his own *Historia*, Symeon of Durham copies this section and renders the amount as £96, reflecting our Wantage and Domesday amounts.[93] This at least supports the existence of tenth-century payments in hundreds (each equal to £8) in the northern Danelaw and possibly implies communal donation by

[85] Roffe, 'Lincolnshire Hundred', p. 30. The purpose of the small hundred may be parallel to the 'leet' which is unique to Domesday entries for East Anglia, see Roffe, *Decoding Domesday*, pp. 83 and 194, n. 59.

[86] Roffe, 'Lincolnshire Hundred', p. 33; Hart, *Danelaw*, p. 283. See also Hadley's envisioning of the 'communal role' of these hundreds as a judicial unit, Hadley, *Northern Danelaw*, p. 104.

[87] Cf. *DB i.* 298V, 336V, 280V

[88] III Atr 1:1. See inc., Roffe, *Decoding Domesday*, p. 194.

[89] Cautiously suggested by Hart, *Danelaw*, pp. 22–3. Cf. R. Fleming, *Domesday Book and the Law: Society and Legal Custom in Early Medieval England* (Cambridge, 1998), p. 14.

[90] O'Brien, *God's Peace and King's Peace*, p. 90.

[91] For the latest arguments for a mid-tenth century dating of the text, see Cross, *Heirs of the Vikings*, pp. 139–40. Cf. E. Craster, 'The Patrimony of St Cuthbert', *EHR* 69, no. 271 (1954), 177–99, at 178.

[92] *HSC* 27, '[Æthelstan's] whole army offered Saint Cuthbert twelve hundred and more', trans. *Historia de Sancto Cuthberto*, ed. T. J. South (Cambridge, 2002), p. 65. Latin text from 'Historia de Sancto Cuthberto', *Symeonis Monachi Opera Omnia*, ed. T. Arnold (Cambridge, 1889), p. 212.

[93] 'Liber Secundus', *Symeonis Monachi Opera Omnia*, ed. T. Arnold (Cambridge, 1889), p. 76.

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the men of this army.[94] Also from north of the Humber we see fines paid in hundreds for the violation of sanctuary in Northumbrian churches, such as '*þreo [hundr]ed*' in the Wulfstanian text *Norðhymbra Cyricgrið* and '*xii. Hundredth*' in a twelfth-century list of immunities of York Cathedral.[95] But the hundred may have even been a somewhat standard denomination for fine payment in Danelaw territories more generally. As Dorothy Whitelock points out, the same amount is implied when the Cambridge Thegns' guild of *c.* 1000 records that only eight pounds (*eahta pund*) will be accepted as compensation for the killing of a member.[96] A similar reckoning occurs in the *Leis Willeme* where £8 is accepted to clear a thief 'in lieu of the head' in the Danelaw.[97] Likewise, the *Leges Edwardi Confessoris*' quotations of earlier laws include three provisions for peace-breach payments made by '*hundreda in Denelahge*' with each paying £8, just as in the Domesday instances.[98]

This wider textual evidence may only corroborate the hundred as a unit of currency, but it encourages an interpretation that recognizes the hybrid nature of the Danelaw hundred as both an amount and an administrative unit. The small hundred land unit could have arisen as a means of gathering communal payments made in hundreds of silver. By the time of the Domesday Survey, this feature was used explicitly for the collection of geld but likely also for fine payments. Over almost two centuries of their existence in the Danelaw, the concepts could have become conflated to the degree that the name of the land unit was intertwined with the denominations of accumulated cash. Such fluctuation is feasible since the small hundred evolved considerably over the period; from its occasional Domesday appearances in the northern Danelaw, by the thirteenth century the term has nearly completely disappeared in the face of expanding manorialization and is only

[94] My use of 'northern Danelaw' borrows from Hadley (modifying Stenton), roughly referring to the Five Boroughs region of the east Midlands, Lincolnshire and Yorkshire, see Hadley, *Northern Danelaw*, pp. 2–4.

[95] Nor grið 1: 'And according to Northumbrian law, the compensation owed for a violation of [church] sanctuary at Saint Peter's, Saint Wilfrid's, and within the walls of Saint [John]'s is three [hundr]ed if the man is alive, but it [cannot be compensated] for if he is dead', trans. A. Rabin, *The Political Writings of Archbishop Wulfstan of York* (Manchester, 2016), p. 84. For the York Cathedral immunities granted by kings Henry I, Stephen and Henry II involving 'twelve hundreds', see Round, *Feudal England*, p. 73.

[96] *EHD*, no. 136, n. 3.

[97] Leis Wl 3:3, trans. Robertson, *Laws*, p. 255.

[98] ECf 12:3, 27–27:1, 33. The scheme is even fully explained: 'For instance, in the Danelaw [the compensation is paid] by eighteen hundreds, which number amounts to 144 pounds, for the Danes and Norwegians called the monetary penalty of the hundred eight pounds', ECf 27:1, trans. O'Brien, *God's Peace and King's Peace*, p. 187. For the author of the *Leges*, the institution of the hundred payment was likely ongoing in his own time and 'was not an ancient and obsolete custom, but current law', O'Brien, *God's Peace and King's Peace*, p. 89.

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sparsely present in the Lincolnshire fens.[99] The *ealahuse* reference in III Æthelred is a central piece within this investigation. There is a strong indication of some kind of sub-wapentake administrative context to the protection granted here: a small-scale assembly.[100] The alehouse may be a reference, directly or indirectly, to the meeting of a Danelaw small hundred, a unit whose existence is substantiated by the Domesday evidence.[101] While we find this unit referred to as a 'hundred' in Domesday, for one reason or another it was recorded as Old English *ealahuse* in Wantage which may better reflect how tenth-century Anglo-Scandinavians referenced this administrative level, possibly because its number of members was small enough to be accommodated within the drinking hall of one individual.[102] While the exact nature of the relationship between hundred payments, small hundreds and alehouses will always remain obscure to us, the implications for communal liability deserve recognition. As will be discussed, this is especially enticing due to how local assembly-based collective liability may fit logically into the context of settled viking armies.

Group responsibility was not uncommon in early medieval Europe generally and existed in Anglo-Saxon law through suretyship and in wergild-brotherhoods.[103] But III Æthelred's communal payments for peace-breaking diverge sharply from voluntary traditions based on kinship or pseudo-kinship. Instead, the Wantage provisions are closer in practice to the involuntary and territorial collective penalties imposed by the Normans. Although the motivations and contexts were vastly different, both of these practices are focused on holding all of those within a certain area responsible, guilty or not, for the actions of an individual.[104] This gives us a fascinating glimpse of *Dena lage* by highlighting a fundamental difference in how Anglo-Scandinavians envisioned the payment of fines, and who bore responsibility.

[99] Roffe, 'Lincolnshire Hundred', p. 27.

[100] III Atr 1–1:2.

[101] 'This provision in the Wantage Code may apply therefore to keeping order at business meetings held by the men of a Danelaw "hundred"', Hart, *Danelaw*, p. 23.

[102] See the discussion of Scandinavian terminology for Danelaw township-level local governance in Baker and Brookes, 'Hundredal Organization in the Southern Danelaw', pp. 79–80.

[103] L. Boerner and A. Ritschl, 'Individual Enforcement of Collective Liability in Premodern Europe: Comment', *Jnl of Institutional and Theoretical Economics / Zeitschrift für die gesamte Staatswissenschaft* 158, no. 1 (2002), 205–13, at 205; R. Naismith, 'Gilds, States and Societies in the Early Middle Ages', *EME* 28 (2020), 627–62, at 642–3. Cf. the provision for wergild-surety (*wærborh*) that would equate to twelve men in II Em 7:2 and Wer 3. Cf. the case of the Cambridge Thegns' Guild where each guild-brother pledges to assist each other in paying the wergilds for necessary killings but not if they kill anyone 'foolishly and wantonly', *EHD*, no. 136.

[104] For a dramatic example of Normans holding an entire district responsible for the actions of one in a punitive manner, see Hn 48:2.

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BUYING INTO LAW

The third clause of the Wantage Code compiles five unique legal terms and declares that they shall not be interfered with.[105] These seem to represent legal processes that were being carried out in the tenth-century Danelaw and three of them are novel to Anglo-Saxon law and the Old English language: the Scandinavian loanwords *lahcop*, *landcop* and *witword*.[106] This entire provision is closely replicated in a later Wulfstanian text, the *Northumbrian Priests' Law*, where these three concepts are declared 'to endure valid and legitimate', suggesting some level of continued relevance in the northern Danelaw.[107] All of the highlighted terms within this clause are rare and deserve exploration, but this section will pinpoint one of these, *lahcop/lahceap*, which scholars often attempt to define as 'payment made for re-entry into legal rights which have been lost'.[108] This word merits focused attention because it is an identifiable Scandinavian legal feature which not only appears in the code of a West Saxon king, but as will be argued, plays a significant but silent role in later clauses of the Wantage Code.

As a combination of two Old Norse words adopted into Old English in the period, *lahcop/lahceap*, is literally 'law-purchase'.[109] Both the wording and the act of purchasing law stand out in an English context; the concept almost certainly originates from a Scandinavian tradition, related to terms such as Old Icelandic *lǫgkaup* 'lawful bargain'.[110] This is further suggested by a later code from Jutland,

105 III Atr 3.

106 III Atr 3. The only reappearance of *lahcop/ceap* and *landcop/ceap* in all of surviving written Old English is in Northu 67:1, see *DOE Web Corpus*, '*lahcop*', '*lahceap*', '*landcop*' and '*landceap*'. *Witword* features only in III Atr 3, Northu 67:1 and a Yorkshire charter of William I in *Early Yorkshire Charters* I, ed. W. Farrer (Cambridge, 1914) [hereafter Farrer], no. 89; trans. *Diplomatarium Anglicum Ævi Saxonici: a Collection of English Charters, from the Reign of King Æthelberht of Kent to That of William the Conqueror*, ed. and trans. B. Thorpe (London, 1865), pp. 438–9.

107 Northu 67:1, trans. Rabin, *Political Writings of Wulfstan*, p. 206. This is the very last provision of the text, adding to the clause's compilatory appearance. At clause 46 in the *Priests' Law* there seems to be a switch from guidelines for priests (as the title suggests) towards secular provisions which seem intended for all inhabitants of Northumbria and which quote from royal codes, Wormald, *Making of English Law*, p. 396.

108 '*Lahceap*', from the online version of *An Anglo-Saxon Dictionary based on the Manuscript Collections of the late Joseph Bosworth*, ed. T. N. Toller (Oxford, 1898), with T. N. Toller, *An Anglo-Saxon Dictionary based on the Manuscript Collections of Joseph Bosworth: Supplement* (Oxford, 1921) and A. Campbell, *An Anglo-Saxon Dictionary based on the Manuscript Collections of Joseph Bosworth: Enlarged Addenda and Corrigenda to the Supplement by T. Northcote Toller* (Oxford, 1972) [hereafter *B-T Online*].

109 *Lah-* is from the Norse-derived *lagu* word field that became popular in tenth-century Old English; its earliest legal use is likely IV Eg 2:1, 12, 13:1; see Pons-Sanz, *Lexical Effects*, p. 86. I Atr Pre even uses *Engla lage* to mean English law. *Cop* is likely connected to ON *kaup* 'purchase' which is rendered in Old English either as a clear Norse-derived noun in the suffix *cop* with the same meaning or by being supplanted by the native OE *ceap* 'purchase, sale', Pons-Sanz, *Lexical Effects*, p. 32. We see *lah-cop* in III Atr 3 and *lah-ceap* in Northu 67:1.

110 Pons-Sanz, *Lexical Effects*, p. 85.

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the 'Town Law of Schleswig' of *c.* 1200, where the custom of *laghkøp* refers to the process for one who abandons the town for over a year to buy back law (*emerat lagh*) and his rights of property.[111] This same language is in use in the 1443 'Newer Copenhagen Town Law' where a man who leaves the settlement for an extended period loses his *bylagh* 'town-law' and *byræt* 'town-right', and must 'buy it to himself again'.[112] Based on much later evidence like this, legal historians since Paul Vinogradoff have glossed Wantage's *lahcop* as 'the Danish word for reintegration to one's lawful standing by the payment of a fine'.[113]

This characterization may not capture the word's full complexity because although not explicitly stated, *lahcop* seems to be in action in a later subclause of Wantage. This appears soon after clause three, within the context of proceedings brought by the reeve and twelve thegns against '*tihtbysian men*', literally 'litigation/accusation-busy men', which is often translated as 'men of bad repute' or 'untrustworthy men'.[114] There is a specific reference in a later subclause to the need to swear that these men have never paid 'thief-gild', so stealing is very probably the crime they are frequently accused of.[115] After being arrested, the men pay a cash security pledge of six half-marks, half going to the lord and half to the wapentake.[116] This is followed by the strange provision that: 'And each of them shall buy for himself [the benefit of the] law (*ælc bicge him lage*) with twelve ores, half to the lord of the estate, half to the wapentake'.[117] While Robertson translated paying 'in order to obtain the benefit of the law', a literal rendering is to simply 'buy law', *bicge lage*. This recalls the earlier *lahcop* 'law-purchase' and they ought to be seen as one and the same, especially given the later Scandinavian practices of 'buying law' under this name.[118] The other 'buying law' in Wantage occurs in a provision

[111] *Slesvig stadsret [c. 1200]* 29, from *Danmarks Gamle Købstadslovgivning*, ed. E. Kroman, 5 vols. (Copenhagen, 1951–61) I, 8; cf. N. Hybel and B. Poulsen, *The Danish Resources c. 1000–1550: Growth and Recession* (Leiden, 2007), p. 238. See the reference to this 'Old Sleswick Law' in *B-T Online*, '*lahceap*'.

[112] *København stadsret [1443]* 33, from Kroman, *Danmarks Gamle Købstadslovgivning* III, 88; trans. *Ancient Laws and Institutes of England, Comprising Laws Enacted Under the Anglo-Saxon Kings from Aethelbirht to Cnut* I: *Containing the Secular Laws*, ed. B. Thorpe (Cambridge, 1840), p. 294, n. a; cf. P. Andersen, *Legal Procedure and Practice in Medieval Denmark*, trans. F. Pedersen and S. Pedersen (Leiden, 2011), p. 390.

[113] P. Vinogradoff, 'Transfer of Land in Old English Law', *Harvard Law Rev.* 20, no. 7 (1907), 532–48, at 538.

[114] III Atr 3:1–2, trans. Robertson, *Laws*, pp. 65–7; *EHD*, no. 43.

[115] III Atr 4.

[116] III Atr 3:2.

[117] III Atr 3:3, trans. *EHD*, no. 43.

[118] Stenton connected 'buying law' and *lahcop*, while noting the matter is 'definitely Scandinavian', Stenton, *Anglo-Saxon England*, p. 512. Wormald remarked on Wantage's 'buying law' as 'an idea not unknown in the far North', Wormald, *Making of English Law*, p. 329.

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offering accused counterfeiters this option, a very similar circumstance of criminals buying some kind of legal benefit.[119]

What does this 'buying law' payment represent? It is distinct from the refundable security of six half-marks by accused persons, which is handled in 3:2; the payment of twelve ores is in addition to this.[120] The *lahcop* seems to be an extra fee necessary to access legal proceedings. The concept of buying rights of any kind is unprecedented in the Anglo-Saxon legal corpus and greatly contrasts with a core value that all free Englishmen by this period had an (inalienable) right to the 'benefit of the law'.[121] In another Æthelredian code, it is declared that 'all men, whether poor or rich', are worthy of 'public law'; this sentiment appears throughout the corpus, even in older West Saxon codes.[122] Within the specific scenario outlined in 3:3 of the Wantage Code, assumed access to legal rights does not seem to be the case. Since Wulfstan especially espouses ideals of universal access to law and its protective power in the secular and ecclesiastical realms, might he object to the *lahcop* in the way that it serves as a barrier to accessing legal proceedings?[123] He certainly omits the term when he seemingly replicates III Æthelred 3 in a clause listing practices that 'shall always remain inviolate' in his code II Cnut.[124] In the *Northumbrian Priests' Law* section that combines both the Wantage and Wulfstan clauses, it includes all of the original terms.[125] Since this text was likely written by one of Wulfstan's two successors in the York archbishopric, one of whom is confirmed as a Danelaw native, the replication of all of these terms including *lahceap* may have been an effort to conserve Danelaw legal tenets that Wulfstan glossed over.[126]

[119] III Atr 8:2. Although she does not say it, Whitelock appears to be referencing these two 'buying law' occurrences when she glosses *lahcop* as 'the sum paid by an outlaw to obtain readmission to legal status' as it is here that this event is happening, *EHD*, no. 43, n. 8.

[120] III Atr 3:2–3:3.

[121] S. Pons-Sanz, 'Borrowing and Attestation: Translating Poorly Attested Loans', *Translation and Medieval Documents. Voices of Law: Language, Text and Practice*, ed. J. Benham and M. Julian-Jones (Cardiff, 2018), pp. 27–33, at 29.

[122] VII Atr 6:1, Robertson again translates this as 'benefit of the law' but this exact language is absent in the text, Robertson, *Laws*, p. 113. See earlier precedents: II Edw 8; I Eg 7; III Eg 1:1.

[123] See Wulfstan's work in V Atr 1:1; VI Atr 8:1; X Atr 2; II Cn 1:1.

[124] II Cn 81, trans. Pons-Sanz, *Norse Vocabulary in Wulfstan's Works*, p. 162, n. 8. This II Cnut clause carries on the *hlafordes gifu / rihtgifu* 'lord's legal gift' from III Atr 3 but eliminates *landcop*, *lahcop*, *witword* and *gewitnes*, instead adding the Norse-derived *dryncelean* 'reward for drink, gift of drink-money', *ibid.* p. 162 and 163–4.

[125] Northu 67:1.

[126] Whitelock attributed the text personally to Wulfstan but this was successfully challenged by Wormald who argued that the work was penned by either Archbishop Ælfric Puttoc or Cynesige, Wormald, *Making of English Law*, pp. 396–7. This attribution remains the most accepted, see Rabin, *Political Writings of Wulfstan*, p. 197. Cynesige was especially associated with the Danelaw, being born in Rutland and connected to the Peterborough monastery, where he was buried, as

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Because an extra payment to access law would be alien in an Anglo-Saxon legal context, it has been suggested that this was a royally imposed fee for Danes to pay in order to be heard in English courts, a 'payment for rights of citizenship'.[127] But given no precedent for this elsewhere, and that there is little sense behind an identity-based fee in the ethnically mixed Danelaw which had been conquered decades earlier, this explanation holds little water.[128] Additionally, it seems clear that both of the Wantage instances of 'buying law' are concerned with specific criminal procedures for untrustworthy men accused of crimes, not a blanket levy against Danelaw inhabitants. Because this protocol for 'litigation-busy' men is laid out in parallel in both the Woodstock code and in Wantage, we are now able to closely dissect the procedure in these texts in search of what law is being bought.

The very first clause of I Æthelred establishes that 'every freeman shall have a trustworthy surety (*borh*)', an oath-swearing person who can guarantee that another fulfils their legal obligation, which often helps to settle tensions.[129] By this period it seems that surety was required for all free men and it could even be forced upon someone.[130] Immediately after this default assumption in Woodstock comes 'If, however (*gyf*), he is of bad reputation (*tyhtbysig sy*)…', implying an alternative procedure for these untrustworthy men, for whom surety does not apply.[131] I Æthelred 1:1 specifies that these men should be sent to the severe triple ordeal.[132] Without mentioning surety at all, III Æthelred likewise comes to this point, after assembling a group of twelve thegns with the reeve, who swear on relics not to accuse innocent men nor protect guilty ones.[133] These thegns then arrest the 'men of bad repute', who pay security.[134] Next in 3:3, comes the 'buying law' at half

attested in *ASC* 1060 D and the *Chronica Pontificum Ecclesiæ Eboracensis*, in *The Historians of the Church of York and its Archbishops* II, ed. J. Raine (Cambridge, 1886), pp. 343–4; cf J. Cooper, *The Last Four Anglo-Saxon Archbishops of York* (York, 1970), pp. 18–23.

[127] Neff, 'Scandinavian Elements', p. 290; Pons-Sanz, 'Borrowing and Attestation', p. 29.

[128] 'Indeed, upon settlement such ethnic divisions, if they ever existed, probably started to break down, and the Norse elite are likely to have identified more with the local Anglo-Saxon elite than with any poorer Norse settlers', McLeod, 'Migration and Acculturation', p. 231. Cf. Hadley, 'Identity in the Danelaw', p. 52.

[129] I Atr 1, trans. Robertson, *Laws*, p. 53.

[130] III Eg 6, 'Each man is to provide himself with a surety, and the surety is to produce and hold him to every legal duty', trans. Robertson, *Laws*, p. 27. Cf. III As 7; IV Eg 3; II Cn 20. See forceful surety-placing by local authorities in II As 7:1, 7:4; III Em 7:1.

[131] I Atr 1:1.

[132] For a description of Anglo-Saxon ordeal protocols, see the anonymous tenth-century text *Ordal* translated in the appendix of Attenborough, *Laws*, pp. 170–3. The triple ordeal meant a heavier iron or deeper pot of boiling water was used, causing more extensive injury, see Ordal 1:2; P. Wormald, *Papers Preparatory to The Making of English Law: King Alfred to the Twelfth Century,* II: *From God's Law to Common Law*, ed. S. Baxter and J. Hudson (London, 2014), pp. 78–9.

[133] III Atr 3:1. There are two references to surety later in Wantage, one regarding cattle-buying and the other paid if an ensured man flees from the ordeal, III Atr 5, 6:2.

[134] III Atr 3:2.

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the price of the security.[135] In 3:4 comes the stipulation that 'each/every (*ælc*) man of bad repute (*tihtbysig man*) shall go to the triple ordeal or pay fourfold [the value of the goods involved]'.[136] Even if he pays security and the *lahcop* penalty, this only earns the accused the opportunity to face the arduous triple ordeal or expensive quadruple-forfeiture. In both texts these men are sent to the ordeal without surety or oath-swearing, but the Danelaw inhabitants must make two payments to access this proof system, while those in English districts pay nothing. By this period in English law the ordeal seems to have been the standard final decisive judgement for the often-accused or a last resort for those who are strongly suspected of being guilty.[137] This can also be seen in Cnut's protocol for *ungetreowe* 'untrue' men and in the *Leges Henrici* for those deemed untrustworthy.[138] The ordeal comes into consistent and mandatory use in English law in the 1166 Assize of Clarendon's application to those 'of evil repute' who are 'notoriously suspect'.[139] But the *lahcop* payment to access the ordeal seems outside of these English standards.

Following this setup, both of our Æthelredian texts next describe a near-identical final recourse for these unfortunate men. The accused can be cleared if their lord swears an oath along with two 'good thegns' declaring that since the council at *Bromdune* (at an unknown pre-997 date), the man has not been convicted of theft.[140] If this is done, then the untrustworthy man of the English district may choose the simple ordeal or an oath of one pound, less severe options than previously faced.[141] For a Danelaw inhabitant, if he is cleared, he may proceed either to the simple ordeal or to paying threefold.[142] In Wantage, this is immediately followed by the caveat that if he is proven guilty in that ordeal, 'he is to be struck so that his neck is broken'.[143] This capital punishment only occurs in Woodstock if a man, after being refused by his lord, fails at the triple ordeal twice.[144] The more liberal use of the death penalty in Wantage has raised

[135] III Atr 3:3. The 6 half-mark security is equal to 24 ores and the 'buying law' is 12 ores, Neff, 'Scandinavian Elements', p. 305.

[136] III Atr 3:4, trans. Robertson, *Laws*, p. 67.

[137] For the similar situation of those often accused of theft see Ine 37; for suspected counterfeiters see II As 14:1 and IV Atr 5:2; for 'an untrustworthy man' see II Cn 22:1; for 'a friendless man' see II Cn 35.

[138] II Cn 30–30:9, cf. 33–33:2; trans. *B-T Online*, '*un-getreów*'. Hn 64:1f, 64:9a.

[139] Assize of Clarendon 10, trans. *English Historical Documents c.1042–1189*, ed. D. Douglas and G. Greenaway, Eng. Hist. Documents 2, 2nd ed. (London, 1981), no. 24. Cf. M. H. Kerr, R. D. Forsyth and M. J. Plyley, 'Cold Water and Hot Iron: Trial by Ordeal in England', *The Jnl of Interdisciplinary Hist.* 22, no. 4 (1992), 573–95, at 573.

[140] I Atr 1:2 and III Atr 4, trans. *EHD*, no. 43.

[141] I Atr 1:3.

[142] III Atr 4.

[143] III Atr 4:1, trans. *EHD*, no. 43.

[144] I Atr 1:4–1:6; cf. II Cn 30:3b–5.

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speculation on the harshness of *Dena lage*, especially within nineteenth-century historiography.[145]

The intricacy of the protocol for prosecuting a *tihtbysig man* adds nuance to the scholarly effort to define *lahcop* as payment for readmission of legal rights to an outlaw or payment to re-enter society. Within the full context and in conversation with the sections of Woodstock, the only 'benefit of the law' being obtained seems to be the ability to enter the ordeal or pay a significantly multiplied forfeiture. Presumably if one could not pay *lahcop*, they had no hope of access to the clearing ability and return to good legal standing that the ordeal could afford.[146] But *lahcop* here is not a standalone fee that cleanly readmits one into society like the *laghkøp* of Schleswig, it is only one part of a broader protocol for men of bad repute.[147] Wantage's other instance of 'buying law', being applied to accused counterfeiters, likely directs these men (in a similar circumstance) to the same procedure centred around the ordeal.[148] It is logical to connect counterfeiting to the institution of the ordeal since in other English codes those accused of this crime are routinely subjected to it.[149] It is unlikely a coincidence that in our two *lahcop* instances, both concern specific proceedings that are independently associated with the ordeal.

It is tempting to associate the *lahcop* procedure of III Æthelred with the *laghkøp* in later Danish law. The very similar and strange language of 'buying law' appears in Wantage's *bicge lage*, in Schleswig's *emerat lagh* and in Copenhagen's *købe bylagh* mentioned above.[150] All of these conceptions of 'buying law' suggest a deeper departure from English legal culture in the way that legal rights can be gained and lost by free men. In fact, Old English *utlaga/utlah* 'outlaw' itself is Norse-derived and implies some of this divergence. The word gains popularity in English writing of the tenth century, logically in parallel with the Scandinavian *lagu* 'law' from which it derives.[151] We see *utlaga/utlah* appear in a number of tenth-century

[145] Esp. J. Steenstrup, *Danelag* (Copenhagen, 1882); see the discussion of Steenstrup in O. Fenger, 'The Danelaw and Danish Law: Anglo-Scandinavian Legal Relations During the Viking Period', *Scandinavian Stud. in Law* 16 (1972), 83–96, at 91. Cf. Wormald, *Making of English Law II Papers*, p. 184.

[146] This realization seems to suggest that an accusation alone (particularly if one is already of 'untrustworthy' status) brings serious penalties, possibly even outlawry at the point of accusation, see below, p. 192.

[147] Cf. *Slesvig stadsret [c. 1200]* 29. When defining *lahcop*, we should remember that because of the ambiguity of the term, instead of 'referring to the purchase of legal rights; it may simply refer to any lawful bargain', Pons-Sanz, *Lexical Effects*, p. 33.

[148] III Atr 8:2, protocol in 3:4–4:2.

[149] II As 14:1; IV Atr 5:2, 7:3; cf. II Cn 8:1.

[150] III Atr 3:2; *Slesvig stadsret [c. 1200]* 29; *København stadsret [1443]* 33; see above, p. 182.

[151] Pons-Sanz, *Lexical Effects*, p. 86. The first legal use of *lagu* is likely in IV Edgar, which may date earlier than his other codes, IV Eg 2a:1, 12, 13:1. The entrance of *utlaga/utlah* into written Old English is dated to *c.* 970 with a peak of popularity in the late tenth and early eleventh centuries, van Houts, 'Vocabulary of Exile and Outlawry', p. 15. Ælfric of Eynsham's *c.* 998 *Grammar*, a

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Anglo-Saxon legal records, first with codes of Edgar, in charters and especially in works penned by Wulfstan.[152] The use of the term contrasts with earlier English legislation that used *flyma*, literally 'fleeing one', with a meaning more closely rendered as 'fugitive' than 'outlaw'.[153] *Flyma* and *utlah* became equated to mean outlaw in tenth-century law, suggesting that the incorporation of the Scandinavian word stretched the native term to more clearly represent being 'outside of the law'.[154] Scandinavian influence may account for the increased presence of the concept of outlawry in later Anglo-Saxon England in general.[155] This trend ought to be viewed as conceptually linked to 'buying law' in the Wantage Code since the idea of buying back into a legal system is inherently connected to the ability to tangibly be cast out of that system, and both ideas are appearing in English sources in this period, likely via the Danelaw. Additionally, the fact that some portion of the ability to return from outlawry depends on 'buying' suggests alternative understandings are at play in Danelaw legal culture.

pedagogical Old English–Latin dictionary, glosses *utlaga* as equal to OE *butan æ* 'outside the law' and Latin *exlex* 'outlaw', (*ÆGram* 26V, 84R), from 'Ælfric's *Grammar*: a Single Witness Edition', ed. K. Bitner (unpubl. MA thesis, Univ. of Saskatchewan, 2018), pp. 36 and 126.

[152] I Eg 3:1; I Atr 1:9, 1:13; II Atr 1:2, 7:1. See *utlaga/utlah* in tenth-century charters, as in the two appearances of *utlage* in the *c.* 983 Peterborough Abbey sureties list with land being paid in order to redeem one from outlawry, S 1448 from *Anglo-Saxon Charters*, ed. A. J. Robertson, 2nd ed. (Cambridge, 1956) [hereafter *ASChart*], no. 40. See also *utlah* in S 1377 (*ASChart*, no. 37; *EHD*, no. 112). See the word in Wulfstanian works: EGu 6:6; VIII Atr 42; Cn1020 17; II Cn 4:1, 13–13:2, 30:9, 31a:2, 39, 41:2, 48:2, 66:1. Wulfstan incorporates the term to represent both secular and ecclesiastical outlawry (i.e. excommunication), and in one example expresses this as outlawry from God versus that among men, II Cn 39. For more Wulfstanian uses of the term for excommunication, see VIII Atr 42; Cn1020 17; II Cn 4:1, 66:1, cf. 41:2.

[153] 'One who flees from justice; an outlaw, exile, one who has been banished', *DOE*, '*flyma*', no. 4. Earlier uses of *flyma* more closely reflect its 'fugitive' meaning and tended to be associated with verbs for harbouring or feeding an outlawed one, see Ine 30; II Ew 5:2; Pons-Sanz, *Norse Vocabulary in Wulfstan's Works*, p. 82.

[154] Pons-Sanz, *Lexical Effects*, pp. 172 and 174; van Houts, 'Vocabulary of Exile and Outlawry', p. 16. See the overlapping uses in I Atr 1:9a; II As 2:1. Wantage uses *flyma* instead of *utlaga/utlah* (III Atr 10), reflecting the ongoing process of linguistic change in the tenth century with these terms likely being interchangeable. See both terms used to describe the same individual in II Cnut 13–13:2.

[155] J. de Lange, *The Relation and Development of English and Icelandic Outlaw-Traditions* (Haarlem, 1935), p. 125; cf. A. I. Riisøy, 'Outlawry: From Western Norway to England', *New Approaches to Early Law in Scandinavia*, ed. S. Brink and L. Collinson (Turnhout, 2014), pp. 101–29, at 121–2. Especially when it collates with the verb *beon* 'to be', *utlaga/utlah* seems to increasingly be the preferred term in the tenth and eleventh centuries for the concept of outlawry, Pons-Sanz, *Lexical Effects*, pp. 172–3. This is reflected in the Wulfstanian legal instances (see above, n. 152) and by broader literary occurrences, such as the calculation that the *Chronicle* for 1017 × 1097 uses *utlah* eight times and *flyma* only twice, van Houts, 'Vocabulary of Exile and Outlawry', p. 17, n. 19.

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Part of this may be clarified by Wantage demonstrating 'a greater emphasis than in English districts on the payment of money to ensure compliance with the law'.[156] In addition to the hefty silver penalties for peace-breach, the existence of 'law-purchase' connotes the heavy monetary nature of Danelaw legal practice.[157] Evidence of the area's high levels of personal movable wealth and overall economic prosperity offers critical context. Kershaw has used recent archaeological finds to outline a Danelaw dual-currency system where both coinage and Scandinavian-style bullion were used in parallel until the mid-tenth century.[158] The quantities involved suggest extensive trading and a heightened presence of cash in daily life.[159] Remarkable amounts of precious gold rings and ingots represent a need for a high-value currency, indicating 'very substantial sums of wealth passing hands in Scandinavian contexts'.[160] Sawyer credits this overwhelming quantity of stimulus-cash with being the prime reason for the Danelaw's tenth-century economic boom.[161] The boroughs of the Danelaw became hubs of trade and particularly of manufacturing, making them some of the wealthiest towns in England.[162] Likewise, urban archaeology has revealed that towns like Lincoln, Norwich, Stamford, Thetford and York were some of the largest in England by 1066 and that their economic expansion and urban growth likely began under Scandinavian rule.[163]

Considering this emphasis on cash and that wealth was likely especially concentrated in the hands of those near the top of the Danelaw social hierarchy, the legal system in these areas could have been designed to privilege these elites, creating cash-heavy criminal justice practices like *lahcop*. Overall, the entire ordeal-focused protocol for 'accusation-busy men' in the Wantage Code, including arrangements for counterfeiters, seems to be a West Saxon concept, now being extended from *Bromdune*-enactment to the Danelaw.[164] Since III Æthelred seems

[156] Neff, 'Scandinavian Elements', p. 291.
[157] III Atr 1:1–1:2, 3, 3:3, 8:2.
[158] J. Kershaw, 'An Early Medieval Dual-Currency Economy: Bullion and Coin in the Danelaw', *Antiquity* 91 (355), (2017), 173–90, at 185 and 187.
[159] McLeod, 'Migration and Acculturation', p. 236.
[160] J. Kershaw, 'Gold as a Means of Exchange in Scandinavian England (c.AD 850–1050)', *Silver, Butter, Cloth: Monetary and Social Economies in the Viking Age*, ed. J. Kershaw, G. Williams, S. Sindbæk and J. Graham-Campbell (Oxford, 2018), pp. 227–50, at 246.
[161] P. H. Sawyer, *The Wealth of Anglo-Saxon England* (Oxford, 2013), pp. 88–9.
[162] *Ibid.* pp. 87, 89, 90, 94 and 96; Jones, 'Celts, Saxons and Scandinavians', p. 63.
[163] Sawyer, *Wealth of Anglo-Saxon England*, p. 90; McLeod, 'Migration and Acculturation', p. 245; R. Hall, 'York', *The Viking World*, ed. S. Brink and N. Price (London, 2008), pp. 379–84, at 382. This is somewhat challenged by Blair's recent argument that many of the urban industrial sites of the Mercian Danelaw should be dated to slightly before the viking conquests of the late ninth century, Blair, *Building Anglo-Saxon England*, pp. 267–8.
[164] I Atr 1:2 and III Atr 4

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to largely codify pre-existing provisions of Danelaw origin, this procedure as a top-down royal application may be an exception. This recalls Edgar's request for his strong stance against thieves to be multi-jurisdictional, a specifically noted exception to otherwise leaving the Danes to their own '*godum lagum*' in his legislation.[165] In order to square the untrustworthy men procedure with their own customs, Danelaw elites may have added 'buying law' to Wantage, also collecting an extra payment for themselves in the process.

PROOF AND TRUTH

The Wantage Code almost immediately presents itself as much harsher than the Anglo-Saxon penal norm, which nineteenth-century historians labelled 'soft' in comparison.[166] In addition to the massive peace-breach fines and the stringent treatment of 'untrustworthy men', the text seems to generally stack the odds against the one being prosecuted to an unexpected degree, especially in the determination of guilt. Some have seen this heavy-handed approach as a punitive act by the English monarchy.[167] But the provisions in question are punitive in the way that they target criminals within society, which should not be conflated with harsh laws meant to suppress political dissent or rebellion. As such, these aspects may well reflect practices that originated within the Danelaw communities. The way that III Æthelred handles measures of proof and truth forms a lense through which we can compare the encapsulated legal culture with that of the wider English corpus.

In Anglo-Saxon law, proof procedure tends to be weighted in the favour of the defendant, particularly because free men, if they have not been deemed untrustworthy, may clear themselves with an oath, possibly along with other swearers if necessary.[168] In Wantage this is clearly not the case, even for those who are not 'litigation-busy'. To be accused puts one in a precarious position, with clearing-oaths not on display. Cnut's codes state that exculpation is a right that can be removed for certain acts; perhaps there was no parallel concept of a clearing-oath in the Danelaw in the first place.[169] The one occasion where III Æthelred does invoke an oath to deny a charge shores up the fact that oaths were not the default as in English districts. Here, if one is accused of feeding someone who has broken

165 'Good laws', IV Eg 2:2, cf. 2:1, trans. *EHD*, no. 41. See Hudson, *Oxford History of the Laws*, p. 248.

166 See discussion in Fenger, 'Danelaw and Danish Law', p. 91. Cf. Wormald, *Making of English Law*, p. 328.

167 See the 'flagrant encroachment' hypothesis, Lund, 'Edgar and the Danelaw', p. 194.

168 Every trustworthy man who has never failed in an oath or in the ordeal, 'is to be entitled to the simple process of exculpation [i.e. an oath] within his hundred', II Cn 22, trans. *EHD*, no. 49. See Lambert, *Law and Order*, p. 255; J. Hudson, *The Formation of the English Common Law: Law and Society in England from King Alfred to Magna Carta*, 2nd ed. (New York, 2018), p. 61.

169 II Cn 20.

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'our lord's [the king's] peace', he must clear himself with thirty-six compurgators nominated by the reeve.[170] Not only is this number of oath-helpers well beyond the English figure for a comparable crime, the chances of all of the thirty-six helpers speaking in his favour seem quite low.[171] This is further reinforced by the fragmentary one-line text *Walreaf*, which is likely a lost clause of Wantage, where forty-eight 'full-born thegns' (*fulborenra þegena*) need to take oaths in order to clear one of the shameful (*niðing*) crime of corpse robbery (*walreaf*).[172] If oaths are not given a primary position as a means of proof, what else is serving this role?

Wantage heavily relies on the ordeal as evidence instead of oaths. We can look to the 'accusation-busy men' who are swiftly exposed to this after making payments.[173] They are put to death if they fail the ordeal, as are accused counterfeiters, well beyond the protocol of multiple chances in the parallel English passages.[174] In another clause there is a notable additional use of the ordeal. If a man wishes to clear one of his relatives who was executed for theft and buried in unconsecrated ground, he must pay a large security ('a hundred [of silver]') in order to be allowed to face the triple ordeal.[175] If he succeeds at this ordeal, the deceased kinsman may be removed, but if the relative fails, the thief stays and the security is kept.[176] Subjecting an innocent man to the ordeal is beyond the Anglo-Saxon norm in such a scenario and seems to be the only occurrence of its particular kind.[177] In English law, to clear a dead man who is said to have been unjustly killed

[170] III Atr 13. '*Ures hlafordes grið*', 'our lord' here likely means the English king, see *DOE*, *hlaford*, no. 3.a.i. For the Scandinavian method of rendering this number as three-times-twelve, see Robertson, *Laws*, p. 321, n. 13.1.

[171] For clearing oneself see In 46–46:1; for the word of one oath-helper see I Ew 1:4; for three peers see Wi 21; for eleven selected from a pool of fourteen (which seems to be the largest) see II Cn 65. See also Lambert, *Law and Order*, pp. 256–8.

[172] *Wal*; see D. Sukhino-Khomenko, '"Twelve Angry Thegns': Some Possible Old Norse Legalisms in Old English Texts', *Scandia: Jnl of Med. Norse Stud.* 3 (2020), 201–37, at 213.

[173] III Atr 3:2–4:2.

[174] III Atr 4:1, 8–8:2; cf. I Atr 1:1–1:14; II Cn 30–30:9. See where the moneyers 'who work in the wood' are killed on sight, III Atr 16, trans. *EHD*, no. 43. For the forest as a place of secret crime see the same provision in IV Atr 5:4; cf. II As 14.

[175] III Atr 7–7:1, trans. *EHD*, no. 43. The same amount as the fine for breaching the peace of a wapentake, a hundred is a significant sum, equalling £8 or 384 shillings; see Neff, 'Scandinavian Elements', pp. 300–1.

[176] III Atr 7:1. It is unmentioned in the text, but a possible further motivation could be that successful exoneration released the dead man's forfeited property, N. Marafioti, 'Unconsecrated Burial and Excommunication in Anglo-Saxon England: a Reassessment', *Traditio* 74 (2019), 55–123, at 87.

[177] In some Domesday entries we seem to see the ordeal being voluntarily entered into (as here) as an opportunity to verify their land claims. E.g., on behalf of a certain Godric, one of his followers is willing to 'undergo judicial ordeal' to settle a dispute over part of Feltwell in the Grimshoe Hundred of Norfolk, *DB ii*. 162, trans. Williams and Martin, *Domesday Complete Translation*, p. 1089.

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for theft, an oath by a relative (or several) would suffice.[178] In a seemingly quite stringent procedure recorded in a later compilation, a large amount of swearing kin-members (eighteen) is required, but there is still no suggestion of the ordeal.[179] These instances from Wantage do not represent the indiscriminate replacement of oath-based proceedings with the ordeal, but they do suggest an increased tendency towards this painful measurement of truth.

Wantage also gives greater prominence to witness testimony and the attestation of facts, rather than reliance on oaths of character. This is demonstrated several times in quick succession, first in clause two, explicitly that 'declarations made with the support of witnesses (*gewitnesse*) shall be incontrovertible' whether those concerned are alive or dead.[180] The following subclause adds that each man should only give witness if he will swear on holy relics, increasing the spiritual stakes.[181] This invocation of witnessing is distinct from mandatory observations of transactions, begun during Edward's anti-theft campaign and developed by Edgar's institution of standing groups of transaction-witnesses in each hundred.[182] Soon after, in clause three's compilation of terms, the native Old English *gewitnes* appears again but so does the Scandinavian *witword*.[183] A literal translation of this as 'wisdom/witness-word' could represent a kind of witness testimony, the sense it is typically translated with.[184] If this is the case, how *witword* differs from *gewitnes* is unclear, but the outlining of these two distinct concepts for witnessing along with their 'incontrovertible' nature suggests the importance of this type of proof.[185] A final reliance on eye-witnesses can be gleaned from the extra

[178] For a man who was accused of being a thief in the woods and is killed, but his kin claim his innocence, they can clear him with a [single] oath, see In 20–21:1. After Æthelstan's establishment of near-universal capital punishment for thieves (II As 1), he outlines a similar process for clearing a dead thief, here requiring four oath-helpers, while the slayer needs twelve others to help swear to the thief's guilt, II As 11.

[179] ECf 36–36:5.

[180] III Atr 2, trans. Robertson, *Laws*, p. 65.

[181] III Atr 2:1. This relic-swearing seems relatively standard; see its reappearance for the jury of accusing thegns soon after (3:1), and also in VII Atr (A.S.) 2:1; II Cn 36.

[182] I Ew 1; IV Eg 3:1–11.

[183] III Atr 3.

[184] III Atr 3; Robertson renders it as it as 'asseverations (which have been duly made)', Robertson, *Laws*, p. 65. Its only other appearance is in Northu 67:1 and a Yorkshire charter of William (Farrer, no. 89); *DOE Web Corpus*, '*witword*'. See Pons-Sanz, *Lexical Effects*, pp. 427–8. For another possible sense, see below p. 202.

[185] Their distinction could be partially explained by the fact that *gewitan* and its variants can also be 'to understand, to know', *B-T Online*, '*gewitan*'. This kind of witnessing may not imply literally watching; i.e. although all cattle purchases must be witnessed if a man makes an unexpected purchase while journeying, bringing the new cattle to his village with the cognisance (*gewitnysse*) of his neighbours suffices, IV Eg 8. Here none of the villagers were physically present at the exchange, but they were notified and it was abstractly in their knowledge, using this same term typically translated as 'witness'. See the power of eyewitness evidence in medieval Iceland,

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requirement that a cow/sheep may only be killed with 'two trustworthy men as witnesses', which appears in a separate clause in addition to the expected English provision regarding proof at the point of sale of cattle.[186]

Exactly how accusations are made remains a gap within our understanding of Wantage's protocols. Given the de-emphasis on oaths, we might posit that there would be an alternative starting point other than the 'fore-oath', the English standard for beginning an accusation.[187] Accusations themselves seem to hold more potential to condemn in Wantage, as demonstrated by the case of the 'accusation-busy men'. If a lord is stepping in to clear the accused, in the Woodstock Code he and two thegns assert that the accused's oath has never failed nor has he ever paid thief-compensation (*ðeofgyld*) that is, been convicted for theft, in the time since the assembly at *Bromdune*.[188] In III Æthelred, the lord and thegns similarly swear that he has never paid thief-gild, but instead of one's oath, they also swear that he has not been accused of theft (*ne he betihlod nære*) since *Bromdune*.[189] There is no concern for the validity of the man's oath; attention is instead directed to the question of previous accusations, regardless of if he had been found guilty or not.[190] Heightened accusatory power is further reinforced by the unique additional measure that an accuser may select the type of ordeal for the accused, either of water or iron.[191] It also seems that the accuser has the authoritative ability to partially outlaw someone who they publicly declare robbed them in daylight. The incriminated robber will not be eligible for any kind of protection (*he ne beo nanes friðes weorðe*), suggesting a measure of outlawry.[192] Possibly responding to measures like these, a Wulfstanian code calls for ending the unjust practice 'in the north' (i.e. Northumbria) of murder accusations brought against guiltless (*unsacne*) men being upheld if they were brought on the same day as

C. Clover, 'Telling Evidence in *Njáls Saga*', *Emotion, Violence, Vengeance and Law in the Middle Ages*, ed. K. Gilbert and S. D. White (Leiden, 2018), pp. 175–88, at 182.

186 III Atr 9–9:1. See the standard West Saxon requirement for surety when buying cattle in III Atr 5 which closely echoes I Atr 3–3:1, cf. II As 10–10:1, 24; IV Eg 8–11.

187 II Cn 22:1a–22:3; II As 23:2; Canons of Edgar 64. See measures against false accusations at III Eg 4; II Cn 15. On Anglo-Saxon accusation behaviour, see Hudson, *Oxford History of the Laws*, pp. 69–72.

188 I Atr 1:2.

189 III Atr 4.

190 In the II Cnut version of these provisions, the lord swearing on the status of the man's oath is included, so Wulfstan stuck to the Anglo-Saxon norm in his rewriting, II Cn 30:1.

191 III Atr 6.

192 III Atr 15. While it seems doubtful that a single person could make someone completely ineligible for church sanctuary or other serious protections, by this period the compound *friðleas* sometimes referred to a lack of membership of legal society, and Wulfstan uses it like this as a synonym for *flyma* in II Cn 15a; Pons-Sanz, *Lexical Effects*, pp. 113–14 and 173.

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the killing.[193] The meaning here is obscure, but it could be an explicit condemnation of a Danelaw region's over-emphasis on the evidential power of accusations, as attested in Wantage. In these instances there seems to be greater credence given to accusations, reducing the presumption of innocence. Accusers are empowered and perhaps the accused are thereby encouraged to face their deeds and give compensation before authorities become involved. As this article will go on to propose, maybe private settlement is much preferred because, when notables in these Scandinavian-settled lands do oversee criminal justice, punishment is expensive and punitive.

The most high-profile and contentious aspect of criminal proceedings in Wantage is the involvement of a 'jury' of thegns. These elites form a group of twelve that accuse and seize 'untrustworthy men' while later in the text another group of thegns votes on issues.[194] Scholars of the last two centuries have argued extensively about the Wantage thegns, particularly to prove or disprove theories of a pre-Norman, possibly Scandinavian, origin to the jury of presentment (the accusing jury of twelve) that became standard in English common law, first seen in the Assize of Clarendon.[195] These 'twelve leading thegns' (*yldestan XII þegnas*) take on much more decisive tasks than simply carrying out the enforcement of a legal ruling, as the *yldestan men* of earlier codes do.[196] Their active role in decision-making is underlined by their swearing not to accuse an innocent (*sacleasan*) man nor protect a guilty (*sacne*) one.[197] Of those whom the king's reeve wishes to charge

[193] V Atr 32:4, trans. Robertson, *Laws*, p. 89. Here, *be norðan* may be used as a synonym for 'Danelaw' as suggested in Hudson, *Oxford History of the Laws*, p. 249. The term seems comparable with the Wulfstanian title phrase *Norðleoda laga* 'law of the Northern People', with *Norðleoda* likely implying Northumbria; this is the word's only appearance in Old English, trans. Rabin, *Political Writings of Wulfstan*, p. 70, n. 15; *DOE Web Corpus*, '*Norðleoda*'. Cf. *Norðengla* 'northern English' in Grið 13, 13:2; trans. Rabin, *Political Writings of Wulfstan*, p. 78. In all Old English, Norse-derived *unsacne*, 'innocent' only appears here in V Atr 32:4; its opposite form (*sacne* 'guilty') appears in Wantage at III Atr 3:1, see Pons-Sanz, *Lexical Effects*, pp. 100–1.

[194] III Atr 3:1, 13:2.

[195] Assize of Clarendon 1. See historiographical discussions in Stanley, *Imagining Anglo-Saxon Past*, pp. 113–48; M. R. Rambaran-Olm, 'Trial by History's Jury: Examining II Æthelred's Legislative and Literary Legacy, AD 993–1006', *ES* 95, no. 7 (2014), 777–802, at 779–87. See significant contributions in D. M. Stenton, *English Justice*, pp. 16–17; P. Wormald, 'Charters, Law and the Settlement of Disputes in Anglo-Saxon England', *The Settlement of Disputes in Early Medieval Europe*, ed. W. Davies and P. Fouracre (Cambridge, 1986), pp. 149–68, at 163–4; Neff, 'Scandinavian Elements', pp. 293–300; M. Macnair, 'Vicinage and the Antecedents of the Jury', *Law and Hist. Rev.* 17 (3) (1999), 537–90, at 538.

[196] III Atr 3:1, trans. *EHD*, no. 43; II As 20:4. For insights on the identities of these twelve thegns, see Sukhino-Khomenko, 'Twelve Angry Thegns', pp. 217–24. Cf. the role of 'nominated men' in the *Law of Jutland*, in *The Danish Medieval Laws: the Laws of Scania, Zealand and Jutland*, ed. and trans. D. Tamm and H. Vogt (London, 2016), p. 23.

[197] III Atr 3:1. Both *sacleasan* 'innocent' and *sacne* 'guilty' are likely Norse-derived, Pons-Sanz, *Lexical Effects*, pp. 100–1; Neff, 'Scandinavian Elements', p. 293.

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with theft, the thegns seem to help determine who is *tihtbysig* or not, and arrest accordingly.[198] Similarly, twelfth-century juries of presentment could clear the accused, and while they could not technically convict someone, an accusation from them was a substantial condemnation that significantly impacted the outcome of a case and could bring penalties regardless of the ordeal's result.[199] In the tenth-century Danelaw, the reeve may have lacked localized knowledge and depended upon the thegns from the community to know who had a bad reputation.[200] Collaboration with Anglo-Scandinavian notables could have been a necessary measure in an area being gradually integrated into a consolidated English legal system after its conquest.[201] The thegns may also have served as a structural check against the interfering jurisdiction of the royal reeve, and by extension the Cerdicing king who was now influencing the Danelaw criminal justice system.[202] This could help to explain the enlarged role of thegns in the legal process described in Wantage when compared to earlier appearances of thegns in English laws.[203] Here we see limits imposed on the arbitrary power of reeves and the empowerment of the local elite, certainly not consistent with a view of Wantage as Æthelred's tyrannical overreach. Within the legal logic of the text, the advice of a local aristocratic council could also be helping to balance the strong authority given to accusers; accusations held such weight because they were subject to approval by an additional body. Below, this article will pursue the other company of thegns who appear in Wantage and whose purpose is quite different, revealing this group's grasp on power within the tenth-century Danelaw.[204]

CONCLUSIONS

In parallel to the upsurge of information about Danelaw material culture that twenty-first-century archaeology has provided, the 'law' of Danelaw requires further exposition, and the present inquiry has breached only the tip of this iceberg. By incorporating the historical context of Scandinavian-settled England in around 1000, as well as what can be reconstructed about Danelaw society, this article will now propose a possible coherent structure that rationalizes the distinctive legal points of the Wantage Code described above.

198 III Atr 3:1–3:2.

199 R. Groot, 'The Jury of Presentment before 1215', *The American Jnl of Legal Hist.* 26 (1) (1982), 1–24, at 1–3.

200 Cf. Wormald, *Making of English Law II Papers*, pp. 185–6.

201 See the discussion of this and the mysterious Danelaw *lagaman*, Abrams, 'Edgar and the Men of the Danelaw', pp. 181–2.

202 Lambert, *Law and Order*, pp. 239 and 242.

203 See the more minor and procedural role of thegns, such as spreading royal initiatives (IV As 7; IV Eg 1:8) and helping with oaths (AGu 3; I Atr 1:2, 1:8; II Cn 31a:1a).

204 III Atr 13:2.

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Our critical backdrop is the Danelaw as an area conquered and settled by viking armies, beginning in the late ninth century. Very recent archaeological work points towards both large-scale Scandinavian settlement in the Danelaw and significant disruption to pre-existing land-holding, the 'shared out' land of the *Anglo-Saxon Chronicle*.[205] This is in addition to the linguistic evidence, particularly naming patterns of settlements and geographic features, which suggest local majorities of Norse-speakers.[206] Even Sawyer's 'minimalist approach' accepts that elites of Scandinavian origin, many of whom were descendants of viking war-leaders, became part of the ruling class of the Danelaw.[207] Modern evidence also illuminates the Scandinavian nature of the other end of the social hierarchy. In particular, large numbers of Scandinavian settlers may have formed a population of common freeholders, giving the Danelaw a model of land distribution distinct from the rest of England. In a post-viking conquest environment, there was likely land forceably seized from natives and 'shared out' among even common members of warbands, whom Anne Kristensen compares to 'soldier-colonists' from the earlier history of the Frankish kingdoms.[208] Stenton, following a long antiquarian tradition, argued for a 'peasant aristocracy' of Anglo-Scandinavians in the Danelaw who enjoyed a less exacting relationship with their lord and retained significant political rights in comparison to increasingly manorialized Anglo-Saxon England.[209] This can be put into conversation with the generally high level of autonomy of Scandinavian peasants and a less cemented social hierarchy as seen

[205] See the three instances in Northumbria, Mercia and East Anglia (respectively): *ASC* 876 A, 876 E, 877 C; 877 A, 877 E, 878 C; 880 A, 880 E, 881 C; trans *EHD*, no. 1. See comments on archaeology above, pp. 166–7, esp. nn. 18–21.

[206] Jones, 'Territorial Organization in Northern England', pp. 77 and 83; Fellows-Jensen, 'Place-Names on the Anglo-Saxon Landscape', p. 82; Abrams and Parsons, 'Place-names and the History of Settlement', pp. 402–4; Townend, 'Scandinavian Place-Names', pp. 113 and 120. See also Battaglia, 'Identity Paradigms', pp. 285–6.

[207] Sawyer, *Age of the Vikings*, p. 152; cf. McLeod, 'Migration and Acculturation', pp. 205 and 212; Thomas, 'Prehistory of Medieval Farms', p. 59; Hadley, *Northern Danelaw*, p. 302. On the continued prioritization of Scandinavian cultural features among the elite in the form of Norse-derived personal names that appear in significant proportions within Danelaw sections of Domesday, see S. Lewis-Simpson, 'Assimilation or Hybridization? A Study of Personal Names from the Danelaw', *Other Nations: the Hybridization of Medieval Insular Mythology and Identity*, ed. W. M. Hoofnagle and W. R. Keller (Heidelberg, 2011), pp. 13–44, at 22; G. Fellows-Jensen, *The Vikings and Their Victims: the Verdict of the Names*, Dorothea Coke Memorial Lecture in Northern Studies (London, 1995), p. 15; Hadley, 'In Search of the Vikings', pp. 23–5. See a caveat to the Domesday name data in R. Fleming, *Kings and Lords in Conquest England* (Cambridge, 1991), p. 14.

[208] A. K. G. Kristensen, 'Danelaw Institutions and Danish Society in the Viking Age: *Sochemanni*, *Liberi Homines* and *Königsfreie*', *MScand* 8 (1975), 27–85, at 34, 42 and 60–2.

[209] Stenton, *Anglo-Saxon England*, p. 515. See the *sokemen* as a possible factor in the distinctive resistance to seigneurialization in the 'eastern zone' of England, Blair, *Building Anglo-Saxon England*, pp. 315–16.

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in eleventh-century Iceland and Norway.[210] A strong Anglo-Scandinavian freeholding peasantry has been argued to be connected to the unspecified *sokemen* who appear throughout Domesday, and in especially high proportions in the Danelaw sections.[211] Such a social dynamic could have led to especially local strata of political organization for these freeholders.[212] This is in addition to the autonomy of Danelaw settlements at some points in the tenth century, with the *Chronicle* reporting the 'armies' of boroughs negotiating independently with West Saxon conquerors.[213] In this socio-political context of a freeholding peasantry and devolved political control, there may have been increased emphasis on small-scale assembly, a role that could have been filled by the Wantage alehouses and the Domesday 'small hundreds'.[214]

Viking raiding armies were the points of origin for many of the first Danelaw settlers and it is in the makeup of these military groupings that we can better understand the society that was founded in their wake. Large hosts like the *Micel Here* of *c.* 865–78 were likely ethnically diverse and composed of collections of smaller, loosely aligned warbands.[215] As very recent DNA studies suggest, these sub-groups could be from throughout the North Sea world, and each was often made up of men from within a relatively small geographic area, who were sometimes even close kin.[216] There would need to be a great emphasis on the cohesion of a large heterogenous armed force like the Great Armies; a common religion is one means of doing this but strict military discipline is another possible

[210] Including the ability to legally choose a lord, C. Wickham, 'Passages to Feudalism in Medieval Scandinavia', *Studies on Pre-Capitalist Modes of Production*, ed. L. de Graca and A. Zingarelli (Leiden, 2015), pp. 141–57, at 147 and 153.

[211] See the many instances of *sokemen* (likely a Scandinavian loanword unattested before the viking conquests) in the Lincolshire folios, *DB i.* 336–71. Echoing Stenton's view of *sokemen* as a distinct free peasant class, Hart also remarks that by the time of Domesday they had lost many of their initial rights and seem to have been mostly unfree serfs directly under a manorial lord; Hart, *Danelaw*, p. 232. See also, K. Leahy and C. Paterson, 'New Light on the Viking Presence in Lincolnshire: the Artefactual Evidence', *Vikings and the Danelaw*, ed. J. Graham-Campbell, R. Hall, J. Jesch and D. N. Parsons (Oxford, 2001), pp. 181–202, at 186; Kristensen, 'Danelaw Institutions', p. 28.

[212] Stenton, *Anglo-Saxon England*, pp. 277 and 304; Hadley, *Northern Danelaw*, p. 45.

[213] See above, n. 8. Cf. Molyneaux, *Formation of the English Kingdom*, p. 22.

[214] III Atr 1:2. See also Baker and Brookes, 'Hundredal Organization in the Southern Danelaw', p. 89; Kristensen, 'Danelaw Institutions', pp. 42–3, 48 and 52.

[215] The 'army' was made up of largely independent warbands of various backgrounds who 'coalesced and divided' when it was advantageous for them: Downham, 'Viking Ethnicities', p. 4. Cf. B. Raffield, 'Bands of Brothers: a Re-appraisal of the Viking Great Army and its Implications for the Scandinavian Colonization of England', *EME* 24 (2016), 308–37, at 333.

[216] Margaryan *et al.*, 'Genomics of the Viking World', pp. 392–3.

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method.[217] It has been suggested that Danelaw laws developed out of a need for martial harshness and retained some of these elements even in a post-settlement civilian context.[218] A concern for maintaining stability within an army could manifest in less tolerance for certain offences, especially those which eroded mutual trust within the 'army community', like violating the peace of a meeting. After all, the Danelaw term *wæpentake* for a land unit and its affiliated assembly is from Old Norse *vápnatak* ('a taking of weapons') and may have originated from the requirement to leave one's weapons aside when entering an assembly to avoid the possibility of bloodshed.[219] If a member of a certain warband broke the peace within a viking army's meeting, possibly he and his associates from his sub-group (who may have been especially linked along ethnic or kin lines) would be expected to pay a heightened penalty together, not unlike the massive communal fine payments in Wantage.[220]

A helpful comparison for III Æthelred is an examination of how medieval Scandinavian peoples settled disputes and when they invoked the law. In one of its often-referenced clauses, Wantage implies that those in the Danelaw heavily emphasized informal negotiation and settlement (*lufu*, 'love') instead of reliance on formal legal proceedings (*lagu*).[221] Here the legitimacy of settlements made out of court is strengthened since if love is chosen, 'that is to be as binding as a legal sentence'.[222] From this demonstration of Anglo-Scandinavian procedure reinforcing private mitigation, we can see parallels in later Norse texts, particularly from Iceland. Private settlement was likely standard procedure for most cases in Iceland since there was no executive arm of government to enforce the ruling of a

[217] Abrams points out that a common religious practice can bind a diverse group together and an 'essentialized Scandinavian religion, focused on elements in common' could have developed in this context, Abrams, 'Diaspora and Identity', pp. 25–6.

[218] J. E. G. De Montmorency, 'Danish Influence on English Law and Character', *Law Quarterly Rev.* 40 (3) (1924), 324–43, at 336–8; Fenger, 'Danelaw and Danish Law', pp. 93–4.

[219] Hadley, 'Creation of the Danelaw', p. 375; see above, n. 48.

[220] See the possibility that if a warrior in medieval Scandinavia commits a crime that qualifies as *niðingsværk*, he would be labelled a *niðingr* 'wretch, villain' and the penalty would be paid by his whole company: De Montmorency, 'Danish Influence', p. 336. Cf. much later collective compensation payments in Denmark: H. Vogt, 'How To Be Remembered: Securing the Memoria of a Slain Person in Medieval Denmark', *Emotion, Violence, Vengeance and Law in the Middle Ages*, ed. K. Gilbert and S. D. White (Leiden, 2018), pp. 156–71, at 59 and 65.

[221] III Atr 13:3, Robertson translates *lufu* as 'amicable agreement', Robertson, *Laws*, p. 71; and Whitelock prefers 'amicable settlement', *EHD*, no. 43. See Clanchy's famous use of this provision when forming his law and love paradigm, M. Clanchy, 'Law and Love in the Middle Ages', *Disputes and Settlements: Human Relations in the West*, ed. J. Bossy (Cambridge, 1983), pp. 47–67, at 49.

[222] III Atr 13:3, trans. *EHD*, no. 43.

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court.[223] This would be handled privately, implying the continued opportunity for mitigation between parties, given the strict hypothetical punishments for certain crimes that we see in the earliest recorded Icelandic law-code, the *Grágás*.[224] Punitive punishments as prescribed in law act as a deterrent, with mutual settlement between disputants as the likeliest outcome, resulting in communities self-regulating. This paradigm seems often at play in the very law-centred *Njáls Saga*.[225] This may also be the sense behind Wantage's provision that a man can bring semi-outlaw status on another by vocalizing the accusation in three villages.[226] This surprising degree of judicial power in the hands of individuals is akin to the Icelandic emphasis on 'publishing' when a crime is committed.[227] Taking this to the extreme, even a private settlement can prescribe outlawry through mutual agreement and there is no need for a formal judgment.[228]

Fees like the Danelaw *lahcop* could act as further deterrents against invoking formal legal proceedings for the sake of expediency.[229] Practicality did not allow for frequent formal law courts; in rural and dispersed Iceland, assembling a large *thing* was a major undertaking that could only happen a few times a year.[230] If the great majority of dispute settlement would have occurred informally, any bad conduct during the rare instance that an assembly was occurring was a serious

[223] W. Schäfke, 'And Since We are No Lawyers, We Will Void the Lawsuit with Battle Axes'! Voiding a Lawsuit in Old Icelandic Procedural Law', *Law and Language in the Middle Ages*, ed. M. W. McHaffie, J. Benham and H. Vogt, Med. Law and Its Practice 25 (Leiden, 2018), 262–86, at 262.

[224] *Laws of Early Iceland: Grágás I*, ed. and trans. A. Dennis, P. Foote and R. Perkins (Winnipeg, 2006), p. 3; all *Grágás* references are from this edition. The text is a thirteenth-century compilation and some sections may go back to the tenth, *ibid.* p. 9.

[225] *Viz.* Njál pays Gunnar for the premeditated secret murder of Kol by Atli rather than any official charges being brought, *Njáls* 37; all *Njáls* references are from the translation in *Njal's Saga,* trans. R. Cook (London, 2001). By written standards, such a crime would bring serious penalties: greater outlawry (*Grágás* K ± 86) in Iceland or status as a *niðingr* outlaw and the loss of all rights, which is the penalty for killing a man by surprise in his home in Norway, *Gulaþingslǫg* 178. *Njáls* is a work of fiction but is amazingly helpful to legal historians in offering a portrayal of *c.* tenth-century Icelandic law in action, although the exact accuracy of the details within certain procedures seems questionable; see H. Ordower, 'Exploring the Literary Function of Law and Litigation in "Njal's Saga"', *Cardozo Studies in Law and Literature* 3, no. 1 (1991), 41–61, at 42–5.

[226] III Atr 15, cf. 10. See above, p. 192.

[227] The first step towards bringing an accusation against someone is making a public announcement, 'publishing', in front of the right people. Assault accusations must be published in front of five neighbours, *Grágás* K ± 86, 87; cf. 21. Murder accusations require nine neighbours, K ± 89. See Dennis *et al.*, *Grágás I*, p. 6.

[228] *Grágás* K ± 60.

[229] This is similar to how, in both the Icelandic sagas and law-codes, the threats of fines are used to limit 'violence, insult, and aggression', J. Byock, 'Dispute Resolution in the Sagas', *Gripla* 6 (1984), 86–100, at 93.

[230] Icelandic assemblies were not very frequent: each Quarter Court met three times a year, the larger General Assembly was once a year, Dennis *et al.*, *Grágás I*, p. 2.

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offence. This is demonstrated by the strict punishments for even minor missteps in the intricate procedures surrounding *things* in the *Grágás*.[231] The penalty for breaching the peace of a meeting was very high, from three-year exile to permanent outlawry and a price on one's head.[232] There is also an indication that purposeful violent disruption of a legal proceeding (by one side when a case was developing unfavourably for them) could have been somewhat common in Icelandic culture and was legislated against.[233] The large fines for the peace-breaking of assemblies in Wantage could echo this Scandinavian regard for formal meetings, which is heightened because assemblies were likely not the default daily legal practice even if they existed at quite local levels.[234] Likewise, the Norwegian *Gulaþingslǫg* prescribes the severest outlaw status for breaching *grið*, temporary peace that often accompanied an assembly, fitting well with III Æthelred's protections of various assemblies in the Five Boroughs and even using the same word.[235] *Grið* was also likely a common part of daily life for Viking Age Scandinavian traders and was critical for commercial activity between groups of strangers.[236]

These Scandinavian analogies, although problematically late and in very different contexts, are some of the best tools at our disposal in reconstructing Danelaw legal culture. Given Iceland's settlement by Scandinavians at around the same time as the Danelaw (late ninth and early tenth centuries), as well as its status as a

231 Lesser outlawry (implying three-year exile) seemed to be the go-to punishment for relatively minor offences related to assemblies in the *Grágás* including: a participant being absent for a night or longer (K ± 23, 58, 59), giving contrary (but not false) testimony (K ± 37) and for a chieftain who does not attend the beginning of an assembly (K ± 56, 84). These are peppered throughout the entire 'Assembly Procedures' section (K ± 20–85). The law-focused *Njáls Saga* reinforces an almost-obsessive concern for procedure in Icelandic court proceedings, Clover, 'Evidence in Njáls', p. 175.

232 *Grágás* K ± 102. Lesser outlawry was the penalty for much less serious assembly offences (see previous note) so fighting at an assembly carried this penalty at the very least; killing brought greater outlawry and a death sentence, K ± 102.

233 'Such obstruction seems to have played an important role in legal discourse, and was considered a problem that required regulation through many detailed provisions', Schäfke, 'Voiding a Lawsuit', p. 283. See the law-codes outlining very heavy security for Icelandic assemblies, *Grágás*, K ± 41; and the anxiety over being labelled a *griðníðingur* 'peace-breaker' among *Njáls Saga* characters, *Njáls* 67–8, trans. Cook, *Njal's Saga*, pp. 113–14.

234 III Atr 1:1–1:2.

235 One becomes a *níðingr*, the worst kind of outlaw, *Gulaþingslǫg* 178; cf. *Grágás* K ± 102; see A. I. Riisøy, 'Deviant Burials: Societal Exclusion of Dead Outlaws in Medieval Norway', *Stud. across Disciplines in the Humanities and Social Sciences* 18 (2015), 49–81, at 58. For more on *niðing* and its incorporation into Old English see Pons-Sanz, *Lexical Effects*, pp. 161–2. On *grið* in this context, see A. I. Riisøy, 'Vǫlundr – a Gateway into the Legal World of the Vikings', *Narrating Law and Laws of Narration in Medieval Scandinavia*, ed. R. Scheel (Berlin, 2020), pp. 255–74, at 258.

236 M. Roslund, *Guests in the House: Cultural Transmission between Slavs and Scandinavians 900 to 1300 AD*, trans. A. Crozier (Leiden, 2007), p. 142.

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commonwealth without monarchical centralization until much later, its records may be able to offer us a general impression of the legal world from which ninth-century vikings emerged.[237] In this context, where informal negotiation is central, formal law (*lagu*) is called upon rarely and with reluctance. This could be the lense through which to read the Wantage provisions for untrustworthy men. The section seems to represent English royal legislation being freshly applied to the Five Boroughs through negotiation with Danelaw elites.[238] The III Æthelred version is significantly condensed from Woodstock's and there is an additional fee for the accused to 'buy law', *lahcop*.[239] After all, if a new legal process was being extended by the English king into Danelaw territory, and formal litigation was rare in the daily lives of these folk, they may have demanded an additional payment for its invocation and passed that cost on to the accused.

As suggested above, some sections of Wantage seem to articulate the interests of Danelaw elites and may have been included at their request, such as the *lahcop* concept.[240] Also pertinent in this regard are the provisions regarding thegns, who form the 'jury' of robust scholarly debate.[241] The meaning of Old English *thegn* shifted in the period from a king or lord's servant, towards representing a dynamic role with shire-level administrative duties.[242] By the tenth and eleventh centuries, thegns were minor nobles who held land and some of whom had military obligations.[243] But there is fluidity here; some thegns are large-scale landlords with vast royal grants, while others seem to be well-to-do free men with comparatively humble holdings.[244] They seem to occupy the same general class, sharing a high wergild valuation, and it seems likely that a key factor determining eligibility was a land minimum.[245] The Wulfstanian *Norðleoda laga* gives the indication that movable wealth was not enough, but if a commoner 'prospers so that he possesses five hides of land for his obligations to the king', then he gains

[237] Wickham, 'Feudalism in Scandinavia', p. 146. See, for early Iceland as a stateless society, S. Reynolds, 'The Historiography of the Medieval State', *Companion to Historiography*, ed. M. Bentley (London, 2002), pp. 117–38, at 132. Cf. B. Solvason, 'Institutional Evolution in the Icelandic Commonwealth', *Constitutional Political Economy* 4, no. 1 (1993), 97–125.

[238] III Atr 3:1–4:2; I Atr 1:1–14. See above, pp. 188–9.

[239] III Atr 3:3.

[240] III Atr 3, 3:3, 8:2.

[241] III Atr 3:1, 13:2.

[242] Pons-Sanz, *Lexical Effects*, p. 210; H. R. Loyn, 'Gesiths and Thegns in Anglo-Saxon England from the Seventh to the Tenth Century', *EHR* 70, no. 277 (1955), 529–49, at 540–1.

[243] W. Hollister, *Anglo-Saxon Military Institutions on the Eve of the Norman Conquest* (Oxford, 1962), pp. 70–5.

[244] F. Barlow, *The Feudal Kingdom of England, 1042–1216*, 3rd ed. (London, 1972), p. 6.

[245] Cf. D. Sukhino-Khomenko, 'Thegns in the Social Order of Anglo-Saxon England and Viking-Age Scandinavia: Outlines of a Methodological Reassessment', *The Retrospective Methods Network Newsletter* 14 (2019), 25–50, at 43.

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thegn status.[246] If thegn status existed and could be this flexible, with a land minimum as a decisive factor, how did such a system incorporate the landholding patterns of the Danelaw? A possible answer is that since members of viking armies and other Scandinavian newcomers became a part of the ruling elite, their descendants during and after the English conquest of the region (particularly those who acquiesced to the West Saxon regime) were allowed to call themselves thegns and were tacitly accepted as such.[247] This is further suggested by what could be the bestowing of noble (thegn) wergilds on any free Danish warrior in Alfred's Treaty with Guthrum, even commoners.[248] As a social role that is not well understood even in non-Danelaw England, perhaps *thegn* was simply used as a legal term for any landowner of a certain social and possibly military calibre, even relatively poor individuals.[249] This could help to explain the appearance of groups labelled 'thegns' in our sources on the Danelaw, particularly the twelve of Wantage, those of the Cambridge Guild and politically active thegns in the *Chronicle*.[250]

In a later section of Wantage, another group of thegns of unknown number form a 'jury' that votes on judgments.[251] This provision comes behind guidelines

[246] Norðleod 9, 10; cf. 5. A wealthy freeman who possesses a 'helmet and a coat of mail and a gold-plated sword' is not worthy of the wergild of a thegn (2000 *thrymsas*) unless he holds land equal to five hides (5), trans. Rabin, *Political Writings of Wulfstan*, p. 71. Part of the short code *Norðleoda laga* seems to have been penned by Wulfstan (5, 7-12), but the remainder may represent an earlier tradition including reference to a 'Danish nobleman' (4). This suggests that the text was created after viking-army contact and may represent a glimpse of the Kingdom of Jorvik: Pons-Sanz, *Lexical Effects*, p. 394.

[247] Cf. Naismith, 'Gilds, States, Societies', p. 656. Domesday suggests that eleventh-century thegnly landholders in the Danelaw were often Norse in name and likely represent the remnants of this population, see above, n. 207.

[248] AGu 2. The language is complex, but a possible reading is that fully free Englishmen seem to not gain this same benefit; see T. Lambert, 'Frontier Law in Anglo-Saxon England', *Crossing Borders: Boundaries and Margins in Medieval and Early Modern Britain*, ed. S. Butler and K. Kesselring (Leiden, 2018), pp. 21–42, at 31–2.

[249] See Costen's Domesday calculations, especially that on average in Wiltshire the actual holdings of a thegn by this period seemed quite small, M. Costen, 'Anonymous Thegns in the Landscape of Wessex 900–1066', *People and Places: Essays in honour of Mick Aston* (Oxford, 2007), pp. 61–75, at 65; cf. Sukhino-Khomenko, 'Thegns in the Social Order', p. 43.

[250] III Atr 3:1, 13:2. The Cambridge Thegns' Guild seems to be a loosely organized institution of thegns in the Danelaw which may have served other purposes beyond mutual wergild guarantees, see *EHD*, no. 136; Naismith, 'Gilds, States, Societies', p. 656. See the continued significant political role of Danelaw thegns as mentioned in the *Chronicle*, including the recognition of a new king (*ASC* 1036 E, 1036 F) and when 'all the thegns of Yorkshire and Northumberland' rebelled against their earl (*ASC* 1065 D), trans. *The Anglo- Saxon Chronicles*, ed. and trans. M. Swanton, 2nd ed. (London, 2000), p. 191.

[251] III Atr 13:2. They may be the same group of (twelve) thegns from 3:1, as most scholars assume, but their number here is never specified. It is said that eight are a voting majority, so the maximum possible number is fifteen. Likewise, a plural pronoun is used for those outvoted

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for a man accused of harbouring an outlaw, but what the thegns are actually voting on in this instance is not specified and is likely unconnected.[252] In fact, this and the clauses immediately following it give some impression that they are together intended to preserve the *status quo* among the thegnly elite, especially land ownership. Their voting might be on any decision that would be handled by local notables, with land disputes likely a common issue. The clause immediately after states that for a *þegen*, agreements either made through love or law will be binding.[253] Following this comes another clause that adds further weight by establishing a fine for those who neglect such agreements.[254] Finally, next comes a provision that is quite notable in the English legal corpus: that for estates held without claims on them in a man's lifetime, 'no one is to bring an action against his heirs after his death'.[255] All of these points could be helping to cement the systems of land ownership that had developed along with the Scandinavian settlement and accompanying property redistribution, here securing holdings from being newly shaken up by integration into the English legal system.[256] This is hinted at the most within the action-against-landowners clause. It is quite telling that the first place in Anglo-Saxon legal records where such a provision exists is in the viking-conquered Five Boroughs; doubtlessly landholding nobles anywhere would appreciate the protection that was secured here.[257] Efforts by the elite could also help to explain the anomalous Norse-derived terms from clause three, *landcop* 'land-purchase agreement' and *witword* 'wisdom/witness-word'.[258] In line with the other clauses, these terms could represent contracts and agreements regarding land ownership. This seems like an obvious fit for *landcop* while *witword* could represent testimony from a sort of 'expert witness' with contextual knowledge of a specific land tract's characteristics and ownership (a 'word of knowledge'), a process reflected by the related Old Swedish legal term *vitu orþ*.[259] Wantage is possibly demonstrating a

(by eight), meaning there must be at least two on the losing side, offering a minimum figure of ten.

[252] III Atr 13:2.

[253] III Atr 13:3.

[254] III Atr 13:4.

[255] III Atr 14, trans. *EHD*, no. 43.

[256] Cf. Wormald, *Making of English Law II Papers*, p. 107, n. 19.

[257] III Atr 14; cf. a later Wulfstanian provision, II Cn 72. Once a man was legally entangled to any degree, it seems that he became much more vulnerable to all kinds of suits and claims, with his property in jeopardy. This is likely also because, when one became 'litigation-busy', they lost a great deal of standing in court, particularly the ability to clear themselves by an oath; see above, p. 189. See this play out when land claims pile up against Helmstan after he is accused of theft in the Fonthill Letter, *EHD*, no. 102.

[258] III Atr 3; cf. Northu 67:1.

[259] See *witword* in Pons-Sanz, *Lexical Effects*, pp. 427–8. The exact kind of witness testimony is unclear: 'a statement which bears witness to anything', *B-T Online*, '*witword*'. Whitelock suggests a simpler translation as 'agreement' or 'contract' in line with the Middle English, *EHD*, no. 43,

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concerted effort to keep existing ownership valid and make sure that previous arrangements that do not have *bocland* documentation are honoured, a critical measure for the Anglo-Scandinavian landed elite who were holding property gained during the upheaval of the past century and a half.[260] With III Æthelred seeming to reflect the process of the Danelaw's legal system being increasingly formally incorporated into the English kingdom, there may have been concern by these elites for their property, which they had potentially unsteady legal claims over. In response, the Danelaw aristocracy could have pushed for these land-focused measures in Wantage, an important aspect of their 'good laws' which were given protection in IV Edgar and which are here having their details royally recognized.[261]

Through analyses of various legal issues raised by the Wantage Code, this work has sought to demonstrate that where the encapsulated legal culture diverges from English norms, this is not just minor and procedural. The inhabitants of the Danelaw, at least those Anglo-Scandinavian elites who helped draft III Æthelred, held fundamentally different understandings of the law, whether it was regarding the communal payment of fines by those in a land unit, the need to 'buy law' and pay additional fees to access proceedings, or a penal code that harshly pressured the accused towards settlement. Because archaeology has increasingly delineated the Danelaw's distinctiveness from the rest of England as a direct result of its viking-settled past, it should be no surprise that a legal system developed here that was not so similar to that of the West Saxons. Only by acknowledging this reality and pursuing further serious inquiries into the Wantage Code and the legal culture of the Danelaw, possibly through further analogies with Scandinavian traditions, will we deepen our understanding of *Dena lage*.[262]

n. 6; see also the sense of the appearance in Farrer, no. 89. See also a land contract context for the Old Swedish *vitu orþ* as witness testimony in an open legal contest over land ownership between two towns: Neff, 'Scandinavian Elements', p. 292.

[260] On 'bookland', see Rabin, *Crime and Punishment*, pp. 16, 27; Hudson, *Formation of English Common Law*, pp. 75–7; cf. Wormald, *Making of English Law II Papers*, p. 214.

[261] IV Eg 2:1, 13:1; trans. *EHD*, no. 41.

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