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Presentment of Englishry at the Eyre of Kent, 1313

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CHAPTER 1
Introduction

In 1313 an eyre was summoned for the county of Kent before which there had not been an eyre since 1288. The people of Kent feared that their customs would not be honored. If this fear was confirmed, it could cause the county significant distress and cost the people money. Instead of targeting landholders, as they had in the past, the royal justices effectively challenged every person in Kent who lived in a community where a homicide had occurred since the last eyre. The justices asked if the people of Kent were accustomed to presenting Englishry, and if so, in what form. The people, knowing that their coroners had not recorded presentments of Englishry, feared the penalty of the murder fine. A knight named Sir Edmund Passele spoke on behalf of the county in their defense. He made a desperate appeal to history, saying, "at the coming of William the Conqueror all the men of Kent were drawn up in the last line against him and … in that battle they rendered themselves to him on the strength of a covenant made and confirmed by him, by which it was acknowledged that the county of Kent should have and should enjoy the laws and customs which therein had been had and enjoyed since time immemorial, and Englishry," Passele said, "had not been originally presentable in eyre."[1] However true and serious this story might have been, it was overruled in favor of a far more recent written document: the roll of the previous eyre that indicated that Englishry had been presented in Kent prior to 1313.

[1] *Kent*, 52.

Memory intersects with nearly all aspects of human existence, and was especially important in the Middle Ages.[2] Law was one point of intersection, as was evident at the eyre of Kent in 1313. The eyre was a traveling royal court, instituted in England after the Norman Conquest. Eyres brought both excitement and anxiety to the counties they visited. They represented an effort to control the kingdom under the central, royal authority in spite of the variety of customs that differed from one county to the next. Memory and the past, both distant and recent, were used in the eyre of Kent to account for these incongruent expectations and procedures. The memory of the Norman Conquest was central to the debate over presentment of Englishry at the Eyre of Kent in 1313.

Soon after William Duke of Normandy conquered the English defenses in 1066 he recognized the need to secure peace. The first law he made in his newly conquered land was that "above all things … one God be venerated throughout his whole kingdom." Next he asserted that "peace and security be observed between the English and the Normans."[3] Since the only thing more important than peace between the English and the Normans was God (and God was a non-negotiable fixture) the most important issue of William I's reign, beginning Christmas Day, 1066, was assuring that all the men that he had brought over to England with him, "or those who have come after … shall be in … peace and quiet," which necessitated the cooperation of the native English he now ruled.[4]

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[2] See Mary J. Carruthers, *The Book of Memory: A Study of Memory in Medieval Culture* (Cambridge: Cambridge University Press: 1990).

[3] *Statutes of William the Conquer* in *Select Historical Documents of the Middle Ages*, ed. and trans. Ernest F. Henderson (London: George Bell and Sons, 1892) 7, sec. 1.

[4] Ibid., 7, sec. 3. The shared theology of the Normans and English was an important aspect of cooperation and assimilation. See Hugh M. Thomas, *The English and the Normans: Ethnic Hostility, Assimilation, and Identity 1066–c.1220* (Oxford: Oxford University Press, 2003) 89-90.

In the Middle Ages, the past was often integral to understanding the present, and the law was no exception.[5] Reading and writing were typically limited to clerics and the royal administration, and so for most, history was a matter of oral, heritable memory.[6] The Norman Conquest was an event that would be remembered for centuries and its significance hotly contested through the early modern period.[7] This contestation was very much alive in the early fourteenth century in the context of the royal eyres, and it is perhaps most evident in the treatment of that outdated practice of presentment of Englishry in the eyre of Kent, 1313. The people of Kent did not want to adhere to the practice of presentment of Englishry for many reasons, perhaps the most persuasive being the murder fine attached to failed presentment that was levied on the hundred where the slain person was found. In response to the royal demand that Englishry be presented in the eyre of Kent, dramatic appeals to the past were made and were overruled in favor of recent documentation.

The form of presentment of Englishry which the justices expected to be used at the eyre of Kent was not the form devised by the first generation of Norman immigrants following the Conquest, but a form described in a late twelfth-century treatise by Richard Fitz Nigel (himself a justice in eyre) known as the *Dialogue of the Exchequer (Dialogus de Scaccario).* The *Dialogue* touches on many things relating to the financial inner workings of the kingdom, including presentment of Englishry. The *Dialogue* was

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[5] See Anthony Musson, "Appealing to the Past: Perceptions of Law in Late-Medieval England," in *Expectations of the Law in the Middle Ages*, ed. Anthony Musson (Woodbridge: The Boydell Press, 2001) 179.

[6] Written histories were seen as valuable to history because they helped spark memory. See Carruthers. For discussion of literacy, see M. T. Clanchy, *From Memory to Written Record: England 1066 –1307* (Oxford: Blackwell Publishers, 1993).

[7] For an example of the "Norman yoke" in early modern English politics, see R. B. Seaberg, "The Norman Conquest and the Common Law: The Levellers and the Argument from Continuity," *The Historical Journal* 24, 4 (1981): 791-806.

composed as an instructional conversation between a master of the Exchequer and a student. In this dialogue, the student asks many questions with seemingly obvious answers, but these questions are important and the answers are straight-forward. Similar to the way in which the eyre of Kent was recorded by royal justices, the answers given by the master must be interpreted as how royal officials in the late twelfth century wanted presentment of Englishry to be understood by students of the law.

Presentment of Englishry was routinely demanded at varying levels of medieval English courts, including community courts and royal eyres. It demanded that the family (as defined by the community in slightly different ways) of a slain person come forward and "present" the slain's English ancestry to the coroner. The Englishry of the slain needed to be presented only if the accused killer had fled, otherwise the killer would be tried and acquitted or executed; presentment of Englishry took the place of a trial and judgment. If the Englishry of the slain was successfully presented, the case was closed and the community (often a village or hundred) that had allowed the killer to flee was not penalized. However, if the slain's Englishry was not successfully presented, the homicide was judged a murder and the community was subject to a murder fine.

Essentially, presentment of Englishry existed in the fourteenth century as a vestige of the Norman Conquest, the event that precipitated its use. The phrase "presentment of Englishry," was rooted in a turbulent history of ethnic conflict. It was this racially-charged terminology which allowed for the strongest contestations of the practice's validity to be made in the eyres and which eventually led to its repeal in 1340 by Edward III.[8] This paper aims to demonstrate that the custom of presenting Englishry

[8] *The First Statute of 14 Edward III, April 1340*. Ed. William Stubbs. Available online: at *http://home.freeuk.com/don-aitken/ast/e3a.html*, last viewed April 15, 2007.

as the presupposition of murder was eventually terminated because of the historically evocative nature of the term "Englishry" in a time when ethnic identity was defined along different lines than those immediately following the Norman Conquest. "Presentment of Englishry" was greatly influenced by the use of both memory and language in fourteenth-century English society.

To bring out the origin and perpetuation of "presentment of Englishry" in the 1313 eyre of Kent, two other fourteenth-century eyres will be contrasted with eyres from the thirteenth century. Contestations and appeals to history were not recorded at the early thirteenth-century eyres, but the way in which presentment of Englishry was enforced (or not enforced) is indicative of the inconsistencies inherent in the practice. Charters dating between the Conquest and the eyre of Kent show how both the practice of presentment of Englishry and memory in Kent evolved. Additionally the Bayeux Tapestry and the *Anglo-Saxon Chronicle* will together provide the narrative development of the law and the recorded history of Kent.

By the thirteenth and fourteenth centuries, the murder fine and presentment of Englishry had become almost synonymous, and presentment of Englishry was viewed, above all, as a financial burden on a community (and benefit for the king). However closely related, the murder fine and presentment of Englishry were not one and the same—while both dealt with secret homicide, they had different structural functions. Regardless of the changes that had occurred since the Conquest, presentment of Englishry was rooted in ethnic difference, as illustrated by its very name. These roots were remembered into the fourteenth century, as will be seen through the appeal to history made in the opening of the eyre of Kent. The events that took place at the 1313

eyre of Kent show how the early fourteenth century marks an important transition when distant memory became less persuasive in English political life than recent documentation. The reasons for this shift, particularly regarding ideas about memory, money and unification of centralized power, will be outlined in Chapter Four.

The argument Passele made against presentment of Englishry at the eyre of Kent was the product of collective memory of the Conquest and his legal knowledge. He used this memory as evidence for the validity of the county's request that presentment of Englishry not be enforced. In the Middle Ages, having a good memory was venerated as highly as logical reasoning and novel discovery are presently. In fact, it was widely understood that a good memory embraced reason and discovery as much as scientific fact-finding does today.[9] A long and detailed memory was the mark of high intelligence. For this reason many people would have wanted to develop their memory, even if their stories had to be invented. For example, a late twelfth-century master of the Exchequer praises his student, saying, "I congratulate you on your memory, which, I see, retains both the gist of what has been said and the plan of what remains to be said."[10] Memory was just as central to inherited culture in the Middle Ages as documentation is in the modern world and it was just as "technologically" advanced regarding complex mnemonic techniques. Mary Carruthers states that the value of memory persisted long after the written document was instituted. "Books in themselves," she writes, "did not profoundly disturb the essential value of memory training until many centuries had passed."[11] Texts took on a mnemonic role, hence the importance of beautifully detailed illuminations and decorations. The text was first contemplated pictorially, and then the

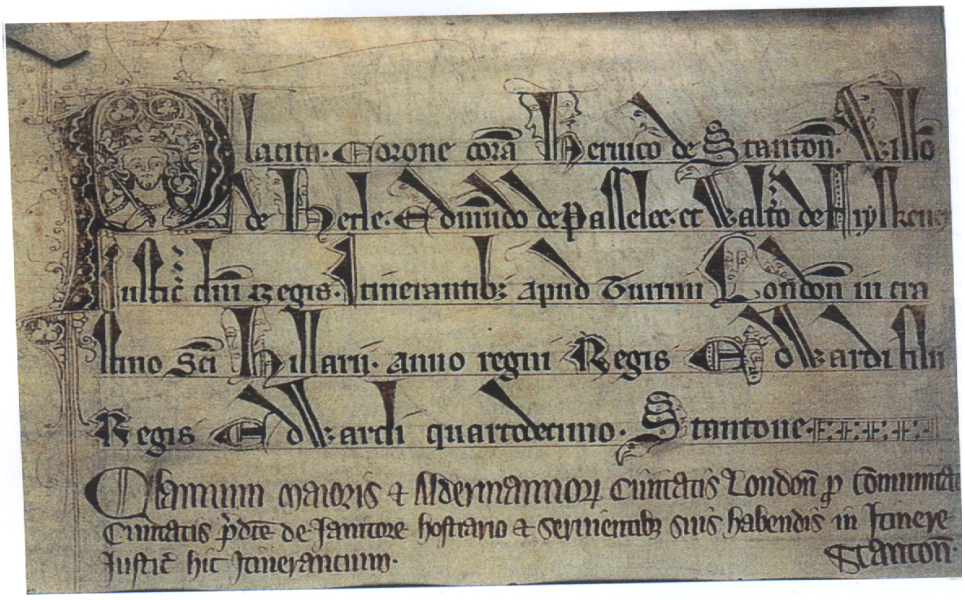
[9] Carruthers, 4.
[10] *Dialogus*, 103.
[11] Carruthers, 8.

meaning was remembered. However, there is no indication that the eyre rolls were read or contemplated by the justices in this way.

The justices' clerks were responsible for recording the debate over presentment of Englishry and it was a clerk's work that provided the justices with acceptable proof that Englishry ought to be presented in Kent in 1313. It is their interpretation of how the appeal to history was made with which we begin. Though the eyre rolls (the record of statements and transactions of the itinerant royal court) were not considered texts to be read such as a chronicle or *vita* (they were instead considered accurate accounts of recent events for the reference of lawyers, justices and county officials), they too included a number of mnemonic devices.[12] Andrew Hershey cites evidence that scribes may have taken notes as the proceedings unfolded before them and afterward composed the often elaborate rolls, many of which have been edited and translated by the Selden Society.[13] Though the rolls were not verbatim recordings, it was understood that "the scribe must be careful not to write anything of his own in the roll, but only what … has [been] dictated."[14] In addition to documenting the discourse of the court, scribes often included marginal and in-text drawings. Some of these were mnemonic devices such as a finger pointing to an important part of the text or a small ship positioned next to a case regarding the ports.[15] The opening of the roll for the eyre of London in 1321 is decked with fourteen faces appended to characters in the script which Hershey calls "a work-place 'office photograph' of sorts."[16] This example from the eyre of London indicates

[12] Andrew H. Hershey, *Drawings and Sketches in the Plea Rolls of the English Royal Courts c. 1200-1300* (List and Index Society, vol 31: 2002) 15-33.
[13] Ibid., 13.
[14] *Dialogus*, 31.
[15] See Hershey, 14, 32.
[16] Ibid., 9.

the importance of the eyre and of recording the events of the eyre, such as the debate regarding presentment of Englishry.



At the opening of the eyre of Kent in 1313, an advocate for the county, Sir Edmund Passele (possibly pictured above), invokes (or invents) a memory by appealing to a story said to be from the time of the Conquest in order to validate the customs of Kent before the royal justices. He does not say from what documents he draws his memory, indeed collective memory was often passed down orally.[17] Nevertheless, there are sources that existed before the eyre in 1313 that potentially influenced his story and certainly influenced his cultural surroundings. These sources illustrate how the memory of the Conquest was kept alive and how Passele's particular story was constructed. The story of the Conquest that Passele tells is an effort to excuse the county from the responsibility of proving the "Englishry" of slain persons. This story and its implications require a closer look because, as Chief Justice Geoffrey le Scrope said, sorting out

[17] Carruthers, 10; Clanchy, 35.

customs was "the principle point of the eyre."[18] An exception should be made to Carruthers' findings in the case of this eyre, for what we see is what appears to be a well remembered story overruled in favor of recent documentation, overturning the theory that the distant past was a dependable source of authority. Yet simultaneously the situation illustrates what Carruthers calls the complex "matrix" of human perception and the use of the past to make sense of the present.[19]

In medieval England, the term "murder" was used not as it is today to describe homicide with malice aforethought, but rather as a category of crimes for which a monetary fine could be levied. Because a judgment of murder necessarily preceded the murder fine, a financial concern, the definition of murder is discussed in the *Dialogue*. Fitz Nigel writes that "murder, strictly speaking, is the concealed death of a man at the hands of an unknown slayer. For 'murder' means 'hidden' or 'secret.'"[20] This was the original definition of murder that predated the Norman Conquest.[21] He continues, writing that "in the period immediately following the Conquest what were left of the conquered English lay in ambush for the suspected and hated Normans and murdered them secretly in woods and unfrequented places as opportunity offered."[22] The master explained that presentment of Englishry was developed in order to ensure that the secret killings of Norman settlers by native English people would not go unpunished. If the killer him- or herself was not punished, the community that allowed the slayer to escape would be. While describing presentment of Englishry, the writer of the *Dialogue* conveys a tone of

[18] *Northamptonshire,* 21.
[19] Carruthers, 193.
[20] *Dialogus*, 52.
[21] See Bruce R. O'Brien, "From Mordor to Murdrum: The Preconquest Origin and Norman Revival of the Murder Fine" *Speculum*, vol. 71, no. 2 (April 1996) 321-357. O'Brien argues that the murder fine was first instituted by Cnut and that *mordor* referred to "secret" homicide only very rarely, as opposed to what Fitz Nigel contended.
[22] *Dialogus*, 52.

objective disinterest, indicating that determining one's Englishry had become a matter of bureaucratic routine, or, he attempted to portray that it had.

The *Dialogue* is evidence both of the change in ethnic relations since the Conquest and of the acute consciousness of these changes. The clever yet naïve, "painstaking" student hears his master's description of the murder fine and asks, "Does the secret death of an Englishman, like that of a Norman, give rise to a murder fine?" This question points to the argument for ethnic equality under the law, to which the master responds by acknowledging this former prejudice against the native English. The master explains that originally, only a Norman could be murdered, "as I have told you," but, "nowadays, when English and Normans live close together and marry and give in marriage to each other, the nations are so mixed that it can scarcely be decided (I mean in the case of freemen) who is of English birth and who of Norman … For that reason whoever is found slain nowadays, the murder-fine is exacted."[23] The frequency of intermarriage suggests that Englishry and Englishness had evolved a great deal during the century between the Conquest and the writing of the *Dialogue*. The master of the Exchequer states that owing to intermarriage, it is impossible to distinguish between those of English and those of Norman descent and so the murder fine existed to protect all subjects against homicide, regardless of ethnicity, even though murder was still judged according to failed presentment of "Englishry"—a concept defunct in practice.

The Norman invaders of 1066 were mostly members of the aristocracy. Their English counterparts were deposed upon the success of the Conquest, creating a new upper class almost entirely consisting of Normans and, occasionally, their English wives.

[23] Ibid., 53. Bondsmen or were long considered to have been English by their social superiors, but is unclear that they recognized themselves as English. They were more likely to identify with their local community or county. See Thomas, 27-8.

A distinction was created that equated the upper class with Norman ancestry and the lower classes with English ancestry.[24] Gradually, English nobility that had not been jailed or killed began to marry back into their original standing, and after approximately a century and a quarter the nobility identified themselves as English.[25] The term "presentment of Englishry" was imbued with class distinction even though it was not enforced in such a way as to protect members of the upper class from those of the lower class. That the royal administration continued to use the phrase "presentment of Englishry" to bring about a judgment of murder may indicate a desire to perpetuate feelings of class difference and inferiority.

The *Dialogue* does not use the term "presentment of Englishry" to describe the process of finding a judgment of murder even though this is precisely what the master described. The phrase "presentment of Englishry" was ubiquitous after the *Dialogue* was composed—by the early thirteenth century at the latest—as seen in the thirteenth-century eyres. The *Dialogue* redefines murder so that it no longer relates simply to secret homicide but specifically to homicide carried out by Englishmen, which was almost always secret soon after the invasion, and, as the master explained, specifically against Normans. Therefore, whenever a slain person was found he or she was assumed to be Norman unless proven to be English by presentation of English kin before the coroner or court. It would have been understandable if the English family was not especially eager to expose themselves to a court of Norman rulers. Under this new interpretation of murder, the Norman settlers were protected and the English were theoretically allowed to slay one another without justice being served. The result would be that the hundred in

[24] Thomas, 102.
[25] Ibid., 101-4.

which the slain Norman was found would pay between £36 and £44 in silver, "according to the locality of the murder and the commonness of the crime," a portion of which went to the victim's family.[26] The purpose of this fine was said to be "for the security of travellers and to induce all men to make haste to punish such a crime or to deliver up to judgment the man by whose fault so great a loss injured the whole neighbourhood."[27]

The student's question about the "secret death of an Englishman" shows that people in the late twelfth century questioned the relevance of Englishry in criminal law, and the master admits that one's Englishry was indeed irrelevant to determining the actuality of secret homicide. Nevertheless the phrase was used into the fourteenth century despite the irrelevance of one's ethnicity. The master of the Exchequer does not mention the monetary aspects of the practice of presenting Englishry or the murder fine, but emphasizes aspects of communal safety and justice. While the office of the Exchequer regarded homicide as a grievous matter and the threat of the murder fine was used to encourage the capture and punishment of criminals and promote peace, it was also used to increase the weight of the Crown's purse, hence its discussion among the responsibilities and aspects of the office of the Exchequer.

The practice of presentment of Englishry in English life and law cuts across many dimensions of historical inquiry including crime, law, memory, and ethnicity, and the best place for its discussion has not been clear. In his survey of homicide in thirteenth-century England, James Buchanan Given states very early on that Englishry is unrelated to the study of homicide, and so chooses not to discuss it further. He recognizes the

[26] *Dialogus*, 52-3. The hundred was a subdivision of the county of varying definitions. Stubbs found that in some instances it was an area of land which produced 100 warriors (Stubbs, *Constitutional History*, i, v, 45). This suggests that it was a relatively large community.
[27] Ibid., 53.

ubiquity of the murder fine in the eyre rolls and states that it "will not be on any concern in this essay." He continues, "The murdrum fine, an invention of William the Conqueror, was levied on an entire hundred whenever a dead body was discovered and it could not be proven that the deceased was of Anglo-Saxon as opposed to Norman ancestry. By the thirteenth century what tensions had existed between the Norman conquerors and the Anglo-Saxon conquered had disappeared, and the murdrum fine had simply become a way of extorting money from the countryside."[28] Presentment of Englishry and the murder fine do extend beyond homicide in many important ways. While the practice of presenting Englishry was not likely to affect whether or not a person chose (or happened) to commit homicide in the thirteenth century, it is not the case that tensions between those of English and those of Norman ancestry had completely disappeared, though they had changed.[29] Presentment of Englishry and the murder fine had many issues associated with them that would complicate a study focused on homicide.

It should also be noted that many sources indicate that the murder fine was not invented by William the Conqueror, as Given states, but existed long before. Of these, the most obvious is *Bracton*, the name given to a professional legal text book composed by the royal judge Henricus de Bractona in the mid-thirteenth century, which states that the murder fine was implemented under the reign of Cnut.[30] This claim, however, could

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[28] James Buchanan Given, *Society and Homicide in Thirteenth-Century England*. (Stanford, California: Stanford University Press, 1977) 10.

[29] Though the tensions between those of English and those of Norman descent may have dissipated by the thirteenth century, the tension between conquerors and conquered had not entirely followed suit, as evidenced by the continuation of local customs and a general distaste for the "common law" in the various counties. The very use of the word "Englishry" in law is further evidence that even if ethnic difference did not exist among the people of England, it did exist in the law, which was both dictated and was dictated by the culture of the kingdom.

[30] "The reason for the devising of murder-fines was this: in the days of Cnut, king of the Danes, when at the prayer of the English barons he sent his army back to Denmark after he had conquered and pacified England, the barons of England offered themselves as sureties to the said King Cnut that, whatever the

be an attempt to legitimize presentment of Englishry and the resulting fine by giving it a history. That being said, it is not unlikely that the Danes did use a race-specific murder fine to raise money and keep peace.[31] If Given has evidence that the murder fine was introduced by William after the conquest of England, he does not provide it. It should also be mentioned that it is not entirely clear that tensions between native English and Normans had entirely disappeared by the thirteenth century; as the master explained in the *Dialogue*, despite regular intermarriage, the lower class was still considered outside (and thus beneath) this new amalgamated race and due to immigration of Norman nobles to England, most English people were associated with this lower class. Even if tensions between individuals on a daily basis had disappeared, the tension of what it meant to be English or Norman had not and may have even been perpetuated by the very phrase in question.

Lastly, in his brief mention of presentment of Englishry, Given states more than once that the murder fine was nothing more than a way for the Crown to shake money from distant pockets of the country. At first this is a tempting conclusion, if for no other reason than that it is straightforward. However, it is rare that something so large, pervasive, contentious and mutable could ever be so simple. Presentment of Englishry began with the intention of protecting Norman settlers and outlived its purpose by over a century. In order to sustain this lasting influence, presentment of Englishry had to take on new meanings and uses. Additionally, the ways in which it was disputed in the early

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force the king kept with him in England they would have firm peace in all things so that, if anyone of the English should slay any of the men whom the king kept with him and if that man could not make his defense against the charge by the judgment of God, that is, by water or iron, justice would be done upon him. If he fled away and could not be arrested they would pay on his behalf sixty-six marks, to be collected in the vill where he was slain, because the inhabitants did not produce the slayer. And if the marks could not be collected in that vill because of its poverty, they would be collected in the hundred for deposit in the king's treasury" (*Bracton*, 379).

[31] O'Brien, 338-9.

fourteenth-century eyres show that the memory of its origin and its current usage remained contentious. While money was certainly the defining aspect of the murder fine, the nuances of the use of Englishry are worth a closer look, particularly regarding the unification of the kingdom and the role of memory in the emerging common law.

To this end, we will first investigate the eyre of Kent between the years 1313 and 1314 at which a contentious debate took place over whether Englishry was to be presented in the eyre, and an intriguing appeal to history was made by the country. The *Anglo-Saxon Chronicle* and a handful of charters which were delivered to the area in and surrounding Kent regarding the murder fine between the Conquest and the eyre will shed light on the basis of the story conjured by the county of Kent. This background is essential for understanding the evolution of the memory of presentment of Englishry.

An examination of attitudes toward and implementation of presentment of Englishry and the murder fine in eyres of other counties in the early thirteenth century will clarify attitudes toward these practices in the early fourteenth century by showing how uneven the application of presentment of Englishry was and how greatly the county's unique history depended on this application. One hundred years later, the people of Kent would form their argument against presentment of Englishry by capitalizing on variations in history and implementation such as these. One of the earliest eyres of which records survive is that of Yorkshire in 1218. Next, the eyres of Worcestershire, Gloucestershire, Warwickshire and Staffordshire, 1221/22, will be evaluated. In contrast to these earlier eyres, the eyre of London of 1321 and the eyre of Northamptonshire of 1329/30 will be discussed. This course shall show the importance of ethnicity in the phrase "presentment of Englishry" in addition to the less loaded

attributes and functions the phrase took on. The problem of presentment of Englishry in late medieval society involved memory as well as finance, and until it was abolished, hindered the unification of ethnicities, laws, and power.

CHAPTER 2
The Eyre of Kent, 1313

Basic familiarity with process of the eyre of Kent and the people involved is vital to understanding the debate over presentment of Englishry in the eyre, owing to the conversational character of the debate. The process shows that the royal justices made an effort to be systematic and fair, even at the expense of what was said to be a 250-year-old customary privilege. Other people, namely Sir Edmund Passele and those he represented in the county, had good reason to believe that an appeal to history had a place in the eyre and that their custom of not presenting Englishry should be upheld on account of the facts of their story. The conflicting viewpoints of the justices and the people of Kent resulted in a drawn-out debate that dominated the opening of the eyre, all over a single custom.

After the personnel and the debate are laid out, charters delivered to locations in and around Kent preceding the eyre in 1313 will be analyzed for the purpose of illustrating how Passele might have constructed his argument, whether knowingly or unknowingly. For example, the charters indicate that there was a history of certain locations within Kent receiving special royal exemption from the murder fine which could easily have been linked to presentment of Englishry, which was required for the murder fine to be exacted. While charters such as these may have influenced Passele, and indeed the justices who sought to level the law by eliminating customs, the charters neither prove that Passele's narrative was factually true nor that Englishry was not presented in Kent. They do, however, prove that Passele and the people of Kent were heir to a tradition of variation in terms of custom and law, a tradition that was gradually coming to an end.

Administration

On July 1, 1313 five royally appointed justices arrived at the great hall of the Palace of Canterbury in the county of Kent. Led by Justice Sir Hervey Stanton, they were Sir William Ormesby, Sir Henry Spigurnel, Sir John Mutford and Sir William Goldington, each of whom had a career in royal administration previous to and following the eyre in Kent. With the exception of Justice Ormesby, who replaced John Wogan before the start of the eyre, the justices were appointed to the eyre just two days after the death of Robert Winchelsea, the Archbishop of Canterbury. An annalist of St. Paul's linked the events at the time, and there can be no doubt that the summoning of the eyre was a result of King Edward's attention being turned in Kent's direction.[32] Although according to the *Mirror of Justices*, an anonymous law text composed in the early 1290s, eyres were to take place in each county every seventh year, the most recent eyre in Kent had been over twenty years earlier.[33]

The justices in eyre had experience working in a wide variety of capacities and locations, exposing them to many varieties of custom, and they brought these experiences to Kent. The justices in charge of orchestrating the eyre came from wealthy and well-educated families. Justice Stanton, the man with the power either to confirm or overrule the customs of Kent, came from a long honored family. He was a clerk, which is said to have informed his opinions on matters of the separation of common and ecclesiastical law, the idea of *bona conscience* and the sanctity of human life, but he spent the majority

[32] David Crook, "The Later Eyres," *The English Historical Review* 97, 383 (April 1982) 265.
[33] *Mirror of Justices*, 145; *Kent*, xxxvi. I have chosen to refer to the *Mirror of Justices* in this chapter because it was composed shortly before the eyre in Kent and because it was informed by the dismissal of all royal judges by Edward I in 1289. When the anonymous writer put together the *Mirror*, he made an effort to glorify the past and encourage lawyers to look to the past for information as well as inspiration. See Musson, 173. The justices hold the county responsible for all events that had occurred in the last twenty-five years. *Kent*, 40.

of his career in the service of the king.[34] After serving as a Justice of the Common Bench from 1306–14 he was appointed Chief Justice of the King's Bench in 1323 before being superceded by Geoffrey le Scrope less than one year later. During this time he also served in the Exchequer and was Chancellor of the Exchequer from 1316–20 and 1324–26. He held canonries and rectories throughout England, and was the founder of Michaelhouse, now part of Trinity College, Cambridge. His body rests in St. Michael's Church, there.[35] He was well versed in the law and highly respected, and it might be thought that his position of power informed his desire to impose the murder fine through enforcing presentment of Englishry, since he worked for the apparatus the gained the most from collecting the fine: the royal administration.

The remaining justices followed similar careers in law and administration though perhaps not as illustrious. Justice Ormesby acted as an itinerant justice in the north country towards the end of the reign of Edward I, was appointed Justice of the Common Bench in 1296, and also served in Scotland. He was known for his rigorous enforcement of fealty and his talent for extorting penalties from those who refused to pledge fealty.[36] Justice Spigurnel acted as an itinerant justice for many years and is remembered in a political song as a "gent de cruelete," a trait sometimes apparent in his occasional sarcasm.[37] Of him, little else is known. Justice Mutford served in various judicial commissions including an assignment in Ireland, and Justice Goldington was appointed Justice of the Assizes of Kent, Sussex and Surrey.

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[34] *London*, xxxix.
[35] Ibid., xxxviii-xxxix and *Kent,* xxiv-xxv.
[36] *Kent*, xxv.
[37] Ibid. Upon learning that the bailiff who allowed for the illegal trial and execution of a horse thief was dead, Spigurnel exclaimed, "And a happy thing for him that he is!" *Kent*, 129.

In addition to the royally appointed justices, there was one other figure prominent in the administration of the eyre: Sir Edmund Passele, an advocate who held land in Sussex. He is introduced by W. C. Bolland, editor of the eyre rolls, as a knight of Kent.[38] Passele represented the concerns and interests of the people of Kent, often in opposition to the justices, throughout the eyre. His career began as early as 1288, and so by the 1313 eyre he had acquired a great deal of knowledge and experience in legal matters. In 1309 he had taken an oath to defend the king's interests in the courts, in addition to his commitment to the people he represented.[39] In 1310 Passele began attending parliaments where he witnessed law making from another vantage point, and was appointed Baron of the Exchequer in 1323, an office he held until his death in 1327.[40] After the eyre in Kent he worked in a very different capacity in the eyre of London in 1321: not opposed to Justice Stanton, but alongside. Though Passele and Justice Stanton disagreed on many points in the unfolding of the eyre of Kent (and, as we shall see, in that of London), both men did strive to represent the interests of the king and the kingdom.[41]

The people who participated in the administration of the eyre directly influenced the manner in which the discussion of Englishry unfolded. It was not a matter of royal justices overruling the complaints of common people with strange customs, but people of similarly high status, all well-educated, debating a subject with a complex history. The recorded dialogues of the eyre (presented much like the *Dialogue of the Exchequer*), while not verbatim, certainly reflect what must often have been lively debate. While it

[38] Ibid., xxxv.
[39] *London*, xli.
[40] Ibid., xli.
[41] Edward Foss outlined the careers of many of many judges and justices from 1066 to 1864. See *The Judges of England; with sketches of their lives*, vol. iii. (London: Longman, Brown, Green, and Longmans, 1851). For more recent biographies, see the Oxford Dictionary of National Biography, available online at *http://www.oxforddnb.com*, last visited April 15, 2007.

should be stated that Passele was indeed intelligent and learned, the unfolding of the eyre should not only be appreciated for the influence of a few individuals, but be equally seen as a manifestation of societal momentum. The justices came to Kent expecting to debate customs, while the people of the county, who had not seen an eyre for a great many years, did not expect their customs to be challenged.

The people who administered justice in Kent when the royal justices were not present were also integral to the eyre, and it was these people who were responsible for passing down local customs. Passele himself was not from Kent, and so would have relied on the word of local officials and leaders in the county. Of central importance are the coroners, without whom there could be no eyre. The *Mirror of Justices* describes the responsibilities of both the coroners general and the coroners special.[42] Coroners special work for a specific franchise, that is, are more or less privately employed. The coroners who were called upon during the eyre are the coroners general, employed by the county. The *Mirror of Justices* states that historically, coroners were charged with keeping the pleas of the Crown, that is, enrolling the details of all criminal activity that occurred in the county. By 1285 their duty had become highly specialized, typifying the growth of administrative bureaucracy throughout the realm during this period and on into the fourteenth century. These rolls were for the immediate use of the community, but also were to be kept safe for the royal justices' scrutiny.

If Englishry were customarily presented, it would have been the coroner's duty to organize the presentment and record the judgment. Coroners' primary duties were to view the bodies of the recently deceased and determine the cause of death with the help of trustworthy people from the community. They were to convene a panel of a dozen

[42] *Mirror of Justices*, 29.

individuals in accordance with the status of the deceased: "the better folk by themselves, the mean folk by themselves, and the small folk by themselves."[43] It was of utmost importance that the coroner record the names of all involved: those who buried the body; those the coroner had conferred with; those who did not appear though summoned; the name of the deceased and where he or she came from; and, if the death was determined to be by the felonious act of another, the names of the killers, where they were from and where they went after the death. He was also to record information as to the condition of the body when found, so that, if it were advanced in decay as to be beyond determination of cause of death, those responsible could be punished "at the coming of the king or his justices in eyre to those parts."[44] If the person was determined to have died by the felonious act of another, the coroner was to record the names of the principals and accessories, whether the hue and cry was raised, and who found the body. Also to be recorded were the deceased's kinfolk and four nearest neighbors. In Kent, the coroners did not record whether or not Englishry was presented at the time of the homicide; Englishry had not customarily been presented between the eyre in 1313 and the previous eyre.

The Importance of Written Records

The debate over presentment of Englishry took place at the outset of the eyre as the justices prepared to examine the coroners' rolls. The eyre began smoothly enough, but the eyre's very existence was unusual for both the people of Kent and the justices, signaling that problems would inevitably develop. Upon the justices' arrival, the eyre

[43] Ibid., 30.
[44] Ibid.

began immediately and proceeded systematically. A county was to be informed of an impending eyre forty days prior to its scheduled commencement.[45] Judging by the swiftness with which most of the people in Kent responded to the arrival of the justices, it is likely that they had indeed received advance notice. However, both the Abbot of Battle and the Bishop of Rochester arrived to defend their franchises a day late, and thus were under the judgment of the justices and would have to wait to be attended to.[46] The justices greeted the people first in French and then in English. Much of the record itself is written in Law French, though interspersed with Latin words and phrases. Other sections of the record are predominantly written in Latin, namely the articles (regulations) of the eyre, and much of the pleas of the Crown, which dealt with criminal cases.[47] However, it is the reported dialogue which is of most concern. It is there that conflicts of interest play out, particularly concerning local customs, namely presentment of Englishry.

From the outset of the eyre a power balance is established. After commanding the sheriff to summon all of the leading men of the county, "the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights and all freeholders," Justice Stanton commanded the sheriff to surrender his staff of office, which he did. Here the reporter writes, "And from this you shall note that the sheriff is removable at the will of the Justices in Eyre."[48] The sheriff's staff was restored after he swore an oath of obedience in the name of the king, and each of his clerks underwent the same oath. Next the sheriff was ordered to collect the list of people who had served as sheriffs and coroners since the last eyre.

[45] Ibid., 145.
[46] *Kent*, 9-10.
[47] Ibid., 28-46, 59 ff.
[48] Ibid., 4.

Stanton warned that if this was not properly carried out, those responsible for the gaps of information would have their land seized and given to the king, demonstrating both his power and the importance of accuracy and efficiency of information transference.

After consulting with the sheriff, the justices summoned the coroners and ordered them to produce the rolls that they had been keeping since the last eyre. The coroners were also warned that they would have their land and chattels removed and given to the king if they did not produce their rolls. The justices encountered some delay in acquiring the coroners' rolls due to the deaths of some coroners since the last eyre. The descendents of the deceased coroners become responsible for the care of their rolls, but in cases where the deceased coroners left no heir, the county, which had elected the coroner, became responsible for accurately recounting the incidents that had passed since the last eyre—a task that was all but impossible—and was subject to judgment for any errors. While this seems and surely was terribly inefficient, relying on the memory of the county was the only way to compensate for the lost rolls. One such dilemma regarding the gathering of the coroners' rolls involved the widow of a coroner whom Justice Stanton ordered to be arrested and her lands and chattels seized. Fortunately this proposition was put aside on the recommendation of the sergeants who reminded him that she had not been assigned to appear by public proclamation as the others had.[49]

The widow's immediate arrest indicates the importance of the written record at the outset of the eyre at a time when the common law was beginning to be defined. Furthermore, when Justice Stanton asked for any kind of evidence, he asked for it to be written down. The coroners' rolls were naturally the most important written record in the eyre because without them the justices would have no record of the crimes that had been

[49] Ibid., 24.

committed. However, there is a small amount of flexibility in many aspects of the proceedings, exemplified by the absence of one coroner's rolls that resulted in the county bearing responsibility for the matters which would have been recorded in the rolls. It is with this possibility of flexibility that the controversy between the justices and the people of Kent over whether Englishry ought to be presented in the eyre begins.

The Debate Regarding Englishry

How did Passele and the people of Kent come to believe that Englishry was not customarily presented in that county? When the manuscripts relating to the eyre of Kent in 1313 were published in 1910 by F. W. Maitland, L. W. V. Harcourt and W. C. Bolland, the existence of this apparent flexibility was regarded as a curiosity with no apparent explanation. Ought Englishry to be presented or ought it not? In his introduction to the edition, Bolland remarks that, "this is a point about which, one would think, no set of intelligent men could have been in doubt."[50] He points out that the previous eyre, in which the justices assert Englishry had been presented, though not recent, was well within the lifetime of most individuals. He is primarily intrigued by the fact that in this short span of time, "a wholly false tradition that has not a single fact to support it, a tradition which a serious inquiry would disprove at once, becomes to a whole county a matter of such certainty that they are willing, without the slightest inquiry, to stake an indefinite amount of their money—and possibly a considerable amount of their personal comfort as well—upon the truth of it."[51] As his own uncertainty proves, the logic that Passele and the people of Kent used was not simple. Lastly, Bolland asks the

[50] Ibid., xxxvi.
[51] Ibid., xxxvi-xxxvii.

reader, "is it possible that there was some good reason for their action which escapes us who marvel at it six hundred years later?"[52] Contrary to Bolland's interpretation, the tradition was not "wholly false," and there are facts that support the argument made in defense of Kent's customs regarding Englishry. Similarly, it is important to remember that the relationship between oral history and the written record was tenuous at best during this time of immense change, and that reported speech and action often cannot be taken at face-value. It was not only in Kent that such debates arose, and these debates were over subjects and concerns other than presentment of Englishry.[53] Concerns about local custom were widespread and frequent in the early fourteenth century, indicating their importance within society and law.

It is at this point that conflict arises. After gathering the coroners' rolls the next step the justices took was to have all of the customs of the county which differed from the common law laid out in writing for their analysis.[54] Passele implores Justice Stanton on behalf of the county for his understanding—the county's customs, he says, "are of such diverse kinds that a man may not bear them all in his mind, and so here we tender to you inscribed on an escrowet [a scroll] some part of these customs; and the rest of them we

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[52] Ibid., xxxvii.

[53] In one case a jury from Canterbury, in Kent, claimed that they city had the custom of infangtheif (trying thieves in a city court). The justices asked by what authority the jury claimed this right and the jury responded that that they had it by charter of the king, "They were bidden to produce the charter. And they did so. But when that same charter had been seen of the Justices there appeared in it no mention of infangtheif, etc." After this, the justices and Passele conferred, Justice Mutford saying that "the production of that charter has had great weight with us." Justice Stanton asked Passele for his thoughts, and he responded as he had regarding the presentment of Englishry, saying "you ask us by what authority the community claims this franchise, etc. Sirs, they tell you that they and their ancestors, citizens of the city of Canterbury, have had and enjoyed such franchises from all time." In the record, Justice Stanton cuts Passele off and Justice Hartlepool compares the situation with similar cases involving writs of *quo warranto* and charters. Justice Spigurnel takes Passele's side, but it is determined that the city cannot claim the right to infangtheif because they did not claim it at the beginning of the eyre. *Kent*, 130-1.

[54] As outlined in the legal text book Britton: "Let inquiry also be made of customs used in the county differing from the common law, and what they are, and if there be any repugnant to the common law, let them be prohibited, unless they have been confirmed by us or our predecessors." *Britton*, 84-5.

pray you to allow when any question concerning them shall arise, according to the testimony of all those who shall appear before you."[55] But Justice Stanton remained unmovable, and demanded that all customs be written down: "take back your escrowet," he said, "and, after full consideration of the matter, insert therein the whole of your customs."[56]

The debate regarding presentment of Englishry in the eyre of Kent was recorded four separate times. The use of so much parchment for this debate suggests that the issue was of significant importance or at least curiosity. The accounts of the debate are the same in the most important aspects, but there are interesting differences. The first recording of the debate outlines the argument and the second offers more detail, but it is the third and fourth iterations that make a clear distinction between the distant and recent past and judge the recent past superior.

The first recording of the debate set the scene for the following recordings and the eventual outcome. The conversation was first recorded in response to the justices' request on the third day of the eyre, after the men of Kent had been given time to discuss the matter of presentment of Englishry in their county. Passele defended the county against presentment of Englishry with a detailed story about the Norman Conquest. It appears as though this story was presented by Passele directly on the behalf of the people of Kent. The recorder writes that the men "went out to emparl and returned and made answer through *Esmond Passele*," and his story is regularly interspersed with "they say."[57] They say that, "such customs as they had had since before the time of William the Conqueror had ever been their custom right up to the present day," and this was

[55] *Kent*, 18.
[56] Ibid.
[57] Ibid., 12.

because of a peace made between William and the people of Kent, which granted that, "they should keep the same customs and laws after the Conquest as they had had before it." Englishry is the only such custom specified in this story, and Passele concludes, "[Englishry] had never been presented in that county previous to the Conquest and so they [the people of Kent] prayed the Justices that they would allow the customs which their customs had been since before the Conquest and ever afterward."[58] Charters dating between the Conquest and the eyre in 1313 show that while it was not whether or not Englishry was presented before the Conquest, as Passele states, it was most likely presented afterward. After listening to the county's appeal to history, the justices responded, "Sirs, we find it recorded on the rolls of the last Eyre held in this county that Englishry was presented in the Eyre in matters of felony," and conclude, "so the whole county must abide our judgment," presumably that Englishry ought to be presented as in the last eyre, by two witnesses on the father's side of the slain, and two on the mother's.

The second recording of the debate builds on the first, adding detail to make the county's story stronger and more believable, but it ends in the same fashion. When it is recorded, time has passed: it is the seventh day of the eyre and the conflict over presentment of Englishry is either not yet resolved, or, a recorder saw some benefit or necessity in entering another iteration of the story. In this recording, Justice Stanton again demands information regarding whether Englishry ought to be presented, and whether it has been in the past. Again, Passele begs for time to discuss the matter, but this time Justice Mutford intervenes by saying that they may have time to discuss other matters, but that "on the first point they ought already to have full knowledge. Englishry ought either to be presented in this county, or it ought not; and on that matter you must

[58] Ibid.

put a reply forthwith."[59] At this point Passele responded, "These good people tell you that when the Conqueror came to England all were slain in the battle save those who were in the last line, and they were the men of Kent." He goes on to explain the same felicitous consequences as before: that the Conqueror granted them the customs they had had since before the invasion, and that since, "there was no Englishry in England" before the Conquest, and therefore none in Kent, so "no Englishry ought now to be presented."[60] As in the first recording, the justices respond that they have found presentment of Englishry recorded in the rolls of the previous eyre, to be presented as described in the previous recording: by two witnesses from the father's family and two from the mother's. Because of this error made by Passele and the people of Kent, this mistaken memory, the whole county is declared to be under judgment: a potential punishment not mentioned in the first recording.[61]

The third iteration of the debate uses language which shows that presentment of Englishry was taken very seriously by the people of Kent as a legal issue. Again, Justice Stanton assures the county that their customs from all time shall be confirmed, "Willingly, so far as they are reasonable."[62] And again the men are refused time to discuss the matter of Englishry, as Bolland pointed out, the recorder notes, "it was within the knowledge of them all whether it was wont to be presented in that county or not."[63] Passele again tells the story of the Conqueror, and with minor differences in word choice, describing a "covenant" and "treaty" made between William and the people of Kent,

[59] Ibid., 19.
[60] Ibid.
[61] "Mistaken memory" was sometimes linked with a deficit in moral and intellectual character, Carruthers, 218-20. "Under judgment" is a broad term, most likely indicating in this context a "money judgment." A money judgment was nearly indistinguishable from other types of fines and was subject to immediate execution. See *Black's Law Dictionary*, ed. Bryan A. Garner (St. Paul, Minn.: West Group, 1999) 861.
[62] *Kent*, 50.
[63] Ibid., 52.

under which they were allowed to keep the laws and customs which they had enjoyed since "time immemorial."[64]

The third recording is the first place where "time immemorial" is used to describe the customs of Kent, and, vague as it may sound, it did have a very specific meaning in legal context, and one with direct effect on the events regarding Englishry in the eyre of Kent. Time immemorial was defined in 1275 by the Statute of Westminster I as the events before the coronation of King Richard I, that is, before September 3, 1189.[65] Under this statute, one did not have to provide a written document as proof of entitlement to a tract of land or other privilege, provided that one could in some way prove to have held the land or privilege since before 1189, or since "time immemorial." This alternate method of proof is undefined, allowing for the likelihood that many would not be able to prove their ownership or right. The use of this phrase may reflect an effort to promote the writing of records and create a clean slate by distancing the present time from the complexities of pre-Conquest England, as was accomplished regarding presentment of Englishry in the eyre of Kent. The effort of the justices to promote presentment of Englishry was not because they viewed it as relevant in its original sense (to protect Normans) but because it benefited the Crown monetarily. This also indicates that the justices did not have the responsibility of making or changing the law, but rather of enforcing it: presentment of Englishry was to be imposed across the kingdom, according to this approach.

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[64] Word choice was the office of the scribes, the personal clerks of the justices. They took notes during the proceedings and wrote the final rolls afterward paying close attention to things like word choice and other details. The words "covenant" and "treaty" show the importance attached to this story by hearkening back to the Bible in the former instance and to major political agreements in the latter. See Hershey, 13.
[65] Musson, 166.

The sharpest distinction between distant and recent past is made in this third iteration of the debate. The scribe interprets what the justices have said about the presentment of Englishry in the previous eyre and this time without referring to the justices, he writes, "But because it was found reported on the rolls of the last Eyre that Englishry had been presented in the case of felony by two of the blood of the slain person on the mother's side etc., therefore was the county adjudged to be in mercy [i.e., fined]."[66] This gradual compilation of various pieces of the debate suggests that this debate was carried on more than one time and did take a number of conversations for the decision of the justices to be accepted by the county. It also shows a clear distinction between the distant and recent past: the distant past being the story of the Conquest and the recent past being the recordings from the previous eyre.

The final account of the story is the most concise of the four. This time, the reporter writes that a proclamation was made that all the knights and stewards of the county come to the bar to answer three questions. The first question concerned presentment of Englishry and the second and third concerned the outlawry, surrender and acquittal of accused criminals. Unlike in the other three recordings, in the fourth the reporter writes that the knights answered as to Englishry without pause. They spoke, with no mention of Passele, on the topic of the "ancient customs" of the county which were practiced before the coming of William the Conqueror, including, of course, their exemption from presentment of Englishry. As in the previous accounts, the reporter immediately writes that Englishry had nevertheless been presented in the previous eyre, and that the county was in mercy.[67]

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[66] *Kent*, 52.
[67] Ibid., 57.

There is a sense of pride in these stories. The people of Kent are glorified in the story as first as having played a memorable role in defending the kingdom against the Norman invaders and second for receiving special attention from King William I. The people of the county are portrayed as uniformly identifying as English from the time of the Conquest to the time of the eyre, though this certainly would not have been the case given the influx of Norman nobility into England following the Conquest. People in Kent during the early fourteenth century most likely uniformly identified as English due to intermarriage and the usurpation of "English" identity by the Norman invaders beginning with William I, and gradual assimilation thereafter; the story told by Passele describes the Kentish people of the late eleventh century as loyal to the English but amicable to the Normans as well. They are portrayed as a commendable people who should not have to endure the injustice of presentment of Englishry: because they represented proof that one's Englishry was not something to be ashamed of. The people of Kent intended to use the term "Englishry" to highlight the injustice of the practice, but it was more likely the imposition of the murder fine that presentment of Englishry brought about that they were most interested in avoiding.

The changing role of memory in public life is central to the way the argument over presentment of Englishry was conducted. In response to the supplications of Passele and the people of Kent, the justices assured the county that the king in no way desired to strip them of their customs.[68] However, because the custom of not presenting Englishry (reportedly granted by William I) was not laid out in a document of any kind, written or otherwise, it appears that King Edward II wished to protect only those customs which were backed by a record, which was to say that he did not in fact wish to maintain local

[68] Ibid., 11.

customs. It was important for the king to gain control over the many and distant counties and the lords who ruled over them, but it was imperative that he do it without appearing excessively dictatorial or unfair, as in the *quo warranto* proceedings.[69] The Crown attempted to relegate pertinent local customs the obsolete distant memory, just as the law of "time immemorial" sought to nullify old customs that could not be affirmed in some acceptable way. To Stanton and the other royal justices, the only acceptable form of proof was a written document. The authority of a written document served as a way for the Crown to appear to be concerned about established local customs, while simultaneously unifying the law of the kingdom under the common law and the royal bureaucratic system. In this case, the record of the previous eyre held more authority than a story said to be nearly 250 years old.[70]

Though it may have seemed obvious to the justices that Englishry ought to be presented, the people of Kent had good reason to dispute it. First of all, failure to present Englishry could result in a hefty fine. According to the law, a slain person was for all intents and purposes Norman until proven English, thus the county was essentially guilty of allowing the felonious homicide of a Norman (by allowing the killer to escape) unless, of course, the slain was proven English, which, as we shall see, was never done in this

[69] The *quo warranto* proceedings, instigated in 1278 by Edward I to find "by what warrant" nobles held their franchises, can be summed up with the story of the Earl Warenne, who placed an "ancient and rusty sword" said to be from the Norman Conquest at the feet of the royal justices saying, "this is my warrant!" If the landholder did not produce a suitable warrant, his or her lands were immediately seized. *The Chronicle of Walter of Guisborough*, ed. H. Rothwell, Camden Society 3rd series lxxxix (1957) 216, qtd in Clanchy, 36.

[70] There is no proof that Passele's story was an account of actual occurrences, and so it cannot be stated that Stanton's decision overruled a 250-year-old tradition. However, it does not matter whether Passele's story was fact or fabrication, what matters is that it was said to be true and in a slightly earlier period would have very likely have been accepted as such.

Kentish eyre.[71] It is possible that the county was indeed aware that Englishry had been presented in the previous eyre, and that they were attempting retroactively to reject the validity of this practice in the eyre of 1313.[72]

Whether or not Englishry was to be presented in large part depended on how the justices chose to unify the legal system. As analysis of other fourteenth-century eyres will show, it was unclear whether the new legal system should use presentment of Englishry in order to determine murder, but it was clear that Kent was not to be allowed exemption based on the supposed history of the county's customs. The debate regarding presentment of Englishry illustrates the difficulty of defining uniformity. The definition of Englishry in the eyre takes the form of a separate *nota*. This note is presented chronologically before the second, third and fourth reports of the debate between the men of Kent and the royal justices; perhaps as evidence that the definition of Englishry in the county was clear, but that it was not accepted by the people of the county. While there are numerous and often redundant references to felony and outlawry, there is no mention of Englishry in the either the old or new list of the articles of the eyre.[73] Also in the articles are copious citations of important statutes, the Statute of Marlborough (1267) and the Statutes of Westminster I and II (1275 and 1285), though the references are known to be corrupt and at times misinformed.[74] Presentment of Englishry and the murder fine may not have been mentioned in these articles because they were not conceived of as permanent fixtures in the law. However, that they were not listed among the official articles may have perpetuated their status as impermanent practices. This also indicates

[71] "Whether the slain man is known or unknown he is called a Frenchman, unless Englishry, that is, that he is an Englishman, is presented before the justices and proved by his kinsmen." *Bracton*, 379.
[72] Musson, 176.
[73] *Kent*, 28-46.
[74] Ibid., 45.

that the problem of whether Englishry ought to be presented was particular to the people of the county and was not intended to be one of the justices' regular concerns; it was not included among the royal responsibilities and eyre protocol, thus creating a space for debate by its not being set in stone.

The definition of presentment of Englishry at the outset of the eyre of Kent in 1313 fundamentally differed from the definition offered in the *Dialogue of the Exchequer*. Procedure for presentment of Englishry (when it was presented) was certainly not uniform from one county to the next, but did not vary drastically. In the eyre of Kent, the *nota* defining presentment of Englishry begins, "Note that Englishry is this" and continues,

> When a man is killed two witnesses of his father's blood and two of his mother's blood go before the Coroner according to the custom of the country and prove that the dead man was of their blood; and this in English is called Englishry. Murder it is where no proof of blood is given, nor misadventure found. And note that the rule is that where Englishry is not presented, judgment is of murder.[75]

It is important to notice that Englishry is defined in Kent as pertaining specifically to slain men, and that class status is not mentioned. It does not state that the presenters must prove that they are of English ancestry, but simply that they were the family of the slain. Under this definition, a community would be fined if a slain man was found on their land and had insufficient family members there who were able to report to the coroner.

[75] Ibid., 13.

The Eyre in Action

Englishry was debated in the eyre of Kent because the society of the 1313 eyre had considerably different needs from those of the society conquered by the Norman invaders in 1066. By 1313, presentment of Englishry was no longer restricted to deaths of members of the nobility. Though it was never explicitly defined as being restricted in this way, it was designed to protect William's Norman followers, the majority of whom were nobles, from brutal attacks by restless or vengeful Englishmen. Moreover, the *Dialogue of the Exchequer* implies that it was not applied to the lowest class of un-free men. The variety of trades represented in the eyre is evidence of the involvement of all classes, including the peasantry, in cases requiring presentment of Englishry.[76] The purpose of presentment of Englishry remained the same in some ways—to punish communities for not catching killers—but it had also changed considerably.

Since the publication of the eyre rolls in the early twentieth century, historians have speculated about the origins of presentment of Englishry and studied how it was or was not enforced in the thirteenth-century eyres. In 1916 William Renwick Riddell published a short article regarding the recently published editions of the eyre rolls by Maitland and others.[77] He offered a general overview of the records, which "introduce us at once into the mediaeval atmosphere," and then went on to write, "Now comes that which looks to us moderns perhaps the most curious of all the proceedings—'Englischeria falso presentata est.'"[78] Riddell explained Englishry in terms of a murder

[76] Bolland lists 131 of the trades represented in the eyre, noting that some (most notably, "Dadalere," or Dawdler) are likely to be nicknames. A peasant may be named as a "Cotyere," one who lives in a cot and was very poor or ill. Women are occasionally referred to according to trade, as in "Rydelstere," a female riddler (corn sifter) (*Kent*, xci-xciii).
[77] William Renwick Riddell, "The Crown Side of the 'Eyre' in the Early Part of the Thirteenth Century" *Journal of the American Institute of Criminal Law and Criminology* 7, 4 (November 1916) 495-504.
[78] Ibid., 495, 498.

fine that predated the Norman Conquest, and defined murder as secret homicide, "in the sense of a killing of a human being without someone being brought to justice as its perpetrator."[79] This law, Riddell said, originated with the Danes and was imposed regardless of the ethnic identity of the slain. This changed, however, under the Normans, "who were not so impartial," or were perhaps, "more lenient and charitable to the bloodthirsty Saxon."[80] That is to say, the murder fine was not *imposed* on the various communities as a foreign concept, but rather *limited* it to the deaths of Normans, therefore in theory lessening the financial burden of the community by not fining for the death of a Saxon. Bruce O'Brien has confirmed this theory that the murder fine was "Anglicized by sleight of hand."[81] Riddell's theory that the Danes imposed the murder fine equally to all peoples is neither the only theory nor the most compelling. It is also certainly not how presentment of Englishry was explained as coming into existence in the early fourteenth century. Passele and the men of Kent argued that presentment of Englishry did not exist in Kent before the Conquest. It is apparent that a distinction was being made between presentment of Englishry and the preexisting murder fine, but it is not clear whether the preexisting murder fine (that predating the Norman Conquest) was accepted or remembered in 1313, or, if it was lumped together with presentment of Englishry. Because no distinction was verbalized (or recorded) during the opening of the eyre, whereas such distinctions are made in earlier law books, it is likely that presentment of Englishry and the murder fine were inseparable to the people involved in the eyre in 1313—the murder fine could not be exacted unless the Englishry of the slain had not been presented.

[79] Ibid., 498.
[80] Ibid.
[81] O'Brien, 324.

Riddell pointed to clear differentiations between various problems arising in the rolls regarding the presentment of Englishry: "Englischeria presentata est," "Englischeria falso presentata est," or "Englischeria non racionabiliter presentata est," and "Englischeria non presentata est."[82] "Englishry is presented" signals that the slain person was suitably proven to be of English ancestry according to the county's custom and so the homicide was not deemed a murder and a fine not exacted. Englishry might be falsely presented in a variety of ways as seen in the thirteenth-century eyres Riddell studied including most commonly a failed attempt of presentment resulting in a judgment of murder and a fine. "Englishry is not presented," however, is very different than "Englishry is falsely presented" because, as Riddell points out, it does not signal a failed attempt of presentment, but rather, no attempt.[83]

Though the justices determined that Englishry was to be presented in the eyre of Kent in 1313, every case involving presentment was described as not presented, "Englisheria non presentata est." This indicates that although it was determined by Justice Stanton and his fellow justices that Englishry ought to be presented by recent precedent of the previous eyre, it was not actually presented at all and must not have been recorded by the coroners before the coming of the eyre. Still, it persisted in the roll as a necessary response to cases of homicide, a fixture in the procedure. This procedure may have endured for a number of reasons, one of which was class related.

The way presentment of Englishry was actually implemented in the eyre reflects the same unease with which it was discussed in the opening proceedings. The first case of homicide recorded in the rolls of the eyre illustrates how confusing the process could

[82] Riddell, 499.
[83] Ibid.

be. It involved the death of an unknown man by an unknown perpetrator. It turned out, however, that one man and his wife were in fact strongly suspected of the killing, and were tried. Furthermore, the supposedly slain man, whose body the first finder and four neighbors supposedly discovered, turned out to be named William the Northerner, and was not dead after all but was "actually alive and within the county."[84] The accused man and his wife were acquitted.[85] It is possible that the "slain man" truly was unknown. Often the term "unknown" was used to signal that a person was an outsider to the community in which they committed the crime.[86] Regardless, it was recorded that "Englishry was not presented," and so the hundred was in judgment for murder until it was revealed that William had not been killed. This case shows how cursorily failure to present Englishry and the judgment of murder were determined and recorded. It was simply inferred by the clerk that Englishry was not presented.

Presentment of Englishry followed every homicide upon which the culprit had fled. The note defines Englishry as the procedure to follow the death of a man (*un hommee*), and indeed, of the fifteen cases involving presentment of Englishry in the eyre of Kent, only one is on the behalf of a woman. It is worth mentioning that far fewer women than men were killed in the years leading up to the eyre, resulting in more slain men being subject to presentment of Englishry.[87] It is also possible that not every death of a woman was recorded.[88] The solitary case involving the death of a woman, Alice the

[84] *Kent*, 60.
[85] Ibid., 60-1.
[86] Given, 87.
[87] Ibid., 48.
[88] Women were not equal to men under the law. Women ordinarily might only bring cases to court under three circumstances: their husband being killed and "died within her arms," the death of her child in her womb, and for rape (*Kent*, 116). Likewise women could not be outlawed, but were instead waived, for "she is not sworn to the law yet to the peace." The same reasoning applied to boys under the age of twelve and so not yet in Frankpledge (*Kent*, 106, 108). Justice Spigurnel speaks of having overseen the trial of an

daughter of Dionysius Wheen, does not stand out in any way from the multitude of similar cases involving the deaths of men: a known intruder, a vagrant with no chattels named Solomon Roys of Ickham, came into her house and beat her "upon the belly," so that she died instantly.[89] He fled, was suspected, and was to be exacted and outlawed. We know nothing of Alice except that she may have been young and unmarried, and was found dead by her sister Matilda, also named as the daughter of Dionysius. As always, "Englishry was not presented; and so judgment of murder against the hundred." The issue was not whether Alice was Norman or English, it was that her killer had escaped. Alice is the only woman recorded as found slain in the eyre, with the exception of one suicide and one infanticide.

Presentment of Englishry in the eyre is more clearly seen in the cases of slain men. In Kent, fifty men were either found dead or said to have been feloniously slain, ten men were said to have died by misadventure, and one by suicide. However, of the fifty slain men, presentment of Englishry was mentioned in only fourteen of the cases, roughly thirty percent, and in all of these cases, Englishry was said not to have been presented. This indicates that in approximately thirty percent of all homicides the killer fled and was unable to be captured by the hundred at the time that the coroner recorded the homicide. Since in all of these cases "Englishry was not presented," meaning no attempt at proving the slain to be of English ancestry was made, these fifteen victims were judged to be of Norman descent, and so a judgment of murder was made against the hundred.

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eleven year old boy who was found guilty of theft and homicide and executed in the context of condemning a man of eighteen years for a similar crime (*Kent,* 148-9). Outlawry was understood in that "he that breaks the law cannot have the advantage of the law," and women were very often outside the law altogether (*Kent*, 86).

[89] *Kent*, 136.

In spite of this judgment, these victims were not thought to be Norman—the master in the *Dialogue* stated that long before 1313 the English and the Normans of the nobility had intermarried to the point where no differentiation could be made, and the peasants had been considered English (opposed to Norman) without pause since the Conquest, and as has been shown, no one's Englishry was presented before the coroners in Kent. At the eyre of Kent, Englishry no longer had anything to do with being English, but became almost a technical term used to indicate that the slayer had fled and could not be brought to justice; and therefore the murder fine ought to be imposed to compensate for this injustice. In theory, presentment of Englishry punished the community for allowing the killer of a Norman to escape, provided monetary compensation to the family of the slain in the place of revenge in the form of capital punishment, and provided pay for the lord or king for the trouble of having a killer on the loose. In practice, the community was punished for allowing a killer to escape regardless of the ethnicity of the slain and the fine was similarly collected.[90]

Finally, to appreciate how presentment of Englishry had changed by the Kentish eyre, those whom presentment of Englishry was originally intended to protect must be considered: the nobility. Because the sample of homicides employing presentment of Englishry in Kent is so small it is difficult to generalize, but it is very clear that it no longer was limited to the aristocracy. Judgments of murder were made on behalf of rowdy pilgrims, millers, chaplains, women, people without chattels, unknown people and young people under mainpast (boys under eighteen years of age and the legal responsibility of their fathers). The killers in these cases were not necessarily unknown,

[90] That is in largely homogenous locations such as Kent. This understanding of Englishry cannot be extended to Welsh, Scottish or Irish territories without reevaluation.

they simply were not caught. Likewise, killers included millers, acquaintances, chaplains, women, would-be thieves, people without chattels, and people with chattels. Six of the fifteen homicides ruled as murders resulted after a quarrel of some kind: one involving two brothers, another involving acquaintances who met on the highway, and one in the day time that escalated to "calling of names."[91] There were two cases where the killer produced a charter of pardon from the king that was acceptable to the justices, and there was one case where the slain and the slayer had fixed surnames (though patronymic), Thomas Megson and John Askins.[92] English nobles committed far fewer personal acts of homicide than their continental counterparts and those in the British Isles beyond England.[93] Given attributes this trend in part to the fact that English nobles "lived in a country with the most developed administrative machine and legal system in Europe."[94] There no evidence that members of the lower ranks of society sought to kill the members of the upper ranks as had been customary after the Conquest when Normans were almost synonymous with nobility. In fact, homicide was often either very personal, involving immediate family members or friends, or the result of an accident or argument.

It is not surprising that the meaning of "presentment of Englishry," both in name and in practice had changed so dramatically: Kent immediately following the Conquest and in 1313 were no doubt very different. The nobility was settled as an enduring class rather than the object of a battle between native and immigrant peoples, and it had enjoyed two centuries of widely accepted authority, and the line between the English and

[91] *Kent*, 77, 150 and 144 respectively.
[92] Slayers pardoned by king, *Kent*, 77, 139. Fixed surnames, *Kent*, 156. The trend of fixed surnames began after the invasion and was heavily influenced by the influx of trades people and newly landed noblemen from Normandy. Names became "fixed" or hereditary about 250 years after the conquest. See J. R. Dolan, *English Ancestral Names: The Evolution of the Surname from Medieval Occupations* (New York: Clarkson N. Potter, Inc., 1972) 3-7.
[93] Given, 74.
[94] Ibid.

the Normans was so frequently crossed as to have become almost an obsolete notion. Also, the practice of law itself had evolved in significant ways between the Conquest and the eyre of Kent. Ideas about homicide, guilt and punishment had changed drastically. Slightly more than half way between the Conquest and the eyre, trial by ordeal had been deemed ineffective and illegal by the Fourth Lateran Council, charging judges and jurors with the duty to try accused killers where God once did.[95] When presentment of Englishry was first used to protect Norman intruders, homicide was not seen so much as the act of an individual as the act of the community under the judgment of God. After the outlaw of ordeal in 1215 this way of thinking was replaced with a more individualistic understanding of sin and crime, which presentment of Englishry (though not necessarily the general murder fine), no longer fit into.[96] What we see in the eyre of Kent is a difference made by the justices and the recorders as to which cases of homicide warranted the label of murder.

It is evident that presentment of Englishry was not merely imposed by the justices as a means of taxation by the Crown. We see this in the way that Englishry was only mentioned selectively, not imposed where- and whenever possible. Moreover, the original murder fine theoretically collected upon failure to prove Englishry, forty marks for the king and six for the kin of the slain, was completely ignored by the justices in eyre.[97] The recorder states outright, "Note that in the olden times a hundred paid an amercement of a 100*s* for each several murder, but now they make one general fine for

[95] Twelfth Ecumenical Council: Lateran IV, 1215, Canon 18. Available online at *http://www.fordham.edu/halsall/basis/lateran4.html*, last viewed April 15, 2007.
[96] See Colin Morris, *The Discovery of the Individual, 1050–1200* (New York: Harper & Row, 1972).
[97] Frederick Pollock and Frederick William Maitland, *The History of English Law Before the Time of Edward I* (Cambridge: Cambridge University Press, 1968) ii, 485.

all murders."[98] Though the fine they claim to be of "olden times" is not the original forty-six mark fine (it was significantly lower, with forty-six marks being approximately 600*s*), the important point is that there was one fine to cover all homicides adjudged to be murder.[99] If the amount of the new fine were known to be less than 100*s* fine of "olden times," it would suggest that enforcing presentment of Englishry was not a means of taxation and that the justices were making an effort to ease the financial burden on the communities. The amount of this new flat-fee is not known, but, it is known that the eyre of Kent raised less money for the Crown than was most likely anticipated, about £500.[100] Regardless of the amount of the new fine, it encouraged wastefulness on the side of the county by offering no reward for presentment of Englishry and no punishment for failure to present Englishry. With one fee for all murders, there was less incentive to catch fleeing killers.

On the surface, presentment of Englishry may have been a means of taxation, but it was not only a means of taxation. It was at its most elemental level a code word indicating that the killer had escaped that placed the blame not on the killer but on the hundred. By saying that "Englishry was not presented," an earlier time when the community was often responsible for the active killing of Norman invaders was evoked, only now it reflected the passivity of the community that failed to catch the killer and it applied to people from all social strata. Sir Edmund Passele and the people of Kent were able to exploit this history in hopes of evading the murder fine.

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[98] *Kent*, 81.

[99] Though the existence of a murder fine was uniform throughout the realm, the specific forms of application varied by community.

[100] *London*, xvi, note 6. This amount includes civil as well as criminal cases. Compare this with the £21,000–£22,000 collected at the 1240/41 eyre of Kent, and the £200 collected at the 1321 eyre of London. That so little was raised at the eyre of London has led scholars to believe that there were extenuating political motives at play involving the Despensers and Lancastrian sympathizers.

Sources of Memory

In the eyre of Kent, 1313, the distant past was pushed aside in favor of the recent past, as recorded in a legal document: the record of the previous eyre. To appreciate this meaningful transition fully, one must look closely at how memories of the distant past were constructed. One of the first questions that arises from the debate over presentment of Englishry at the opening of the eyre is whether or not the story of William the Conqueror that Passele presents could possibly be historical fact. Of course, as is often the case, it is extremely difficult if not impossible to know the details of such events. We do, however, know that because of Kent's location between Hastings and London, people there were likely to have been radically affected by the invasion and subsequent administrative and cultural changes. The invasion was certainly a momentous event in the lives of those living in southeast England and was unlikely to fade from memory fast. To gauge the effect of the Conquest over time, is useful to look at documents ranging from the Conquest to the fourteenth century specific to Kent and related to the invasion and its aftermath. The oldest document reflecting activity in Kent considered here is the *Anglo-Saxon Chronicle*, a narrative of events originating under the Saxon king Alfred the Great in *circa* 890, followed by various charters that bestowed certain legal benefits to people and institutions in and around Kent.

Kent is first mentioned in the *Anglo-Saxon Chronicle* in detail in the context of Odo, William I's brother and the bishop of Bayeux, in Normandy, owner of most of the land in Kent. It is possible that the famous Bayeux Tapestry depicting the Battle of Hastings was commissioned by Odo, who is featured in it prominently.[101] The tapestry

[101] *The Bayeux Tapestry: A Comprehensive Survey*, ed. Sir Frank Stenton (London: Phaidon Publishers, 1957) 9.

illustrates the involvement of the English, and possibly the people of Kent, in the Battle of Hastings at the very end where the victorious Normans chase after a fleeing band of unarmed Englishmen. Could this have been the scene Passele recounted where "all were slain in the battle save those who were in the last line, and they were the men of Kent"?[102] It certainly was how he chose to recount the story of the invasion.

While it is not until the reign of William II that the *Anglo-Saxon Chronicle* elaborates on the people in Kent, the county is mentioned numerous times as the events of the Conquest unfold. In the year 1066, in addition to the Norman Conquest, a comet or "long hair'd star" appeared in the sky shortly after Easter—"such a token as no man ever saw before."[103] For this year, the *Chronicle* mentions localities in Kent with little elaboration. Harold, "king of the English," spent time in Sandwich, Kent, the summer before the invasion. He was, in another account, slaughtered by Norman forces at the estuary of Appledore, in Kent. In another version, Christchurch, in Canterbury, "was burned."[104] The close ties that Passele claimed Kent shared with William I are not mentioned. For the year 1088, an extremely thorough and elaborate story regarding the English people of Kent and William I's son William II was recorded. Around this time, a great deal of ink and parchment is dedicated to criticism of William I, specifically of his greed. Hugh Thomas attributes this scribal license to strong loyalty to the new king, William II, and speculates that these criticisms might have been helpful in overcoming the conquered/conqueror dynamic of the kingdom, and fostering one of increasing fraternity.[105] The writers of the *Chronicle* create the appearance of having been very

[102] *Kent*, 19.
[103] *ASC*, 1066. See also *The Bayeux Tapestry*, plate 35.
[104] *ASC*, 1066.
[105] Thomas, 90.

close to William I, stating, "we will write about him as well as we understand him: we who often looked upon him, and lived sometime in his court."[106]

The *Chronicle* describes 1088 as a year in which England was "much stirred, and filled with great treachery," for it was in this year that a conspiracy led by Odo escalated into a violent battle for the crown of William II. Odo is described as despoiling the countryside of Kent and taking his collected booty to his castle in Rochester. After learning of Odo's movements, King William, "his mind much agitated," called upon the Englishmen and "earnestly requested their support." If they would support him, he promised them "the best laws that ever before were in this land."[107] The language in this statement can be interpreted to mean either that the king would establish new laws, superior to any that had existed before, or, that he would grant his followers the right to practice the most appreciated laws that had existed "ever before" his reign. Either way, it is clear that the king promised to grant the English laws that would be beneficial to them. Passele would interpret this in the early fourteenth century to mean that ethnicity would no longer determine murder; Englishry would not have to be presented and a fine would not be collected. Upon hearing the king's promise, the Englishmen of 1088 raised their arms in full support of the king. After finding Odo to have fled from Rochester to another castle in Pevensey, they patiently waited there six weeks for his surrender. During this time the king's brother Robert, Duke of Normandy, crossed the channel with a large army in hopes of joining with Odo, but the Englishmen who guarded the sea "lighted upon some of the men, and slew them, and drowned more than any man could

[106] *ASC*, 1087.
[107] *ASC*, 1088.

tell."[108] The battle did not end there. After Odo's provisions were spent and he exited in peace, offering to abjure the realm and forfeit his land, a faction of his own army, "all the best born men that were in this land or in Normandy," kidnapped and imprisoned Odo as well as the king's Englishmen who had escorted him on his preparation for departure. At this point William desperately sent notice bidding that all faithful men of England come to him, both French and English, "from sea-port and from upland." Many men came in support of the king, and the battle in his defense was won. Odo and his men abandoned their land and departed for Normandy, along with many other Frenchmen, and William reportedly "gave their lands to the men that were faithful to him."[109]

In this story the men of Kent explicitly play an important role in the defense of the king, the son of the Conqueror. These men, whom the chroniclers deliberately label as "English" men, rose to fight a long and complicated battle to defend a newly crowned king, the son of an invader, against other foreign invaders. While England at the time was a military society and violence and conflict were expected, and while the Englishmen's efforts are not to be discounted or brushed aside as self-serving, the *Chronicle* does state that King William used a specific tactic to persuade them to come to his aid: the promise of good laws.

Certain charters also illustrate distinct treatment of Kent. Even before the conspiracy of 1088, King William II showed special consideration for territory surrounding Kent, especially for St. Martin of Battle, better known as Battle Abbey. Battle, named for the Battle of Hastings that was waged on its soil, was dedicated as an act of penance for the brutal killing that took place there, and was regarded for as a very

[108] Ibid.
[109] Ibid.

holy place for generations of English monarchs after the dedication. In 1087 William II delivered a charter notifying the people of Salisbury in Wiltshire (west of Kent), "both French and English," of the special rights granted to Battle Abbey and the lands under the abbot's control in Wiltshire.[110] Among these rights, including infangtheif, sac and soc, toll and team, and a number of construction and upkeep benefits, was the right to collect the profits of the murder fine.

Another charter, this time given by King Henry I in 1120 notifying the people of Sussex "both French and English," grants almost the exact same benefits to Battle Abbey, including the proceeds of the murder fine.[111] There is doubt over the authenticity of the charter, as there is with many charters produced in the century following the Norman Conquest, which may indicate its importance to either Battle or the manor in Sussex that it was addressed to. However, there is little doubt that the provisions of the charter are genuine.[112] The possible forgery of this charter indicates that the provisions were important and desirable either to the abbey or the Sussex manor to the point that the charter would be re-made, if necessary, to ensure the continuance of the provisions it granted.[113]

In 1123 another charter was sent by Henry regarding the rights of Battle Abbey, this time addressed to all the sheriffs in the lands held by Battle Abbey including plots of land in Berkshire, Oxfordshire, Wiltshire, Essex, Surry, and Kent, specifically the village of Wye.[114] All of the usual benefits are stated, including the right to the proceeds from the murder fine. This time, however, it is not stated as a gift of Henry's own, but in the

[110] COWDRAY/1(i). West Sussex Record Office: The Cowdray Archives.
[111] COWDRAY/1(iii).
[112] J. H. Round, *Ancient Charters*. (Pipe Roll Society, vol. 10) 27-8, qtd in COWDRAY/1(iii).
[113] See Clanchy, 318-27.
[114] COWDRAY/1(iv).

memory of William II, the king's brother. The liberties of this charter were still enforced during the 1313 eyre of Kent. In one case, a woman indicted in Wye for homicide is forced to wait in prison for the justices from Wye to attend to the case. She asks the royal justices to be bailed until then, but they maintained that they did not have the power to free her.[115]

A fourth charter diverges from the established pattern and almost foreshadows the debate over presentment of Englishry in Kent. Issued by King Stephen in the mid-twelfth century and continually edited and added to through the late thirteenth, is a charter regarding Canterbury Cathedral.[116] The practice of granting special benefits to Canterbury had been established before the Norman Conquest. In 1023, Cnut granted Christchurch, Canterbury access to all shores and dues "from as far inland as can be reached by a small axe thrown from the ship."[117] King Stephen's charter bestowed the benefits aforementioned in Cnut's charter, and also requested that a candle be kept before the reliquary of St. Anselm "for the soul of Henry I and previous kings." In return, the cathedral is not given the usual benefits, but is said to be *exempt* from various duties: "To be held free from Danegeld and other gelds, and from murder-fines, charges and other civil dues." With this exemption, the exemption claimed in Passele's story starts to look like part of a template.

Even the people of Kent who were not involved in the ecclesiastical life would have been familiar with the notion that the murder fine was a commodity; not all charters regarding the murder fine were royal in origin. One such charter was an agreement

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[115] *Kent*, 83.
[116] CCA-DCc-ChAnt/B/335. Canterbury Cathedral Archives: Dean and Chapter Archive.
[117] *Charter of Cnut to Christchurch, Canterbury*, in *Anglo-Saxon Charters* edited and translated by A. J. Robertson. First published in 1939 by Cambridge University Press. (Holmes Beach, Florida: Wm. W. Gaunt & Sons, Inc., 1986) 159.

between Richard the baker of Prittlewell (Essex) and Richard of Southchurch written in the twelfth century but also containing a description in thirteenth- and fourteenth-century hands.[118] To Richard Southchurch, Richard the baker bestowed eight acres of land in exchange for four and one half marks up front and an annual payment of one root of ginger to himself and the sum of twelve pence annually to his lord. Richard the baker also notes that the proceeds of the murder fine on this land are *not* included in his gift, suggesting that the amount of money to be gleaned from the murder fine was not insignificant. It is not known, however, whether Richard the baker or his lord had the right to the profits of the murder fine for this property, or if the fine would by default go to the king.

As the fourteenth century approached, such charters gradually became more detailed and explicit, especially in terms of the monetary value of the gift whereas in earlier charters the financial benefit was only vaguely implied. One charter, sent by King Henry III to Battle Abbey in 1270 illustrates this development.[119] This charter grants to the abbey "the chattels of fugitives, of those hanged, and of those condemned … and also chattels of out-dwellers indicted within their liberty and found with the malefactors therein, and the money from their men which pertains to the murder-fine," clearly identifying the monetary benefit of this gift. Like the aforementioned charter which Henry I presented in memory of his brother William II, this charter was given "for the soul of King William the Conqueror and those of the [present] king, his ancestors and heirs, to the convent which King William founded according to his vow."

[118] CCA-DCc-ChAnt/S/115. The varying hands are noted by the National Archives editor.
[119] COWDRAY/1(v)

These charters relate to the debate over presentment of Englishry in Kent because they illuminate one of the most controversial functions of the murder fine: a source of income. In these charters, the income went to Battle Abbey and possibly Richard the baker, but ultimately to the king in non-specified regions. It would follow, then, that finding homicides to be murders would be desirable for the elite (clerical or secular). Though the word "Englishry" is not mentioned in these charters, explicit non-presentment of Englishry almost always preceded judgment of murder. As the eyre of Kent shows, presentment of Englishry and the murder fine were inextricably linked.[120] This mode of proto-taxation, then, *should* have become gradually less lucrative as more people came to identify as English, and the relationship between presentment of Englishry and the murder fine would be endangered.

Aside from these larger issues, these charters show very simply that, if we accept that the murder fine depended on failure to present Englishry, including cases where the killer is unknown or not to be found, presentment of Englishry did exist in Kent before 1313. We can logically deduce this in that Wye was exempt from the murder fine in the 1123 charter from Henry I to the sheriffs of various counties containing property held by Battle Abbey, suggesting that the murder fine was normally collected elsewhere in Kent for the king, and thus Englishry was presented as well. Similarly, in the eyre of Kent in 1258, the Master of the Hospital of Saint John and his men were amerced for refusing to pay the murder fine while living in the Kentish vill of Kingston.[121] It is important to establish that presentment of Englishry was customary in Kent between the Conquest and

[120] Chapter Three will demonstrate that this is not the case in other eyres.
[121] *The 1258–9 Special Eyre of Surrey and Kent.* Ed. and trans. Andrew H. Hershey. (Surrey Record Society, 2004) 75.

the eyre in 1313. It is suggests that Passele's story was drawn up effectively to change the present situation and law as it was imposed on the county.

Conclusions

The debate over Englishry in the eyre of Kent draws on two main points: the malleability of medieval English law as it conformed to the needs of the time, and the implications of a vestige of ethnic difference in a society striving for homogeneity as demonstrated by the *Dialogue of the Exchequer* in Chapter One and the story of Passele and the people of Kent. "Englishry" no longer had anything to do with whether one was English or not, even though it was implicitly defined in terms of English ancestry. If only grammatically, the idea that presentment of Englishry was related to one's Englishness was indefeasible. The people in Kent who confronted this law in 1313 did not accept that the application had changed while the term remained the same, and they intended to free themselves of the new application by exploiting the history of the term. Though we cannot know what thoughts or emotions the people of Kent had in response to presentment of Englishry, the dispute in the eyre of 1313 illustrates that its history as an ethnic divider was remembered. It was this history which allowed the county people to question the applicability of presentment of Englishry in 1313 by drawing on concrete sources regarding exceptions of the murder fine, and ultimately justifying their custom with a story from the time of William the Conqueror.

Although the story Passele and the people of Kent present is overruled in favor of a more recent document, the rolls of the previous eyre, the appeal to historical memory is still significant considering the alternatives. Passele did not ask the justices to consider

the fact that no one distinguished between those of English and those of Norman ancestry anymore, though theoretically he could have. He did not seek to change the law or modernize the terminology by illuminating the current situation but rather by recreating the past in a way that would change the present. The justices, however, were determined not to allow for such stories of historical exception: their goal was to unite the counties under the common law as much as possible, even if it meant using a defunct term in a new way—for the time being, the term "presentment of Englishry" had to stay.

CHAPTER 3
Englishry in Other Eyres

While the most salient discussion of Englishry in the later Middle Ages occurs in Kent, it is also beneficial to spend some time looking at whether and how Englishry was discussed and implemented in the eyres of other counties before the eyre of Kent in 1313 and after. The purpose of examining how presentment of Englishry functioned in eyres of other counties prior to the Kentish eyre is to illuminate what the justices and county people in Kent understood presentment of Englishry to be in recent history, as opposed to its original purpose at the time of the Norman Conquest. Examination of fourteenth-century eyres after the eyre in Kent will show how counties other than Kent as well as other royal personnel continued to grapple with the meaning and purpose of presentment of Englishry. This survey will span a roughly 100 year period, from 1218 to 1330. One result of this wide range is the illustration of how the circumstances of different reigns influenced ideas about presentment of Englishry. For example, tension in the northern counties following the first signing of the Magna Carta may have influenced the royal justices' ability to enforce of presentment of Englishry. Very brief consideration will be given to the monarchs ruling during these eyres and the significant events of the period, while the focus will be on how Englishry was presented in the eyres under these circumstances. This will increase the contrast of the eyre of Kent against the context of the later Middle Ages as a whole, bringing out similarities as well as idiosyncrasies. Ultimately this will clarify how the burgeoning common law changed according to the needs of the times: the law made divergences, but eventually resumed its original path.

This survey will also show how diverse the customs of the counties were though they often masqueraded under the same name, including presentment of Englishry.

The early-thirteenth-century eyres of Yorkshire, Worcestershire, Warwickshire and Shropshire will first be examined. The records of the eyres of these counties are very different from one another and from the record of the eyre of Kent; they are often less complete and show Englishry presented in a number of ways and to various degrees of success. At one eyre, the eyre of Yorkshire in 1218, Englishry is not mentioned at all. We will then return to the fourteenth century to examine presentment of Englishry in the eyres of London and Northamptonshire in 1321 and 1329 respectively.

The northern counties experienced law enforcement, among other cultural influences, differently than the more central and southern counties owing to their geographical location, and would for centuries following the Conquest and even the eyre of Kent in 1313. The will of the Crown was typically more difficult to impose in these distant regions, and in some counties, presentment of Englishry was no exception. Nevertheless, these eyres can be compared with the eyre of Kent in 1313 concerning presentment of Englishry. This comparison will demonstrate that the Crown sought to enforce presentment of Englishry uniformly throughout the kingdom, and failed. The uneven application of presentment of Englishry in the eyres of the thirteenth and fourteenth centuries resulted from the changing definition of "Englishry."

Customs vary from one county to the next for reasons beyond mere geography. As F. S. C. Milsom pointed out in the introduction to his book *Historical Foundations of the Common Law*, "differences between one district and another were sometimes not different answers to the same problem but different ways of life; and these in turn may

sometimes go back to the piecemeal nature of those earlier conquests and settlements [prior to the Norman Conquest]."[122] Different counties had different needs and problems and therefore different customs. There is no strong evidence that these needs had become any more homogenous by the early fourteenth century, but practice of presentment of Englishry is a good indicator of the needs of a particular county in this later period regarding local responses to the drastic changes in ethnic identity. However the purpose of this study is not to determine the needs of Kent or any other county, but to discover the meaning behind presentment of Englishry in the early fourteenth century, and one way to achieve this is to evaluate its earlier meaning and use.

Yorkshire, 1218/19

The 1218 eyre of Yorkshire was drastically different than the eyre of Kent, and understandably so. It followed the death of King John and the crowning of the boy king, Henry III, by only two years and rebellious barons were far from sated by the forced signing of the Magna Carta in 1215. There is no dialogue recorded, and the cases are extremely brief. Brief though they may be, they are copious in the three surviving rolls and provide a sketch of what life in early-thirteenth-century Yorkshire may have been like. It must have been very hard; there were many appeals of homicide and rape, a seemingly high occurrence of drowning and freezing to death, and little merry-making over ale as compared with other counties, indicating great need for legal control.[123]

If a formal recording of the commencement procedures was made, such as that at Kent, it has not lasted, and so we know nothing of the customs claimed to be specific to

[122] S. F. C. Milsom, *Historical Foundations of the Common Law*. 2d ed. (Toronto: Butterworths, 1981) 11.
[123] *Yorkshire*, l-li.

Yorkshire at this time, if they were enumerated. However, the record shows plainly that not a single homicide was judged to be a murder, and Englishry is never mentioned. This did not necessarily mean that homicide in Yorkshire was not committed in secret, that all killers were caught and tried, or that all slain persons lacked sufficient kin to present their Englishry. After the Norman Conquest, Yorkshire would have had similar problems concerning English reprisal killings as did Kent, though early surveys of the kingdom show a relatively high number of native English aristocratic families in the north, compared with other regions where the entire English aristocracy was replaced by Norman immigrants.[124] Whether presentment of Englishry had gone out of practice by 1218 or whether the people of the county successfully persuaded the judges to exempt them from it is not known. It may be reasoned that the Crown did not want to provoke further animosity in the northern counties at this critical time and so allowed for such exemptions.

The legal system was undergoing changes imposed from outside the kingdom as well at this time, which may have lessened justices' concern with local customs. Significantly, the trial by ordeal was banned in 1215 at the Fourth Lateran Council, forcing the judges to draw up a different procedure for determining the guilt or innocence of found or accused killers. The jury was not yet firmly in place and most killers were simply "interrogated and outlawed," thus leaving the door open for extralegal reprisals and ad hoc justice on a case by case basis.

A typical case that should have called for presentment of Englishry states that "Adam the fisherman was found killed in his house at Morton upon Swale. His wife

[124] Thomas, 112.

found him first. No one is suspected. He was killed by malefactors."[125] This is just one of twenty cases of secret homicide presented and (un)resolved in the same manner. As mentioned above, the absence of Englishry may signal the absence of numerous Norman settlers in Yorkshire; there is only one reference to Normans in the eyre. In this solitary case, a manor was given to Hugh Painel by the king's advisors after the king had disseized the Normans in Yorkshire from their land there "because they had withdrawn from his service."[126] This case is evidence that the distinction between people of English ancestry and people of Norman ancestry had not disappeared in all of England by the early thirteenth century and also that being Norman did not presuppose loyalty to the king.

Law in England was far from unified in the further reaches of the land at this time, as indicated by the unusual treatment of secret homicide in this eyre. It is not certain whether the murder fine was exacted in Yorkshire in 1218, it is not recorded to have been, but it is clear that presentment of Englishry was not made on behalf of the slain, which in the 1313 eyre of Kent was necessary for a homicide to be judged a murder. It seems that the royal justices had more important concerns than analyzing the ethnicity of criminals and victims at this time. The justices still might have found ways to collect money for the Crown, but most importantly they avoided stirring further hostility. Presentment of Englishry was not enforced in Yorkshire in 1218, much closer to the time of the Norman Conquest, raising a red flag over the issue at the 1313 eyre of Kent where it was enforced (in theory) much later. It shows that presentment of

[125] *Yorkshire*, 386.
[126] *Yorkshire*, 239. Possibly in a fashion similar to that outlined in the *ASC*, 1088, when King William II gave the lands of the banished traitors to those who had been faithful to him.

Englishry did not *have* to be enforced by the justices. Presentment of Englishry was not a fixed procedure such as, for example, punishment by hanging.

The argument the justices at the eyre of Kent made by looking to the rolls of the previous eyre is actually irrelevant in the course of the actual events in history of Kent and only won out because of the justices' status as royal ambassadors. That is, as the eyre of Yorkshire shows, whether Englishry had been presented before was, historically, not strong enough evidence that it ought to be presented again. In the past, whether or not a county should present the Englishry of slain persons was a flexible matter, depending on extenuating circumstances in the county and the kingdom. This indicates that Kent was perceived as weaker than the central royal authority. This flexibility also shows that in the early fourteenth century, the recent past had become a legitimate standard against which to measure what ought to be done in the present, an even more persuasive standard than the distant past.

Worcestershire, Warwickshire and Shropshire, 1221/22

After visiting most of England between 1218 and 1219, the justices embarked on an eyre of the western counties. Though the geographic location of these counties may have influenced the outcome of the eyre, the very slight temporal removal from the signing of the Magna Carta did not. After Magna Carta, ethnicity was no longer a matter of language and appearance but a matter of politics.[127] The proceedings regarding presentment of Englishry and the murder fine in Worcestershire and Warwickshire are very different from those of Yorkshire three years prior. In these counties, Englishry is

[127] Thomas, 342-3. For more on the appearance of the native English and the Normans, see Robert Bartlett, "Symbolic Meaning of Hair in the Middle Ages," *Transactions of the Royal Historical Society* 6, 4 (1994) 43-60.

often successfully presented; it is presented on behalf of women as well as men, and it is often "falsely presented," showing that the communities had a strong interest in proving the Englishry of the slain. In more remote Shropshire, however, like Yorkshire, Englishry was not mentioned at all. The pleas of the crown for the other western counties, namely Gloucestershire and Staffordshire, have not survived for comparison. Nevertheless, the wide-ranging usages of presentment of Englishry are well covered in the surviving rolls for Worcestershire, Warwickshire, and Shropshire, and help to illustrate the way presentment of Englishry was used throughout England and how royal justices approached it before the eyre in Kent in 1313.

The records remaining from the eyre in Warwickshire are plentiful and offer a vast amount of information on the county. The scribe writes, for example, that the jurors of the country "answer very badly in everything," alluding to possible problems with cooperation.[128] The county puts forth little effort to present Englishry even though it is enforced at the outset of the eyre and to be proved by one male relative on the father's side and one on the mother's. [129] The justices, however, though according to their office are acting on behalf of the king, are not interested in squeezing every possible penny from the county. In one case of misadventure involving a boy who fell from a horse and drowned, the deodand for the horse, which was supposed to go to the king, two shillings (no small amount) was "given to the boy's mother for God's sake."[130] There is no mention of the amount of the murder fine and it is not likely that the total amount owed, which would have been very great, was collected.

[128] *Warwickshire*, 357
[129] Ibid., 331.
[130] Ibid. 339. There were multiple incidents of the deodand being pardoned "for God's sake." See p. 374.

Scribal reports on presentment of Englishry in Warwickshire show the ubiquitous nature of the phrase "presentment of Englishry" in court. While in most cases of homicide, "Englishry was not presented," there are three cases in which it is. The formula of these cases, "Englishry is presented, and therefore nothing" aligns with the usual "Englishry is not presented, and therefore murder" very closely and shows that, unlike in Kent in 1313, Englishry could be successfully presented. "Therefore nothing" does not mean that the slain was not killed feloniously, but it does indicate that the community avoided the murder fine, even though the killer escaped, by successfully presenting the slain's Englishry. There is one unusual case of a woman killed in her house by unknown malefactors at night of which the clerk has written, "Englishry is presented. Judgment, Misadventure."[131] The difference between homicide and misadventure was well defined at this time, but because her Englishry was presented, her death could not be adjudged a murder, even though she appears to have been feloniously slain by an unknown killer. This shows a diversion from "therefore nothing" and an effort to recognize the homicides of slain "English" people, even if the name of the type of homicide was inaccurate.

The successful presentment of Englishry in Warwickshire is not enough to indicate that differentiation could still be made between those of English and those of Norman ancestry, for there could also have been reasons unrelated to ethnicity that impeded successful presentment. In the early thirteenth century, England was plagued by civil wars, not between ethnicities but between the landed aristocracy (no matter their ancestry) and the monarchy.

[131] Ibid., 371.

Presentment of Englishry in the eyre at Worcestershire, which lay between Warwickshire and Shropshire, was similar to the irregular pattern of presentment in Warwickshire. There are approximately one hundred cases of homicide in which Englishry is mentioned in Worcestershire, but, unlike in Warwickshire, it was successfully presented very frequently. The system was not without flaw, however. There is a handful of unusual cases in which Englishry is mentioned and the homicide judged as a murder even though the killer was caught and in one case, hanged for his crime.[132] There are also a few cases where the killer is said to have fled, but neither Englishry nor the murder fine was mentioned.[133] Also as in Warwickshire, the Englishry of slain women was to be proven as well or else the murder fine would be imposed, showing both a concern for the killing of women and a desire to collect more money. The record indicates that there were a large number of homicides carried out by unknown robbers at night, sometimes killing whole families. This is not seen in Warwickshire. In these cases, the Englishry of each family member had to be presented, possibly to glean more money under the pretense that families could be of mixed ancestry. The rest of the cases were comprised of persons killing and fleeing, often with impunity.

The records show that Englishry was presented before the justices in eyre arrived, most likely around the time of the homicide. This indicates the authority that the local lords in Worcestershire had over their people, an authority not exercised in this way in early-fourteenth-century Kent. The justices in eyre observed that "the presenters of Englishry [were] dead" at the time of the eyre; this is a relatively frequent occurrence in

[132] Ibid., 535.
[133] Ibid, 539-40.

the eyre at Worcester, and occurs in one case in Warwickshire.[134] In addition to showing the authority of the local lords over their people, it also shows that they were able to dodge the king's murder fine by claiming to have presenting Englishry before his justices arrived. If this were the case, the justices did not question the authenticity of the claim that Englishry was presented and in these cases the murder fine was withheld. Either way, it does show that Worcestershire was unusually well organized.

As with certain areas within and surrounding Kent, there was one area in Worcestershire where Englishry was not involved in cases of homicide and this was in the forest of Malvern, where "Englishry [was] not to be presented" and there was no murder fine "by ancient custom."[135] The justices allowed for this custom to continue, which affected the deaths of two men killed in the forest.[136] It is possible that there was no community living in Malvern to hold accountable for homicides as it was a royal forest surrounding a Norman monastery.[137] Forests in medieval England were subject to different laws than towns and villages. These laws were primarily for the protection of the animals that the king hunted.[138]

There were a small but noticeable number of false presentments of Englishry in Worcestershire and one such instance in Warwickshire, showing that people in the county attempted to avoid the murder fine while complying with presentment of Englishry as an

[134] Ibid., 541; *Warwickshire*, 339.
[135] *Worcestershire*, 537, 547.
[136] Ibid.
[137] Interestingly, a name given to the native English who sought to kill newly emigrated Normans shortly after the Conquest was *silvatici*, from the Latin *silva* meaning forest (Thomas, 59).
[138] *Select Pleas of the Forest*, edited for the Selden Society by G. J. Turner. vol. 13. (London: Bernard Quarditch , 15 Picadilly, 1901) ix. There is one case of homicide in this edition: a stranger was found slain in the hundred of Huntington in 1255. The hundred did not present Englishry "by reason of the assize of the forest," but the justices decided that "the law of the land concerning the death of a man ought not to be abated on account of the assize of the forest," and the hundred was handed the murder fine (p. 19).

institution in the eyre.[139] Often this was blamed on the jurors, but occasionally on the individuals who presented it. In Worcestershire, Odo of Witton was in mercy for a false presentment of the Englishry of a woman, Agnes, who was killed by her husband who then took flight. In this case the jurors were also amerced for false presentment of Englishry.[140] The manner of the false presentment of Englishry is not described in the roll, but it is more likely that Odo was simply not related to Agnes rather than that he was related, but was not suitably English, though he may not have been.[141] In a similar case we see another false presentment in which the clerk writes, "and let Henry son of Simon, who falsely presented Englishry and said that he was Craddoc's [the slain man] kinsman, be taken into custody."[142] In this case, Henry was pardoned, showing that the justices recognized the tendency people had to falsify Englishry and did not have a particular penalty in place for false presenters. By lying about a slain person's Englishry, the community asserted that the requirement to present Englishry was an unfair penalty on the community for a person not having living family members to legitimately present the slain's Englishry. The Crown, however, as expressed by Fitz Nigel in the *Dialogue of the Exchequer*, saw presentment of Englishry and the murder fine as incentive to capture killers, or if that failed, a means of collecting more money.

The eyre in Shropshire, where Englishry was not presented, began on a peculiar note. Beneath the heading the clerk wrote, "The shire gives 30 marks that they may not

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[139] *Warwickshire*, 383. "No Englishry. Judgment, Murder. The jurors falsely presented Englishry and are therefore in mercy."
[140] *Worcestershire*, 556.
[141] It is unlikely that in the thirteenth century a person who conceived of themselves as English (hence the offer to present Englishry) would not have been considered English by others. Nevertheless, the first generation of immigrants after the Conquest did produce a large number of children with mixed ethnicity, largely mothered by elite English women, and it is possible that they might consider themselves English while others did not (Thomas, 138-40).
[142] Ibid., 565.

be involved in trouble."[143] The first case of homicide shows how disorganized the county was compared with the more inland counties of Worcester and Warwick. A man who fled after committing homicide is to be exacted and outlawed, as is customary throughout England, but, the clerk writes, "There is no murder fine in this county, nor frankpledge, nor mainpast."[144] Frankpledge, the name of the oath taken by a tithing of mutual responsibility for one another in the service of the king, was essential to organizing community responsibility in medieval England.[145] Unlike in Kent, a century later, the justices uphold the county's declared custom and there is no mention of Englishry or murder fine. They do not attempt to make up for the lost income by harshly imposing other fines but rather accept the custom in stride. As in Warwickshire, deodand was not always collected and more often was given to the family of the deceased "for God's sake."[146] The only income for the crown came from the chattels of the killer who fled, which could be substantial, but more often amounted to nothing at all.

The fact that Shropshire, like Yorkshire, was exempt from presentment of Englishry and the murder fine so much closer the origin of the practice after the Conquest than Kent illustrates that presentment of Englishry was still a topic of concern for people in the various counties and that it was not necessarily enforced by the justices if they did not see fit to enforce it. It would be expected that presentment of Englishry would have more of a legitimate presence in these earlier than eyres in Kent according to its original function as a protection for Normans. The fact that it was not enforced during these early

[143] *Warwickshire*, 457.
[144] Ibid., 533.
[145] Mainpast was the word used to describe those who the men in frankpledge were responsible for, such as their wives, daughters, and sons under the age of 12.
[146] See for example *Warwickshire*, 536.

thirteenth-century eyres, but was in 1313, shows that its function had long been evolving though its form remained unchanged.

London, 1321

The eyres of Yorkshire, Worcestershire, Warwickshire and Shropshire all differ from the eyres of Kent and London in relatively predictable ways related to their place and time. They occurred shortly after the first signing of the Magna Carta, when relationship between the king and the local barons was extremely vulnerable. Though the eyre was an effort to promote royal authority over the authority of local lords, the crown was in no way stable enough to be inflexible. To be uncooperative was not in the king's interest at this time due to the risk of inciting further discord and possible rebellion as illustrated by the multitude of exemptions granted to the counties during the eyres.

Following the eyre of Kent in 1313, King Edward II's hold on the country became increasingly weaker. Biographer Roy Martin Haines describes this period as a "descent into the abyss."[147] Years of tension in Scotland erupted in the battle of Bannockburn in 1314 and conflict continued there through the remainder of his reign. After years of famine following the eyre of Kent, the king prepared for civil war against the restless barons near the Welsh march.[148] In 1321 the year of the London eyre, Edward became engaged in another failed campaign against both the barons and the Scots.

The record of the eyre of London is unique among the extant eyre rolls because it is the only eyre limited to an urban center. Though Helen Cam, editor of the rolls, described them as "few and scanty," they provide us with enough information to sense

[147] Roy Martin Haines, *King Edward II: Edward of Caernarfon, His Life, His Reign, and Its Aftermath, 1284–1330* (Montreal & Kingston: McGill-Queen's University Press, 2003) 95.
[148] Ibid., 123.

how Englishry was regarded. Headquartered at the Tower, the eyre was presided over by many of the same people sent to Kent, and was orchestrated in much the same fashion. Justice Hervey Stanton again led the proceedings accompanied by others active in the royal legal profession at the time. One justice assigned to the eyre, Sir John Mutford, (also present at Kent) was forced to leave only twelve days into the eyre on due to a conflicting duty, and he was replaced by none other than Sir Edmund Passele.[149] Passele worked in a separate hall within the Tower, smaller than the one assigned to Stanton and the other justices, but he did have seniority over his one colleague in the smaller hall, Sir Walter Friskeney, a man with a similar career. While Passele did have a good deal of legal experience, as seen in his role as an advocate for the people of Kent in the Kentish eyre of 1313, and he served on various royal commissions and attended parliaments, he was never a salaried official like Justice Stanton.[150] He was, however, sworn to defend the interests of the king. There is no indication that Passele was thought not to have performed his duties well and with good judgment, even though his opinions often differed from the majority. The king, who had many adversaries, was fortunate to have a core of justices and lawyers who (by all accounts) viewed their position as separate from both local and state politics.

In 1313 Passele defended the people of Kent and their claim to historical exemption from the common law regarding presentment of Englishry. He defended the county against the royal justices and even against a written record stating that Englishry had been presented in the last eyre. It seems, then, that Passele, and even the other justices, regarded his work in this regard to be in the defense of the kingdom, suggesting

[149] *London*, xl-xli.
[150] Ibid., xli.

that the law was not tyrannical at this time or at least, that it made efforts not to be by allowing for dissent. That is to say, he worked for the king very actively but was simultaneously able to exercise his own judgment; he was not forced to bow to the desires of the king, and the king did not represent the law.

At the outset of the eyre of London, Passele is more clearly allied with Justice Stanton than in the eyre of Kent, and it might seem plausible that their opinions would be more synchronized. This is not always the case. Most notably during the eyre of London, Passele persuades Isabel of Bury, who killed a clerk in the church of All Hallows in self defense, to plead not guilty.[151] It is likely that Passele advised Isabel in this fashion as a result of what he had witnessed in other trials including during the eyre in Kent where men were acquitted for killing in self defense, and through familiarity with the legal text books at the time, particularly *Bracton*, which states that one is not liable to penalty for homicide who kills "with sorrow of heart, in order to save himself and his family, since he could not otherwise escape [danger]."[152] Isabel's case, however, was complicated by other factors, namely of being in a church at the time of the attack.[153] Ultimately Passele sided with the majority opinion in this case (embodied by the Bishop of London), and Isabel was found guilty and hanged.

As indicated in the *Anglo-Saxon Chronicle*, London, though not the first point of contact the Normans had with England, was of central import. It was where William was crowned on Christmas day and was to become the center of a unified England. The battle

[151] Ibid., *Rex v. Bury*, 73-6.
[152] See *Kent*, 150; *Bracton*, 340-1.
[153] Other complications gradually surface as well, particularly that Isabel and her friend, another woman, stabbed the clerk to death after he had asked them to leave for making too much noise. The point is that, regardless of the actual events that took place, Passele advised Isabel to plead not guilty when the only information was that she had killed in self-defense.

for London was very different than the battles waged on the southeast coast: it was not only military, but ideological. For this reason, it is clear that the logical reasoning involving martial bravery used in Kent to avoid presentment of Englishry would be irrelevant and unusable in London. How then, would the people of London reason with the royal justices if they wished to avoid the financial burden of presentment of Englishry?

As far as the record reflects, the Londoners did not make an appeal to history to excuse themselves from presentment of Englishry. This is surprising considering that, as Helen Cam points out and the records prove, London had many unique customs, perhaps even more than Kent.[154] Because London had not been visited by an eyre in many years, during which the justices were active in other counties, the justices had seen more change in custom than Londoners might have anticipated. By the time the justices arrived in London, Cam writes, "It is probable that there was good precedent for the City's demand to claim their customs orally, but the practice of the Justices had eliminated oral claims, so that Hervey could say that it was common law that all liberties must be claimed in writing."[155] This practice was enforced eight years earlier at the eyre of Kent, and it is also problematic in the eyre of London when a disagreement arises regarding abjuration and escape.

By 1321 the justices were much more confident in their authority and more explicit about their goals. The people of London remarked that the custom of abjuration was challenged in the last eyre and "was not disallowed." Stanton then replied that "that was left undetermined at the other Eyre. We are instructed to determine what was then

[154] *London*, lxvi-lxxii.
[155] Ibid., lxiii.

left over, so claim now by what title you will." At this point, Passele interjected against the London custom saying, "'a usage cannot be proved by non usage,'" and it was determined that the attempt to defend the custom of abjuration, which allowed a criminal to escape, was illegal and it was overruled.[156]

Approximately two weeks into the eyre, Justice Stanton asked the mayor and aldermen whether Englishry ought to be presented in the eyre. The men adjourned for deliberation and returned to say that "Englishry was never presentable in London, nor ought it to be presented."[157] Instead of responding to this statement, Stanton instead pressed the men of London as to their procedure of outlawry and demanded to see charters of their laws though the Londoners conceded that they had no charters, only the rolls of fortnightly hustings, which were local meetings. This exchange occurred three more times and with the same cursory attention a few days later: the main concern of the justices was not Englishry but outlawry and an apparent fascination with the customary husting. Just as the story of exemption from presentment of Englishry given by the Conqueror was attached to the mention of Englishry at the Kentish eyre, mention of outlawry is attached to Englishry in London. Outlawry was closely linked to presentment of Englishry because it also dealt with criminal prosecution: instead of punishing the community for the crime with the murder fine, a commitment was made to bring the criminal to justice by outlawing him.[158]

At the eyre of Kent a story was used to explain claim to a custom; at the eyre of London there was no such story. There was also no strong advocate in the opening of the

[156] Ibid., 59-60.
[157] Ibid., 31.
[158] Outlawry meant that the criminal could be killed immediately if found. Women were not outlawed but rather "waived" of their rights.

eyre of London, no one to support the county's claim against presentment of Englishry. Although Passele was present at the eyre, he was twelve days late, explaining why his name is nowhere to be found in the opening show of bureaucracy. Had he been present, it is uncertain whether he would have supported London's claim as he supported Kent's. What kind of story would he have told? One might expect that London's experience of the Conquest was very different from Kent's, and their stories would have been just as different. One might presume that Passele would have been unfamiliar with London's stories, or, perhaps London did not have a story. However, given the broad nature of Passele's brief tale, it does not seem necessarily limited to Kent. Indeed the entire south eastern region of England was brutally leveled at the time of the Conquest.[159] However, Passele was not employed as a royal justice at the eyre of Kent. In London, it was his job to represent the kingdom, not the city. As far as the record indicates, the men of London did claim to be exempt from presentment of Englishry, but were less eager to discuss the reasons behind their claim than the men of Kent had been, and the justices seem equally uninterested in hearing it.

The cases presented in the eyre of London are, unfortunately, scanty indeed. There are very few cases involving homicide, which indicates that much of the record is missing given the likelihood of there being at least an average number of homicides in the city as in other counties. But in the cases that do survive, none involving homicide mention either presentment of Englishry or murder.[160] Justice Stanton was adamant

[159] Thomas, 58-61.

[160] With cases of misadventure and suicide excepted, there are only fifteen cases of homicide represented in the record. In twelve of these cases the killer was known. Of these, seven were acquitted, two were hanged and three were awaiting judgment. Only three had fled. The low instance of flight supports the claim that there was little need for presentment of Englishry and the murder fine in London, if these numbers are taken to be representative of actual patterns of homicide which they seem to have been in 1321.

about "determining what was left over" from the previous eyre, and yet it is possible that the debate regarding presentment of Englishry was left inconclusive, and that London was allowed exemption from presentment of it in this eyre. This indicates that deciding which customs became common law was not a clear-cut task and that presentment of Englishry was particularly problematic.

The first case presented in the pleas of the Crown is a case of homicide that ordinarily would call for presentment of Englishry and judgment of murder.[161] It involved "a certain known man [who] was killed by unknown persons who fled." Had this case occurred in Kent the record would most likely have read, "Englishry is not presented, and so judgment of murder on the hundred," indicating that the community was at fault for allowing the killers to flee. In London, however, this case proceeded very differently. One of the first details ordinarily recorded by a coroner in the event of a homicide was the name of the first finder, but when the justices in London inquired about the first finder, they were told that "it is not the use not custom of London to have finders, on account of the multitude of people living there." This custom was expressed in the opening of the eyre as well, adding that "events of this sort can by no means be concealed … therefore there is not nor has there been wont to be such (informants) in the City, but only the common report of the people of the City."[162] This makes sense given that London was more densely populated than scattered villages and towns in the outlying counties, but how effective their customs were cannot be known. It was claimed to have been effective, but it was not perfect and did allow for some killers, some of whom are represented in the eyre reports, to escape. It seems then that management of crime was

[161] *London*, 59.
[162] Ibid., 10.

neither more nor less effective than in Kent, thus there is no apparent reason presentment of Englishry should be any different.

If the high population density of London did in fact allow for fewer escaped killers, it would follow that presentment of Englishry and use of the murder fine were far less necessary for ensuring order in London than in Kent. The neglect of presentment of Englishry and the judgment of murder leaves two more questions: whether or how the justices collected money for these unsolved homicides, and whether they distinguished them from other types of homicide. These questions are important because they are the two remaining purposes of presentment of Englishry and the murder fine in a time when English ancestry (opposed to Norman ancestry) was irrelevant.

There is no indication that cases of homicides in which the killer was not found were grouped together in any fashion for financial reasons. As in Kent, the chattels of the escaped killers are valued and, if there were any, taken for the king. In London there appears to have been an effort to amerce anyone who was possibly involved in the case. In the first case of the eyre, the two living of the original four neighbors of the slain are amerced for failure to appear, as are their respective pledges. Though this type of amercement was not uncommon in Kent, it might be an attempt to make up for lost funds usually raised by the murder fine. It shows that the Crown did collect money from the eyre, even if not by imposing the murder fine.

Because presentment of Englishry was not used in London, the term "murder" could not be used to indicate that the killers could not be found and tried. This is because, as demonstrated above, the word "murder" related to the imposition of the murder fine, and the murder fine could not be levied without failed presentment of the

Englishry of the slain. However there is increased attention to homicide by "malice aforethought" as opposed to self-defense. This of course would later be the new definition of "murder" as we today know it, though it was still somewhat tied to the idea of vengeful Saxons lying in wait for Norman aristocrats.[163] It is possible that presentment of Englishry was not enforced in London as it was in Kent because the justices expected there would be fewer cases of escaped killers in a compact urban area than in an expansive, largely rural one, as the people of London argued when they told the justices that they do not bother with the first finder practice. This supports the idea that presentment of Englishry was used in Kent out of necessity to hold communities responsible for escaped killers, but calls the idea that presentment of Englishry was enforced in Kent out of a desire to impose uniformity into question. The law in this period was flexible in some ways, and was searching for the best methods from different areas, acknowledging the fact that while not all areas were the same and had the same needs, they were all subject to the final word of the justices in eyre.

The debate over presentment of Englishry is important with respect to the debate in the eyre of Kent because it illuminates the decline of the influence orally transmitted memory and the impact of history in the legal context. By disputing presentment of Englishry at the outset of the were it is apparent that the Londoners also wanted to be exempt from presentment of Englishry, but unlike the people of Kent, they did not go to great trouble to explain why they deserved exemption. There are many factors which might affect the difference between the eyres of Kent and London, not least of all the eight years which separate them. While eight years may seem marginal compared with the distance from the eyre of Kent of the early-thirteenth-century eyres mentioned above,

[163] See *London*, 80-1.

it was enough time for ideas about common law and even ethnicity to change. Even in the fourteenth century London was a diverse city. Granted, enforcing presentment of Englishry in such a diverse community where many foreigners were present could have been highly profitable to the Crown.[164] There are a multitude of other factors as well which cannot be fully known such as the state of the monarchy at the time of the eyre, which in 1321 was rushing toward crisis, and a desire to collect money while being cautious not to upset the precarious balance of peace and power.

Presentment of Englishry was ultimately a phrase that harkened back to a relatively distant time. The Norman Conquest in 1066 may have appeared to be the foundation of the kingdom, but arguments made by people in Kent and even London show that the communal history of these counties extended back before the Conquest. Yet, these appeals to history were not blindly accepted by the justices in eyre. In Kent they were not accepted at all, and in London a more rational approach was taken, completely unrelated to various customs. Englishry was not presented in London because it had been deemed unnecessary by the justices.

Northamptonshire, 1329/30

Following the eyres of Kent and London, King Edward II found himself in grave peril and was murdered at the hands of his closest advisors in 1327.[165] The eyre in Northamptonshire in 1329 was the first eyre of the new king and was seen as a time of great opportunity "for redressing these offences in some better way."[166] These offences,

[164] London was said to be "seething" with foreigners in the days of Edward II. (Matthew Paris qtd in *London*, cxxvii)
[165] Haines, 198.
[166] *Northamptonshire*, 6.

homicide and other felonies, had been without satisfactory justice for many years as seen in the eyres of the early thirteenth century and the uneven application of the murder fine in Kent and London the early fourteenth.[167] While the people of Kent were not allowed to maintain the customs they claimed to have in 1313, not all customs were necessarily abolished. Even afterwards at the eyre of London some customs were accepted. However, as the amount of debate that ensued at the openings of the eyres of both Kent and London shows, local customs were gradually overridden by the emerging common law and England became increasingly unified.

Like the eyre of London, the eyre in Northamptonshire contrasts nicely with that of Kent due to temporal proximity, and substantial differences are more markedly pronounced. The main difference between these two eyres in relation to the place of presentment of Englishry in fourteenth-century law is that the people of Northamptonshire, like the people of London, do not provide a tale from the county's history to account for their desired exemption from presentment of Englishry. Or, if they did, it was not perceived as important enough to be copied into the record. The people of Northamptonshire contested presentment of Englishry in the same matter-of-fact way the Londoner's did—further evidence that appeals to history were no longer recognized as practical responses to the royal justices who by this time demanded written proof.

In many ways the opening of the eyre of Northamtonshire, led by Chief Justice Geoffrey le Scrope, was similar to the opening of the eyre of London and even more similar to that of Kent. The justices assert their power over the local administration, gather the coroners' rolls, announce the assize of bread and beer and ask the routine questions. The first question asked is whether or not Englishry is presented in the county

[167] Ibid., xxii-xl.

and if so, how. This discourse is merely a routine, but it is almost humorous to see the justices asking a question to which they already know the answer: the rolls of the last eyre say that Englishry was presented. Nevertheless, the spokesmen for the county dutifully, if hopelessly, asserted that they were not accustomed to presenting Englishry. But perhaps the novelty of this claim had faded: no elaborate story is given nor heated dialogue recorded.[168] Justice Scrope was more direct than his predecessor Sir Hervey Stanton with his declaration that Englishry ought to be presented, saying to the community (*la communalte*) that "You are more at fault and are to be amerced more heavily than you were then [at the previous eyre in 1285]. For then you said that you did not know whether you ought to present Englishry or not, and now you have said, contrary to the truth and to the record, that you ought not and are not obliged to present it."[169] The county was fined one hundred marks for this fault, a fine which Scrope made sure was collected from each hundred "according to what it could bear."[170] The communities apparently accepted this fine without hesitation, indicating that they may have expected not to be given the exemption they sought.

At Northamptonshire, Englishry was more narrowly defined than in the earlier eyres; it applied only to slain males over the age of twelve. The scribe recounted the old record of the previous eyre as it was read aloud to the justices and county:

> When an Englishman was killed, if he was male and over twelve years of age, one male relative of his father's side and another male relative from his mother's side ought to present in the next

[168] Ibid., 21.
[169] Ibid., 28.
[170] Ibid., 242. Justice Scrope refers to the Magna Carta of 1225 while discussing this fine, saying "the statute says that people are to be amerced saving their livelihoods etc." Sutherland notes that this statute is the Magna Carta.

> county after his death that he was English, and by presentment in that form Englishry should be adjudged. If Englishry is not presented the case is adjudged a murder.[171]

This definition of presentment of Englishry is far more positive in its attitude towards English people compared with the much earlier definition of presentment of Englishry in the *Dialogue of the Exchequer.* It begins by assuming that the slain man is English, where as the older definitions assume the slain to be Norman. The actual definition had not changed, but this re-wording shows that the attitude toward Englishry and hence English*ness* had. By 1329 there was no tangible or concrete distinction between those of English and those of Norman descent in England and the idea of a foreigner would have been a newly arrived immigrant or visitor. Hence, most people who were born in England considered themselves English and ethnicity had no bearing on presentment of Englishry.

Presentment of Englishry was not merely a form of taxation in Northamptonshire. While Justice Scrope's insistence that the county account for the 100 mark fine for their mistaken claim regarding presentment of Englishry does indeed indicate that money was an important factor in the eyre generally as well as with regard to the murder fine, there is also evidence that presentment of Englishry was more clearly a punishment for allowing a killer to escape than it had been in previous eyres. The case of one unknown man who was killed by another unknown man (who then fled) shows this function. The people from the community where the killing occurred asked the justices not to be charged with failure to arrest the killer due to the fact that the killing had taken place at night. The justices maintained, however, that there was to be a night-watch at that time of the year

[171] Ibid., 29.

(the week before Michaelmas) and that they were in mercy on two accounts: firstly because the Englishry of the slain was not presented, and secondly for not arresting the killer. The fault of the county is separated into two parts—the failure to maintain a night-watch and the failure to capture the killer—though failure to present Englishry would have accounted for both.[172] The fact that both failures are reprimanded is evidence that the edifice of presentment of Englishry and the actual function behind it were finally beginning to come apart at the seam: and that justices were interested in more pertinent issues.

Conclusions

The analysis of these early-thirteenth-century eyres does not aim to compare homicide trends among different counties, which has already been successfully done.[173] Nor does it claim to calculate the precise frequency or method of presentment of Englishry in the different counties. Instead, it demonstrates how presentment of Englishry operated throughout the kingdom as a whole in the royal courts over time. It also sheds light on the traditions and customs that the men of Kent may have been influenced by as they claimed to be exempt from presentment of Englishry, as well as on the background of the justices in eyre as ambassadors of royal control. The analysis shows that different counties at different times had their own customs regarding very important matters of law and order. These customs persisted through the early thirteenth century without debate or penalty, but as the eyre of Kent in 1313 approached, development of common law became more self-conscious. The justices in the eyre of

[172] Ibid., 182.
[173] See Given.

Kent could have accepted Passele's story if they thought doing so would benefit the king by controlling rebellion even if it did not provide him with money, as had been done in past eyres in other counties. Passele and the people of Kent undoubtedly knew that exemption on the basis of custom had been given before and might be given again. One possible reason (though not the only possible reason) this may not have worked in Kent's favor is because the people of Kent, Passele, and the royal justices lived a century after the first signing of the Magna Carta, they did not have the threat of imminent rebellion to lend them strength. The written document was by this time favored over oral tradition. They needed a good story, but no story would have been good enough without written documentation.

These eyres indicate that presentment of Englishry was an evolving practice, and that appeals to the past were not forceful enough to override it. Examination of the eyres of London and Northamptonshire show that, as in Kent, Englishry had not been presented to the coroners in these counties at the time of the homicides. The key difference was that in Kent the justices refused to allow for this failure to go unpunished and in order to encourage presentment of Englishry in the future, they noted the communities' failure to present Englishry in the eyre rolls. Conversely, the people of London and Northamptonshire were not penalized for failure to demand presentment of Englishry even though the justices acknowledged that Englishry had been presented in the previous eyre. Also, the people of London and Northamptonshire did not devise a story such as Sir Edmund Passele's to explain for their failure to enforce presentment of Englishry. It appears as if Passele's story about William the Conqueror actually worked against the

interest of Kent and incited the royal justice to demand adherence to the more recent eyre rolls.

CHAPTER 4
Presentment of Englishry Re-evaluated

Presentment of Englishry in the fourteenth century operated on three distinct levels: one of memory, one of money, and one of unification. The relationship between presentment of Englishry and memory was clearly shown at the opening of the eyre of Kent in 1313. When faced with defending the county against presentment of Englishry (and thus against the murder fine), Sir Edmund Passele, knight and advocate, along with the people of the county conjured a vague tale of how William the Conqueror had personally allowed the county the right to practice law according to their old customs. They told the justices in eyre of the bravery of the men of Kent in battle, and the gratitude with which William bestowed this privilege.

Evaluation of documents produced between the Conquest and the eyre indicates that although Kent had been held accountable for presentment of Englishry, there were areas in and around Kent that were exempt in some way. This shows two things: first, that there was a history of exemption for Passele and the people of the county to draw upon, and second, that the appeal to history had been made not to "do right by the past" in any sense but to reform the present situation.[174] Memories, like forgeries, could be fashioned to establish "truth for posterity" by elucidating "what really should have happened."[175] The people of the county did not want to pay the murder fine, and because of the solid link between the murder fine and Englishry, they were afforded an attempt to avoid the murder fine by exploiting the ethnic past associated with presentment of Englishry. Furthermore, they had not presented Englishry to the coroners when the

[174] Musson, 165.
[175] Clanchy, 149.

homicides took place, and did not want all of these homicides to be judged murders just because it had not been the custom to demand presentment of Englishry between the eyre in 1313 and the previous eyre.

Presentment of Englishry was also very closely tied to money because of its link with the murder fine. Englishry was not presented in any instance other than one of secret homicide, and secret homicide called for the hundred to be punished with the murder fine unless the slain was proven to be English. The way in which the justices set out to collect the murder fine varied among eyres according to the time and place of the eyre. In Kent, Englishry was never presented, rendering every secret homicide a murder. Perhaps to the county's benefit but perhaps to the king's, a flat-fee was imposed to cover all murders, no matter how many or few. In Kent there were many homicides adjudged to be murder, but the eyre did not raise a great deal of money, which indicates that this flat-fee may have benefited the county. The eyres of London in 1321 and Northamptonshire also imposed the rule of presentment of Englishry, though it was sometimes successfully presented, unlike in the eyre of Kent.

In other eyres, particularly those of the early thirteenth century, presentment of Englishry was less clear-cut. In the eyre of Yorkshire in 1218 and of Shropshire in 1221, presentment of Englishry was not practiced, and no murder fine collected. In Worcestershire and Warwickshire under the same eyre by the same justices, Englishry was presented both successfully and falsely, as well as not at all. In these counties the Crown gleaned some money from the murder fine, the many cases where deodand is not collected in cases of misadventure shows that the justices were not interested in depriving those who were in dire need of money just to provide for the king. Current events in the

kingdom undoubtedly had an influence on how harshly the justices in eyre would impose royal power over the counties. In these eyres, royal will was imposed with caution, perhaps due to ongoing rebellions surrounding Magna Carta and the recent crowning of a minor king.

Finally, presentment of Englishry had a great impact on both perceived and actual unity in the kingdom. In the early thirteenth century, presentment of Englishry was made haphazardly according to the proclaimed custom of the various counties. At the eyre in Kent, Passele used this trend to make a case for Kent's exemption from presentment of Englishry and the murder fine, but this time the county's custom was not respected, even though Justice Stanton had promised that the king did not desire to strip the county of its customs.[176] Despite the king's reassuring words, the royal justices were no longer willing to allow different counties their unique customs unless suitable evidence for the custom was shown. This was a step towards what came to be known as the common law for the very reason that it was common to all of the counties in the kingdom.

There is also the matter of ethnic unity. The *Dialogue of the Exchequer*, composed more than one hundred years before the eyre of Kent in the late twelfth century, states that no distinction remained between those of English and those of Norman ancestry, excepting that the lowest class had always been considered English.[177] While this was at best a mild exaggeration and at worst a projection of what the situation *should* be, it was most likely true a century later. Because of this, presentment of Englishry grew meaningless as originally defined. Thus it was not used in the local

[176] *Kent*, 11.
[177] *Dialogous*, 53.

courts, leaving counties vulnerable to the murder fine if the justices in eyre did not honor the custom of non-presentment, as seen in Kent.

These three aspects of presentment of Englishry are discernable but not separable. This is especially true concerning the influence of memory on unification and of unification on memory. The impact of memory on unification and the common law is evident in the increased reliance on precedent in the courts. At the eyre of Kent it is not the county's supposed memory of the Norman Conquest that has power but the memory of the previous eyre, conveniently documented and accessible to the justices. It is as if Justice Stanton said to Passele, "Yes, the Norman Conquest did affect the laws of Kent 250 years ago, and one's Englishry may no longer be relevant, but this document is evidence of a more recent history and therefore a more relevant history." The Norman Conquest was a common source to which people turned in order to validate claims in the later Middle Ages, and Passele's story is one poignant example.[178]

Equally, unification influenced memory in some very interesting ways. Anthony Musson gives a wonderful example of this occurrence. William Herle, a justice at the eyre of London (pictured in the heading of the roll inserted in Chapter One) as well as Chief Justice of the common pleas in the reign of Edward III made the illuminating comment in court that "Domesday was made in the time of St. Edward which was a long time before the Conquest."[179] Musson states that Herle had effectively erased the repercussions of the Conquest and placed this important record in an earlier time that was favored as the "Golden Age" of English law.

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[178] Another, of course, being the story of the Earl Warenne displaying his rusty sword from the Conquest before the royal justices as his response to a write of *quo warranto.* See Clanchy, 35-6.

[179] *Year Book 8 Edward II*, 186 qtd in Musson, 178. Domesday Book was compiled at the end of the Conqueror's reign in 1087, but the "St. Edward" referred to may have been Edward the Confessor, the king of England whose death brought about the Conquest in 1066.

Passele's story attempts to draw on the Conquest's status as a mythological event to lend credence to his story, though at the eyre his story failed. However, though neither he nor the justices lived to see it, his story succeeded one day in April, 1340, when a parliament at Westminster under King Edward III abolished presentment of Englishry, saying that this "great mischief to the people" was to be "wholly out and void forever."[180] Moreover, it was written that "many mischiefs have happened in divers counties of England, which had no knowledge of presentment of Englishry." While some counties claimed to have no knowledge of presentment of Englishry, such as London and Northamptonshire, the people of Kent embraced their knowledge of it and attempted to use their knowledge to avoid it.

In medieval English law, words had immense impact. The phrase "presentment of Englishry" had no relevance in fourteenth-century Kent—there was no longer a need to protect Norman immigrants from vengeful Englishmen because this ethnic divide no longer existed as it once had. It was this language, the word "Englishry," that allowed the county to attempt to free itself from the murder fine. The people of Kent exploited the ethnic history of the term to counter the fine with the history of their own county; they reinterpreted the past to suite the needs of the present.

The story of Kent's involvement in the Conquest as told by Passele has been shown to be largely fabricated without being altogether untrue. It was, however, imprecise, and was overlooked in favor of recent documentation—in favor of precedent. The emerging concept of precedent was not inflexible however, as one justice said in the mid-fourteenth century, "No precedent is of such force as that which is right."[181] In 1340

[180] *The First statute of 14 Edward III*.
[181] William Sharesnell, justice of common pleas in the 1330s and 1340s, qtd in Musson, 171.

it was decided that it was not the murder fine that was problematic, it was the phrase "presentment of Englishry." Once this was recognized, parliament removed the phrase from legal practice; a significant step towards the unification of the kingdom and nation.

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