

## Saint's Law: Anglo-Saxon Sanctuary Protection in the *Translatio et Miracula S. Swithuni*<sup>1</sup>

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Patrick Wormald's handlist of Anglo-Saxon lawsuits begins its *gesta* and *miracula* evidence with three consecutive suits from Lantfred of Winchester's c. 972 *Translatio et Miracula S. Swithuni*.<sup>2</sup> The suits, which appear in chapters 25-27, describe the trial by ordeal of a servant accused of "a certain misdeed" (*quodam facinore*, 25.3), the mutilation of a man accused of robbery, and an "arraignment of a man for appropriation of the king's corn."<sup>3</sup> Although Wormald classifies the third item, like the first, as a "rescue from prison or penalty" case in contrast to the sanctuary cases he identifies in the *Vita S. Edithae Virginis* and *De Miraculis S. Edmundi*,<sup>4</sup> the corn-appropriation or "wheat-thief" episode rightly belongs in both categories since it intentionally evokes the defining characteristics of sanctuary protection in pre-Conquest legislation. Sanctuary miracles are, in fact, quite common in the Anglo-Saxon hagiographic record, informed by

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- 1 I use the modern historian's term "sanctuary" throughout to indicate the full spectrum of asylum-taking traditions. For a discussion of the various terms employed during the medieval period, see Shoemaker, "Medieval Sanctuary Law," 22-29. I am grateful to Dr. Shoemaker for providing me with a copy of his dissertation.
  - 2 Wormald, "A Handlist," 269. The three cases are numbered 154-156. The "wheat-thief" episode is retold in Wulfstan of Winchester's c. 994 *Narratio Metrica de Sancto Swithuno* (2.10). Lantfred's *Translatio et Miracula S. Swithuni* and Wulfstan's *Narratio* are edited and translated in Lapidge, *The Cult of St Swithun*, 217-333 and 335-551, respectively; quotations from the texts and translations are taken from this work.
  - 3 Wormald, "A Handlist," 269.
  - 4 Wormald, *The Making of English Law*, 160, n. 154. For the motif of "miraculous jailbreak" in early hagiography, see Graus, "Die Gewalt," 61-156.

the wider interactions between secular legislative and customary laws.<sup>5</sup> Miracles of saintly protection are frequently connected to the saint's ability to defend or rescue those in need of asylum from the rigours of legal persecution or private vengeance. Lantfred uses several dramatic retellings of sanctuary episodes at Winchester to cast Swithun as protector of the desperate and downtrodden and as foiling the excesses of royal officials. To this end Lantfred references the particulars of contemporary legal practice in the three episodes above as well as several others, each of which promotes Swithun as a patron of criminals, slaves, and others who have run afoul of the law. In the resulting confrontations between the harshness of legal punishment and Swithun's merciful intercession, Swithun is placed in opposition to the zealous promulgation and enforcement of law that characterized late Anglo-Saxon England.<sup>6</sup>

The conceptual basis for Anglo-Saxon church sanctuary was the sacredness of the physical church and the intercessory authority of the bishop who governed it.<sup>7</sup> Sanctuary was not an end in itself. It was, rather, part of a conception of justice that saw wrongdoing primarily as a breach in society and between Christians and God.<sup>8</sup> The enthusiasm of the Church for sanctuary was at least in part an expression of the desire to repair such breaches in the social order and offer redemption to a wrongdoer's soul, an opportunity lost if wrongdoers were executed or killed in revenge for their misdeeds. The clear message of the early laws is that churches were more than sites of worship; they were the houses of God, understood in the legal context of lordship over a homestead. The privileges and protections of the church were commensurate with the respect due to God and his immediate subordinates, the saints.<sup>9</sup> These were legislative means of expressing Christian popular belief in a religious topography of holy spaces; God and the saints

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5 For scholarship on sanctuary traditions, see generally Helmholz, *The Ius Commune*, 16-81; Shoemaker, "Medieval Sanctuary Law"; Rosser, "Sanctuary and Social Negotiation," 57-79; Riggs, *Criminal Asylum*; Timbal, *Le droit d'asile*; and Trenholme, *The Right of Sanctuary in England*.

6 For the increasingly insistent legislative character of late Anglo-Saxon law, see Wormald, *The Making of English Law*, 290-345; Campbell, "The Late Anglo-Saxon State," 39-65; and Riggs, *Criminal Asylum*, 39-61. For an opposing view, see Hyams, *Rancor and Reconciliation*, 71-110.

7 Timbal, *Le droit d'asile*, 32. See also Markus, "How on Earth Could Places Become Holy?" 257-71.

8 Shoemaker, "Medieval Sanctuary Law," 87.

9 Æthelberht 1, for example, sets the protection of "God's belongings and the Church's" (*Godes feoh 7 ciricean*) atop a continuum (described in Æthelberht 1, 4, 9, 27-28, and 32) valuating the fines due for theft from the property and households of kings, bishops, and others. All references to the Anglo-Saxon law codes of Æthelberht (r. 590?-616), Wihtred (r. 691?-725), Ine (r. 688-725), Alfred (r. 871-899), Æthelstan (r. 924-939), Edgar (r. 959-975), and Cnut (r. 1016-1035) are to Liebermann, *Die Gesetze der Angelsachsen*; translations, where available, are taken from Attenborough, *The Laws of the Earliest English Kings*.

offered *grið* (peace or protection) in their churches in the same manner as a king or lord offered *mundbyrd* (guardianship) to those in his presence. In the case of the saints, this was meant literally; their relics — and therefore their physical presence — were indeed within the church, and they both enjoyed and reinforced the protection it offered. Their unique position between God and the faithful made them natural embodiments of intercessory power, both spiritually and temporally.<sup>10</sup> Their physical presence, moreover, undoubtedly drew attention to similarities between the *mundbyrd* or *handgrið* of a lord and the *ciricfrið* (security specific to holy places) of the church. The later Anglo-Saxon kings took an increasingly harsh line against wrongdoers, and especially against those who attempted to evade the king's justice.<sup>11</sup> Yet the *ciricfrið* remained strongly supported, not least because of heavy ecclesiastical influence over the written codes. Sanctuary, perhaps in part due to this collaborative process, became less dependent on the personal authority of the king and more of an absolute power grounded in the holy places of the Church. Even as newer laws increased the scope for summary execution of fugitives, therefore, a claimant who reached a church was legally protected from immediate harm.

A sensitive understanding of sanctuary as legal entity and as customary practice can illuminate hagiographical writing, providing insight into the depth of contemporaneous feeling concerning the protection offered by saints' cults. The intercessory role of churches contrasted sharply with the strident laws being promulgated in the tenth century under Æthelstan and Edgar. The contrast was surely intentional, as demonstrated by the frequency with which royal officers meet with saintly rebuke in late Anglo-Saxon hagiography.<sup>12</sup> It is hardly surprising that hagiographers would find in sanctuary an ideal proof of the special sanctity of their subjects. Saints were vital to the definition of church space and were connected in the medieval imagination to the *sanctum sanctorum* and the *grið* of the church itself. Saints, as ideally constructed, were guardians of the oases of God's peace. The justification of sanctuary as a concomitant of the respect due to God and the saints, in turn, attached the intercessory authority of the clergy to their sacred charges, the relics and the churches. Churches were guarded by the saints, whose power as the special intimates of God extended to and reinforced the formidable taboos already in place against violence in holy places.<sup>13</sup> Their guardianship was routinely

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<sup>10</sup> Rollason, *Saints and Relics*, 7.

<sup>11</sup> E.g., II Æthelstan 1.2: "Gif he hine þonne werian wille oððe oðfleo, ðonne ne sparige hine mon" ("If however, he [the thief] tries to defend himself, or if he takes to flight, he shall not be spared").

<sup>12</sup> Wormald, *The Making of English Law*, 160.

<sup>13</sup> Riggs, *Criminal Asylum*, 26-27.

affirmed both in ritual and in law, and the clergy were quick to see advantages in promoting the sanctuary powers of the Church as an advertisement for the greatness of its saints.

The wheat-thief episode of the *Translatio et Miracula S. Swithuni* relates several miracles alleviating the plight of a poor but pious labourer who, through a misunderstanding, finds himself accused of theft. The episode opens with the man accepting a gift of four sheaves of wheat from the king's reapers at Kingsclere without the permission of the royal steward (*echonomus*, 27.3), who finds him in the act of taking the sheaves home.<sup>14</sup> The man does not name his benefactor and, unable to account for the sheaves, is imprisoned to await judgement for theft (27.6). Instead of pursuing a public judgement, however, the steward orders that the accused be flogged to the point of death and then beheaded (27.7-8). That night, the prisoner borrows a small knife from one of his guards in order "to trim his fingernails" (*ad unguis suos incidendum*, 27.10). Invoking Swithun's intercession, he then prays to receive the help of God, "Who releases those in chains and Who lifts up the downtrodden" (*qui compeditos soluit et elisos erigit*, 27.15), whereupon he is able to cut through the beam securing his chains as if it were "fresh cheese" (*quasi recentem caseum*, 27.19) and, after another appeal to Swithun for aid, to snap the spike holding his "cruel fetters" (*diris ligaminibus*, 27.18) together. Further miracles see him safely through a roomful of sleeping guards and enable him to open a forbidding lock on a door, which then opens as silently as if it had been "greased with soap" (*peruncta ... sungia*, 27.33). He leans a huge cartwheel against the outside of the door, blocking his would-be captors in, and rushes the eighteen miles from Kingsclere to the church at Winchester, where he arrives at dawn and gives thanks at Swithun's tomb. Throughout, the wheat-thief's attention remains focused on escape from his captors and attaining safety through Swithun's protection and aid, "as he himself reported it unhesitatingly to the monks of that place" (*sicut ipse fratribus loci illius indubitanter retulit*, 27.37-38).

The wheat-thief's story goes beyond a general invocation of the sanctuary privilege. While still succeeding as a "rescue from prison" episode, the narrative expands to encompass the details of a flight to sanctuary reflecting the legislative tradition. Lantfred's knowledge of the codes was extensive, as indicated by his accurate depiction of an

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14 In *Narratio* 2.10.521, Wulfstan identifies the estate under the steward's control as Kingsclere, a royal estate still in the possession of the royal family down to the time of Domesday Book and into the twelfth century; it lay some eighteen miles north of Winchester. See Lapidge, *The Cult of St Swithun*, 39 and 519, n. 521. The stewards appear from this and other episodes in the *Translatio* to be deeply involved with local law enforcement around Winchester.

ordeal in chapter 25 and his preservation of an otherwise lost law code of Edgar in chapter 26,<sup>15</sup> although a general familiarity with the legislative tradition would have been enough to accurately reflect the concept of sanctuary in the law. The protection offered by a church was frequently addressed in the law codes, and even though the legislation does not tell the whole story, it is nevertheless indispensable as a record of attempts to define and limit the scope of the sanctuary privilege. The earliest specific reference to sanctuary in the surviving codes is found in Ine 5 and 5.1:

5. Gif hwa sie deaðes scyldig 7 he cirican geierne, hæbbe his feorh 7 bete, swa him ryht wisige.

5.1. Gif hwa his hyde forwyrce 7 cirican geierne, sie him sio swingelle forgifen.

[5. If anyone is liable to the death penalty, and he flees to a church, his life shall be spared and he shall pay such compensation as he is directed [to pay] by legal decision.

5.1. If anyone renders himself liable to the lash and flees to the church, he shall be immune from scourging.]

Charles Riggs argues that these laws refer primarily to unfree persons and “hand-having” thieves (those caught in the act of thievery).<sup>16</sup> Whipping as a punishment is reserved for the unfree classes in Ine (3.1; 48; 54.2) as well as elsewhere in the legislative tradition (Edward and Guthrum 7.1 and 8; II Æthelstan 19); the only persons likely to render themselves “liable to the lash,” and to avail themselves of the protection offered by Ine 5.1, would therefore be slaves. Certainly there is Continental precedent for offering such protection as well as a Roman tradition of offering protection to slaves who fled harsh masters.<sup>17</sup> Ecclesiastical sources repeatedly addressed the question of the sanctuary protection of slaves, with several councils reaffirming the privilege from the sixth century to the tenth.<sup>18</sup> The reference to the death penalty is less restrictive — the law certainly encompassed theft, but was not necessarily limited to thieves. It is therefore unlikely that the reading proposed by Riggs embraces the full extent of sanctuary law. A death

15 Wormald infers that Lantfred may in fact be referring to the code appended to II Æthelstan; Wormald, *The Making of English Law*, 370 and 415. Liebermann is less convinced; Liebermann, *Die Gesetze der Angelsachsen*, 3:155. See also Hyams, who argues for Lantfred’s knowledge of contemporary law from the evidence of the ordeal episode in chapter 25; Hyams, “Trial by Ordeal,” 90-126.

16 Riggs, *Criminal Asylum*, 10-27.

17 For the Roman tradition of protection for fugitive slaves, see de Ligt, “Restraining the Rich, Protecting the Poor,” 1-45. Timbal, *Le droit d’asile*, 99-106, takes up the story in the early Christian context.

18 Timbal provides the most complete overview of the relevant materials; Timbal, *Le droit d’asile*, 55 *et passim*. For an extended analysis of the interaction of English and Continental law during this period, see also Shoemaker, “Medieval Sanctuary Law,” 86-149.

sentence could be incurred for a number of misdeeds, ranging from fighting in the king's residence (Ine 6) to leaving the road without properly announcing oneself (Ine 20), and it is likely that the sanctuary protection offered by Ine 5 was intended to apply to them all. The legislation does not set out all the infractions which might trigger sanctuary protection; rather, a broad and implicit privilege is assumed. The code of Alfred makes this explicit, establishing the universality of both the churches' status as safe havens and the offences for which their protection might be invoked.<sup>19</sup>

The wheat-thief's story certainly mirrors the details of sanctuary legislation. It also resonates with contemporary custom and the Roman and canon law traditions of sanctuary protection specifically for unfree persons. Since Anglo-Saxon law and custom based the legal standing of an individual on his or her socio-economic status, the wheat-thief's social rank is significant to understanding the action of the story. Several markers in the story indicate that he is of unfree or *theow* status. The wheat-thief is of an economic class which requires that he accept the charity of a field-reaper under what are clearly dangerous, even criminal, circumstances. (Wulfstan later alters the events so that the man actively begs for the sheaves, which are given by a group of labourers who are moved by pity to help him.) Later, he is placed in fetters and threatened with flogging. As other examples from the *Translatio* show, Lantfred was most likely aware that only slaves were liable to these punishments. The conspicuous absence of a lord to take up the case on the wheat-thief's behalf may indicate not that he is free, but rather that he is a *theow* of the king's own property.<sup>20</sup> The steward's treatment of the wheat-thief would therefore be cruel, but legally unimpeachable. The flogging in particular indicates not only the status of the prisoner in law, but also Lantfred's anticipation of the climax of his story, invoking all the force of the legislation governing sanctuary. Threatened with both flogging and death, the wheat-thief is explicitly permitted the haven of sanctuary. Finally, the wheat-thief is able to beg only "a knife with which to trim his

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19 Alfred 2 and 5.

20 This seems likely given the evidence of the text. The wheat-thief is known to both the steward and the field-workers of the king; he is in the king's fields when he receives the illicit sheaves; and he is a resident of the area around Winchester. Winchester's arable land was largely owned by the Wessex kings, except for those parcels given to the priory at Winchester. Lantfred, like Wulfstan and Ælfric after him, is keen to attach the name of Winchester Cathedral (and particularly the Old Minster) to any aspect of Swithun's legend (e.g., Lantfred's reference to the slave-girl of Teoðic, a Winchester bell-maker). A reference would almost certainly be made to the wheat-thief's status as a tenant of the priory's land if he were one, and if he were indeed a slave, he would in any event not be part of the priory's house as the Church forbade full slavery; the king is therefore the most likely candidate to be the wheat-thief's lord.

finger-nails" (*cultellum ad unguis suos incidendum*, 27.10) rather than a sword, a weapon forbidden to unfree men by Anglo-Saxon law.<sup>21</sup> Certainly this last piece of evidence is indirect at best and, on its own, inconclusive since it is unlikely that a prisoner of any social rank could successfully beg a sword off his captors. Taken together, however, the prisoner's need for charity, the nature of his theft, his treatment upon capture, and the possibility of his being flogged to death all indicate that he is a *theow*, most likely the king's own, and vulnerable to the excessive enforcement of the law. His subsequent flight to the protection of Swithun thus foregrounds the protective nature of Winchester's holy space and opposes the threat of harsh legal judgement with the saint's guardianship.

Several of Swithun's miracles revolve around men and women in chains or threatened with flogging; without exception, these beneficiaries of the saint's attention are servants or persons accused of crimes. Lantfred saw this attention to those most at the mercy of the law and of royal officials as central to an understanding of Swithun's character, a point he makes clear in the penultimate sentence of the *Translatio*:

Mirum namque hos est ualde: quod sanctus iste Dei famulus [...] non solum meritis et orationibus medetur languentium doloribus, uerum etiam compenditos soluit multos a ualdis ligaminibus, a columbare et compedibus, a carcere tenebroso et graui tormento.  
(*Translatio* 39.7-10)

[This is highly remarkable: that this holy servant of God [...] should not only have healed the sufferings of the diseased through his merits and prayers, but that he even released many who were shackled from powerful bindings, from head-collar and foot-shackles, from the dark prison and from severe punishment.]

Lantfred describes the saint releasing slaves and prisoners, both innocent and guilty, from their shackles, fetters, cells, and torments throughout the *Translatio*. To the three episodes already described are added those of a slave-girl (*ancilla*) of a Winchester bell-founder freed from her chains and protected by the saint from her angry master (6); another bound slave-girl whose prayers are answered when she is carried to Swithun's

21 Noted by Lapidge, who adds, "it is not specifically stated that the man was a slave"; Lapidge, *The Cult of St Swithun*, 315, n. 250. See also Æthelberht 18-20, Ine 29, and Alfred 19 on the responsibilities incurred by loaning a recognizable weapon to another man. Ine 29 especially warns against giving a weapon to another man's servant: "Gif mon sweordes onlæne oðres esne, 7 he losie, gielde he hine ðriddan dæle; gif mon spere selle, healfne ..." ("If anyone lends a sword to the servant of another man, and he makes off, he [the lender] shall pay him [the owner of the servant] a third [of his value]. If he provides [the servant] with a spear, ... half"). Lantfred demonstrates in the *Translatio*'s third chapter that his knowledge of types of weaponry is more than merely casual when he uses the terms *cultellus*, *mucrō*, and *pugiō* (3.39) to distinguish between lengths and types of blades.

tomb by a spectral priest (20); a third whose manacles slip from her arms when she approaches the saint (38); a male slave shackled for a dereliction of duty who is freed after hobbling to the tomb (39); a man guilty of kin-slaughter whose penitential iron bands spring free from him at Swithun's tomb (24); and a thief miraculously freed from a Gallic prison after praying to Swithun (34). The Gallic thief's story in particular mirrors the wheat-thief episode in many respects: the prisoner is caught in the act; he is shackled and imprisoned; he is under threat of execution for his crime; after his prayer to Swithun, his shackles are loosed, the prison-door opens for him, and he is able to flee. It lacks the subsequent journey to Swithun's tomb, however, and so does not invoke the sanctuary power of the saint. In the context of the *Translatio*, then, the wheat-thief's story is unusual only in that the protagonist is apparently both slave and criminal at once and in scrupulously reflecting the legal character of sanctuary.

The wheat-thief is, by any reasonable Anglo-Saxon definition, guilty of a criminal act as well as of wronging his lord and master. Taking the sheaves is unquestionably illegal. Lantfred's text sympathizes with the straits of the luckless man and anticipates a similar sympathy from its audience, but it does not seek to justify or ennoble his actions beyond emphasizing the prisoner's unwillingness to implicate his benefactor or benefactors in the crime.<sup>22</sup> The produce of the king's land is the *bona*, the goods, of the king himself. Early Kentish law allowed for a nine-fold fine for theft of the king's goods, to be reduced to a double fine if the accused were a *theow* (*Æthelberht* 4 and 90, respectively). Ine's Wessex laws are harsher: a thief's life was potentially forfeit if not redeemed by a *wergeld* payment: "Gif ðeof sie gefongen, swelte he deaðe, oððe his lif be his were man aliese" ("If a thief is taken he shall die the death, or his life shall be redeemed by the payment of his wergeld"; Ine 12). Yet even the reduced fine due for the life of a *theow* would likely be beyond the reach of a man forced to beg for wheat. Moreover, the royal authorities cannot be minded to act as a mediating influence in the case, since the wronged and avenging party is the king (through his agents). Since the wheat-thief is caught by the king's steward, he is also denied the possibility of clearing himself by oath: "Ðeof, siððan he bið on cyninges bende, nah he þa swicne" ("A thief shall not have the right of clearing himself by oath after he is in the king's power"; Ine 15.2). Though the theft appears minor, the legal implications for the wheat-thief are dire indeed, and he is left without the possibility of secular intervention in his fate. He would therefore be forced to rely on the mercy of the king's agent or to seek ecclesiastical intercession.

22 Lantfred points out, "Is itaque omnino noluit largitorem indicare echnomo, mallens mortis cruciatu sustinere quam damnum amico irrogare" ("He of course did not wish to reveal the donor to the steward in any way, preferring to undergo the penalty of death rather than to impute the theft to a friend"; 27.5-6).



That the prisoner is captured with the sheaves on his person, in the act of taking them home, makes his legal position even worse. The laws governing theft included a set of graduated fines, consisting of a compensation payment (called *angyld*), which was most often set at the price of the stolen goods, and another penalty levied by the Crown, which could be as high as 60 shillings.<sup>23</sup> The laws governing the treatment of “hand-having” (OE *hæbbendre handa*, Lat. *handhabbenda*) thieves, those caught in the act of stealing, were graver, with a prisoner of freeman status potentially being required to purchase his freedom by a *wergeld* payment (or, if unfree, the equivalent fine) in addition to the other penalties, or even allowing the person finding the thief to kill him on the spot.<sup>24</sup> Wulfstan incidentally removes any doubt as to the hand-having guilt of the wheat-thief by the addition of a detail absent in Lantfred's account:

Vix adiitque locum solito quo forte iacebat  
 limes agro positus (litem ut discerneret arius)  
 dispensator ei fuit obuius ecce repente  
 regius, huncque rogat quis frumenta dedisset.

(*Narratio* 2.531-34)

[He had scarcely reached the place where by chance the usual boundary-marker lay in the field (so that it could settle a dispute about land), when the king's reeve suddenly came upon him, and asked him who had given him the corn.]

The sheaves once carried across the boundary become stolen goods. Having been caught in the act of crossing the land-boundary leaves the wheat-thief with no possibility of avoiding accusation and renders him subject to the harshest laws associated with the crime.<sup>25</sup> The nature of the thief's crime, “hand-having” or witnessed theft of the king's property, also means that he is unlikely to find any powerful ally willing to take his side or mediate for him. As noted above, it is likely that he is a *theow* living on the land of the king and thus completely without the protection of another lord. Under these circumstances, the king, as both lord and injured party, would not be minded to redeem his servant and could not be pressured to do so. Failure to pay the *wergeld* or fines attached to an accusation of theft technically left a thief's life forfeit. But this was probably comparatively rare. A freeman unable to redeem himself would more likely be

23 For a fuller treatment of *angyld* and *bot* payments, see Goebel, *Felony and Misdemeanor*, 1:348-59.

24 Wiltred 25, 26; Ine 12; and II Æthelstan 1, which limits the summary execution to thieves over the age of twelve and found with goods worth more than eight pence.

25 The distinction is indicated by Ine 7, which prescribes a punishment of fine-payment or slavery for theft, and Ine 12, given above, which orders death or a full *wergeld* payment for a thief “taken” (i.e., in the act).

forced into debt-slavery, an outcome that accommodated the customary preference for allowing the redemption of wrongs; an unfree man such as the wheat-thief would most likely be flogged or returned to his master for punishment in a scenario which similarly re-established the *status quo ante*. Later developments in the law codes of Æthelstan made the execution of thieves more common, but even then only under specific circumstances, for example, when the thief attempted to evade arrest. Lantfred's wheat-thief is in a bind, but, as he has as yet made no attempt to flee, probably ought not to be subject to the death penalty, as the text indicates he might be.

There are precedents, however, in Lantfred's text for officials who overstep the bounds of law and of custom. In the trial by ordeal case of chapter 25, a *theow* (*servus*) is forced to undergo a test of hot iron<sup>26</sup> at the command of Eadric of Calne,<sup>27</sup> a reeve criticized for "exulting overmuch in his secular authority" (*ultramodum superbiens pro mundanis fascibus*, 25.10).<sup>28</sup> Unlike the wheat-thief, however, this *theow* has in Flodoald of Winchester<sup>29</sup> a master willing to take up his case. Flodoald offers first to give the slave to Eadric "under the conditions pertaining to a slave" ("seruili prescriptum condicione famulum possideret illesum," 25.9);<sup>30</sup> when that offer is ignored, Flodoald offers to add a pound of silver and the *theow*'s kin make an additional offer of gifts to suspend the ordeal. But Eadric flouts the custom of fine-compensation and forces the *theow* to undergo the ordeal. The *theow*'s hand is badly burned by the iron, and when Flodoald

26 The ordeal of hot iron is described in II Æthelstan 23.1 and in more detail in the *Dom be hatan isene and wætre*; see Liebermann, *Die Gesetze der Angelsachsen*, 1:386-87, and Attenborough, *Laws of the Earliest English Kings*, App. II, pp. 170-73. It involved the grasping and carrying of a piece of heated iron in one's hand for a distance of three paces, after which the hand was wrapped for three days before being uncovered and examined. A clean wound was considered proof of the defendant's innocence, while discoloration or festering of the wound was taken as a sign of guilt.

27 Lapidge identifies this Eadric as a contemporary of Lantfred's; he was indeed reeve of Calne in nearby Wiltshire, and his name appears in the lists of witnesses for seven charters between 966 and 970. (See Lapidge, *The Cult of St Swithun*, 308, n. 229-30.) If Eadric still held office when Lantfred's text was produced c. 972, the condemnation of his behaviour may have been intended as a direct rebuke.

28 The accuracy of the details of this case is addressed by Lapidge in *The Cult of St Swithun*, 309, n. 232-33, and by Whitelock in "Wulfstan *Cantor* and Anglo-Saxon Law," 83-92; however, Whitelock discusses only the later version found in Wulfstan's *Narratio*.

29 Wulfstan adds that Flodoald was a respected merchant in Winchester (*Narratio* 2.8.299-301).

30 The reference here may well be directly or indirectly to the Roman *noxalis actio* ("action on account of injury") of noxal surrender, by which a master could shield himself from further liability for the delict of a slave by giving the slave to the injured party. The action was most often termed *noxae dedere*, "surrender to the one injured." An overview of the *noxales actiones* in Roman law is found in Roby, *Roman Private Law*, 2:252-58. I am grateful to one of *Florilegium's* anonymous readers for pointing out this connection.

examines the wound on the second day, he realizes that its condition will be enough to pronounce his servant guilty. He and his household then pray for Swithun's intercession, promising to give the *theow* to Swithun if he will rescue him. On the third day, the bandages are removed in the reeve's presence, and while all Flodoald's household can see the blisters and wounds on the *theow*'s hand, Eadric and the gathered thanes miraculously see only unbroken skin, "as healed [...] as if it had never touched the heated metal" (*ita sanam . . . quasi penitus / foruum non tetigisset ferrum*, 25.35-36). The *theow* is returned to Flodoald, who, mindful of his promise, "donated him to the same blessed bishop who had snatched him from the dreadful danger of an odious death" (*contulit ipsum beato pontifici prefato qui eum subtraxit a diro pestiferae necis periculo*, 25.40). The donation of the servant to Swithun (that is, to the ecclesiastical community at Winchester) is significant as a demonstration of Flodoald's gratitude to the saint. It also serves to make any further action by Eadric unlikely. Since the slave would henceforth be a member of Swithun's "household" — whether in holy orders or as a lay worker is unclear, though the latter is far more likely — he would gain the Church's substantial protection from further harassment by the king's reeve.

It is difficult to say with certainty whether the unnamed steward of Kingsclere is as much a petty tyrant as Eadric of Calne. The wheat-thief is apparently without a lord or friend who is willing to pledge on his behalf in a case of theft of royal property, and thus the steward need not turn down an offer of settlement. If, as I have suggested, the king is the wheat-thief's immediate lord as well as the wronged party in the theft, the steward may act on the king's behalf with virtual impunity. His sentence is harsh, but certainly within the contemporary bounds of allowed treatment if the thief is an unfree labourer. Edgar's and Æthelstan's laws dictated severe corporal punishment for criminals in any case and, to ensure enforcement, exacted a *wergeld* payment from anyone who refused to pursue a fugitive or showed mercy to a captured thief.<sup>31</sup> Lantfred makes no reference to any attempt to pay the fine for thievery or to purchase the thief's life through some combination of fine-payment and gift-giving, as is offered by Flodoald. Such evidence (or lack of evidence) may equally reflect the steward's vindictive nature, the wheat-thief's lack of familial support or economic means, or the difficult situation created by a *theow* caught stealing from his own lord. Any of these scenarios, or a combination of them, only increases the appeal of sanctuary as an escape and provides an opportunity for a strongly implied critique of the innovations in Edgar's laws.

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31 See I Edgar 3 and II Æthelstan 1.1.

Lantfred moves closest to direct criticism of Edgar in the *Translatio*'s twenty-sixth chapter. It begins with a reference to a new law then being promulgated by royal authority:

Prenotato denique tempore, glorioso rege Eadgaro precipiente, ad deterrendos quosque malos horribili poena talis lex est constituta in Anglorum prouincia: ut si quispiam cleptes in tota uel predo inueniretur patria, caecatis luminibus, truncatis manibus, auulsis auribus, incisus naribus, et subtractis pedibus excrucietur diutius; et sic demum decoriata pelle capitis cum crinibus, per omnia pene membra mortuus relinqueretur in agris, deuorandus a feris et auibus atque nocturnicanibus.

(*Translatio* 26.2-7)

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

Though the law itself no longer survives, the passage is yet another example of Lantfred's engagement with contemporary legislation.<sup>32</sup> He apparently felt comfortable enough to report Swithun's mitigation of Edgar's severity, as the balance of the chapter describes a miraculous cure performed by the saint on a man falsely accused and subjected to this punishment. A note of disapproval of the "wicked" (*nefandis*, 26.9) men who carry out Edgar's law may be heard here, but only as a reflection of the ruthlessness of the law itself. Swithun's merciful healing of a man ill-treated by the law is even more provocative in its placement between two chapters decrying the merciless royal officials of Calne and Kingsclere. Lantfred builds across these three passages a sustained critique of the new laws and the men who enforce them with excessive zeal. He juxtaposes this critique with Swithun's willing mercy and protection of those who call on him or approach his tomb.<sup>33</sup>

32 For a discussion of the implications of Lantfred's reference here, see Wormald, *The Making of English Law*, 125-28. The date of composition of Lantfred's text (c. 972 x 975) is consistent with the promulgation of Edgar's *Wihthordesstan* or fourth code, but no equivalent law is found therein. (For the date of Edgar's code, see Liebermann, *Die Gesetze der Angelsachsen*, 3:138-39). It is most likely that Lantfred refers to another code now lost.

33 This strategy is only one part of what Lapidge calls Lantfred's "eloquent advocacy" of the saint; Lapidge, *Cult of St Swithun*, 217. It shows the hagiographer engaged in a recognizable and therefore relatively

The wheat-thief, significantly, does not seek Swithun straight away. He allows himself to be taken prisoner rather than attempt to flee to a place of sanctuary at once. This might not be considered unusual, except that he does then make his escape after his imprisonment, when he faces chains, bolts, a beam, a locked and squeaking door, and a roomful of guards. The decision, however, is a rational one in light of the tenth-century law codes' hostility to flight. For example, IV Æthelstan 6.3 specifies, "Si autem fugiat (aufugiat), prosequatur eum omnis homo super vitam suam qui velit quod rex, et occidat eum cui obviabit" ("If, however, he [the thief] takes to flight, he shall be pursued to his death by all men who are willing to carry out the king's wishes, and whoever shall meet him shall kill him"). Riggs identifies in the legislation of Æthelstan and Edgar an attempt to create a quantifiable "breaking point" in an individual's resistance to the law:

If [the accused] submitted before this breaking point, he was entitled to a judicial treatment; if his resistance went beyond this point, he exposed himself to summary police action and automatically lost his capacity to effect a judicial settlement. In the case of a handhaving thief this breaking point was reached the moment he took to his heels.<sup>34</sup>

It is more than likely that this move by Æthelstan marks an early medieval effort to check the power of criminal asylum, also evident in his legislative attempts to firmly limit the length of time a fugitive could remain in sanctuary (IV Æthelstan 6.1 and 6.2). The laws incidentally legitimize sanctuary even as they limit it; any attempt under Æthelstan to gain the safety of the church, however, meant potentially gambling one's life on success. Later, certainly by the reign of Cnut, this had been expanded to mean that a fugitive was to be taken dead or alive, sometimes even in contempt of sanctuary (II Cnut 26). Ameliorating these new laws, however, were new affirmations of the sanctuary privilege, including VI Æthelred 50, VIII Æthelred 1-1.1 and 3-5.2, I Cnut 2.1-2.3 (which includes a caveat allowing the king to pardon even a sanctuary violation), and I Cnut 3.

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safe motif of criticizing secular officials to promote his subject rather than making an attack on the king's justice *per se*. Though there is a great deal of specificity in the censure of Edgar's laws and of local officials, Lantfred's narrative focus remains on Swithun's and Winchester's relationship to the persecuted rather than their persecutors. He is, moreover, careful that the most pointed criticism should fall on the heads of Eadric of Calne and the Kingsclere steward rather than on that of the king. Certainly neither Lantfred nor his superior Bishop Æthelwold would have expected that the "glorious and blessed King Edgar" (*glorioso rege Eadgaro atque beatissimo*, 3.145), at whose supposed command Swithun's translation is carried out and whom Wulfstan later credits with lavish gifts to the shrine and cult of the saint (2.1-15), would be personally affronted by this rhetoric.

<sup>34</sup> Riggs, *Criminal Asylum*, 44-45.

The wheat-thief, then, may well have chosen not to flee because flight meant the risk of instant death. Staying meant the possibility, at least, of a compensation settlement with the king, a return to servitude, or a sentence of exile. It is only when the steward demonstrates no intention of offering these comparatively merciful alternatives and instead has him chained and threatened with execution, and when it becomes clear that no allies will take up his cause, that the wheat-thief breaks free and makes for Swithun's tomb in a bid for the sanctuary protection of the cathedral and the saint. Both the initial decision to stay and the subsequent one to flee, then, are logical in light of the circumstances. They reflect an understanding of the law (no matter whether the wheat-thief's understanding of his predicament even in the heat of the moment or Lantfred's canny use of the story in support of his hagiographic aim), but also an uneasiness about those who enforce it.

The actions taken by the steward and the local authorities when the wheat-thief is captured further indicate Lantfred's engagement with the laws governing captured criminals. A reward of ten shillings was offered for the capture and delivery of the prisoner, while substantial fines were levied against a community that allowed a prisoner to escape. Once a thief was captured, responsibility for his incarceration passed to the local community until a royal official arrived to take the prisoner away or to pass judgement.<sup>35</sup> The transfer could happen immediately, but there was also a chance that weeks might go by before the prisoner was officially claimed. Lantfred indicates that members of the Kingsclere community are still in charge of the wheat-thief by the inclusion of the detail that one of the guards is on duty "with his wife and family" (*cum coniuge et familia*, 27.9); that is, the wheat-thief is being kept in a private residence. It is only after this family has gone to sleep that the escape attempt can begin.

The wheat-thief clearly understands Swithun's fame as a helper of those in chains and fetters. The reasoning for his prayer for Swithun's intercession and his subsequent flight to Winchester, however, may reveal yet more about contemporary sanctuary practice and its role in shaping Swithun's early reputation. The choice is less obvious than it might seem, given the distance from Kingsclere to Winchester. It indicates that he may well have already decided where to flee upon breaking loose. Anglo-Saxon sanctuary reflected a universal respect for holy space but was also a function of the prestige of an individual church. The laws governing the length of time a claimant was protected

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35 For example, Ine 36: "Se ðe ðeof gefehð, oððe him mon gefongenne agifð, 7 he hine þonne álate, oððe þa ðiefðe gedierne, forgielde þone þeof his were" ("He who captures a thief or has a captured thief given into his custody, and allows him to escape, or suppresses knowledge of the theft, shall pay for the thief according to his wergeld").

by sanctuary vary greatly, but the general agreement of the sources is that the largest (in physical area), longest-lasting, and most staunchly defended right of sanctuary belonged to churches governed directly by bishops and those deep in royal favour. Saints' relics had a similar effect, focusing spiritual and temporal guardianship on the churches most fortunate in procuring and promoting them.<sup>36</sup> As the seat of a bishopric and the beneficiary of the patronage of generations of Wessex kings, Winchester had sanctuary powers among the strongest in the kingdom, making the cathedral an obvious choice for those in need who had time to consider their options. Æthelwold's ecclesiastical authority as bishop of Winchester was unrivalled in the southwest, and his power to protect fugitives would have been commensurately extensive. For the friendless wheat-thief, the cathedral's imposing reputation, Swithun's supernatural protection, and the possibility of gaining partisan support from Æthelwold would have been powerful incentives to risk travelling the road to Winchester. Any number of would-be sanctuary claimants, similarly tempted, would continue making their way to Winchester from the surrounding lands throughout the Middle Ages, adding to Swithun's reputation and serving as a reminder of the prestige of the cathedral and its religious community. If, even in the nascence of Swithun's cult, the protection offered at Winchester was strong enough to entice the wheat-thief to flee all the way from Kingsclere to take refuge there rather than at any of the local churches, it is reasonable to assume that the cathedral's properties as a sanctuary space were already well known before the translation of the saint's relics in 971.

Upon making his way through various hazards, including a roomful of guards sleeping by a miracle of God (27.23), the wheat-thief finds himself trapped when he confronts a locked and imposing-looking door which, he knows, also squeaks loudly whenever it is opened (27.32). He panics, and prays again: "Modo me grauior expectat interitus, si non superuenerit Dei suffragium! Quapropter, uenerande presul Suuithune, adiua me tua sancta intercessione" ("Now a more cruel death awaits me, if God's assistance does not intervene! Therefore, venerable Bishop Swithun, help me with your holy intercession," 27.26-27). His dismay, of course, is natural: a prisoner caught in an escape attempt, like one caught fleeing the scene of the initial crime, forfeited his right to judicial process and became subject to summary execution by

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36 Forster observes that the greater sanctuary privileges attached to cathedrals made them popular sanctuary sites even when fugitives had to travel great distances to reach them. He also argues from the evidence of the Durham and Beverley Registers and local court records that sanctuary may have been difficult to obtain in the immediate area of one's crime, necessitating an extended flight to sanctuary much like that taken by the wheat-thief. See Forster, "Notes on Durham," 137-39.

anyone who found him. The wheat-thief must also contend with highly motivated pursuers, as his guards would be held accountable for a prisoner's escape. But Swithun comes to his aid once more, and the wheat-thief escapes through the miraculously unlocked and silent door. Instead of immediately taking to his heels, however, he takes a few precious moments to roll a heavy cartwheel in front of the door in hopes of locking in his former guards and delaying their alerting the town to his escape.<sup>37</sup> The detail confirms that the fugitive, for fugitive he now is, understands (as does Lantfred) that his life is forfeit should he be captured in his flight to the saint's tomb, as Æthelstan's laws effectively mean that he must risk everything to attain the shelter of the church.

Lantfred claims, as mentioned above, that the account of the wheat-thief's flight is "just as he himself reported it unhesitatingly to the monks" (*sicut ipse fratribus ... indubitanter retulit*, 27.37-38) after arriving in Winchester. This attention to identifying his source is typical of Lantfred, even when he makes no more than a general reference to gathered crowds who can confirm his account (e.g., 30.8-9). The statement that the wheat-thief reported his actions to the monks serves another purpose, however, in affirming that he fulfilled the customary requirement that a sanctuary claimant announce his arrival and the crimes of which he stood accused or wished to confess. This is, in fact, an early form of the so-called "sanctuary oath," a scripted confession recited by the claimant before witnesses.<sup>38</sup> The wheat-thief reports to the monks only after making his obeisance at Swithun's tomb, effectively placing himself in the saint's care. At that moment, having sought (and received) the saint's aid and announced himself to the monks, the wheat-thief is no longer without friends. He could expect, from then on, that bishop Æthelwold or an appointed member of the Winchester community would arrange for a settlement on his behalf. The bishop would act as the saint's legal representative in such cases, seeking a settlement that would express the saint's charity.<sup>39</sup> The settlement would not necessarily be an improvement on the prior circumstances of the

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37 This is a curious detail of the episode: for reasons of security as well as for practical considerations, external doors in nearly all Anglo-Saxon dwellings would open in, not out, thus protecting the hinges from would-be intruders and allowing the door to be barred; see Archer, *Architecture*, 256. A cartwheel, then, no matter how heavy, would be only a momentary impediment, not an effective doorstop.

38 A much later example of the sanctuary oath survives in BL MS Harley 4292 f.17r, within a register of sanctuary claimants at Beverley from the reigns of Edward IV to Henry VIII. Interestingly, its first stipulation is that the fugitive pledge himself "trew and feythfull to my lord archbishop of york," indicating that episcopal authority over sanctuary was even more extensive by that time.

39 Olson, "Sanctuary and Penitential Rebirth," 41.



wheat-thief: he might be banished from the kingdom,<sup>40</sup> returned to his master as a runaway with oaths taken that he would be spared a beating, or sold or given to a new lord. The Kingsclere steward might pursue the objection that the wheat-thief was already convicted of a crime and therefore ought not to be allowed sanctuary, but he would be unlikely to win his point. If he wished to have the wheat-thief returned to him, he would have to swear an oath that he would bear no grudge for either the initial offence or the subsequent escape and flight. That oath, taken in the presence of bishop Æthelwold, would be redeemable at a heavy fine if he was later found to have broken it.<sup>41</sup> Whatever happened, the success of his flight into sanctuary meant that the wheat-thief gained powerful protectors, would be allowed to live, and stood a chance of being reconciled to his lord or at least reintegrated into society in some capacity.

The wheat-thief's story, however, ends at the moment when the tomb is reached. Despite the care Lantfred takes to establish the fugitive's sanctuary claim within the legal tradition, his primary concern is not to set forth the legal procedures or the negotiations which would follow on the heels of an escape to sanctuary but to demonstrate Swithun's ability and willingness to remove all obstacles to the thief's flight to the tomb at Winchester. The audience was encouraged to infer from this and the other evocations of sanctuary in the *Miracula* that those who fled to Swithun's tomb could expect to be well protected and kept safe in the saint's embrace. Lantfred's meticulousness concerning the details of the wheat-thief's flight to Winchester and Swithun's protection indicates that he was well aware of the legalities attendant on a claim of sanctuary, but the demands of hagiography are satisfied by the protection itself.

Hagiographic representations of sanctuary are not always precise in their attention to law codes. The first interest of hagiographers, including Lantfred, is the glorification of the saint. Yet the degree of ecclesiastical involvement in Anglo-Saxon legislative innovation suggests that hagiography was written in an overtly political landscape, with greater attention to contemporary law than is generally appreciated. The combined study of the legal tradition and hagiography of Anglo-Saxon England can therefore

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40 This early form of abjuration may have existed by the end of the tenth century; it was certainly an established tradition long before it came under the jurisdiction of the coroners at the end of the twelfth, and Bracton regards it as an established practice that abjurors were allowed to choose their destination; see Bracton, *De Legibus*, 2:382. See also Riggs, *Criminal Asylum*, 61, and Hunnisett, *The Medieval Coroner*, 37-54. The definitive study remains that by Réville, "L'Abjuration Regni," 1-42.

41 Ine 13: "Gif hwa beforan bisepe his gewitnesse 7 his wed aleoge, gebete mid CXX scill" ("If anyone bears false witness in the presence of a bishop, or repudiates a pledge which he has given in his presence, he shall pay 120 shillings compensation").

provide a great deal of information about sanctuary as both a legal concept and a customary practice. Spiritual intercession by saints and the clergy on behalf of the faithful naturally extended into temporal intercession in daily affairs. The assertion of the rightness of supernatural sanctuary protection spoke to, and, indeed, to some degree countered, the social anxiety surrounding wrongdoing as a crime against natural order. Through the intercession of the saint and the negotiations that followed, a return to normalcy was believed possible. The protection of the saint or the church was reinforced by written law, but the utility of sanctuary as a means to negotiated settlement (i.e., redemption) was key to the enthusiasm with which it was supported and practised in Anglo-Saxon England.

The circumstances in which a person would choose flight to a place of refuge, especially in view of tenth-century laws that allowed for harsh treatment or summary execution of a fugitive, naturally had to be extreme. Whether the fugitive was an escaped slave, a hotly pursued thief, an accidental slayer, or someone accused of any of the many wrongs for which violent reprisal might follow, a bid for sanctuary meant a major disruption in the surrounding community's routine of life. Lantfred places Swithun in the breach created by this disruption and makes him the guardian of the lowest and most vulnerable members of society. In doing so, he juxtaposes Swithun's compassionate beneficence to the excesses of royal officers and even the king's law itself: not in direct opposition to the saint's royal patron, but as a balm to soothe the sting of institutional justice. Lantfred's audience would also recognize in Swithun's merciful protection of the downtrodden a rebuke of those engaged in overzealous enforcement of written law and the rejection of customary settlement.

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