The Middle English romance *Athelston* deals with an issue that was extremely topical to the time of writing at the end of the fourteenth century, that is, treason. Two concepts of treason, personal and institutional, are opposed in the text. The work seeks to retrieve the Anglo-Saxon past through the operation of historical nostalgia in which Saxon history shown as a time of divine blessing and intervention. It also speaks directly to contemporary concerns by establishing an opposition between established English custom and foreign innovation in terms of royal power and prerogative. This is done through the treatment of the law and legal procedure, specifically surrounding the issue of treason. As a result the work can be read as an assertion of English national identity through the deployment of Anglo-Saxon history and the affirmation of English law in comparison to French models.

The Middle English tail-rhyme romance *Athelston* (c. 1380–1400) is one of only two Matter of England romances that has no Anglo-Norman analogue. Effort has been made to show that the romance is based on historical events, either from the reign of the Anglo-Saxon king Athelstan, the grandson of Alfred the Great, or from the life of Queen Emma, the mother of Edward the Confessor. Later scholarship has tended away from searching for antecedents in other romances and chronicles to addressing issues that were pertinent to the time that the poem was written. This has led to parallels being drawn between *Athelston* and the reign and deposition

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1 Although argument has been made by A. Mcl. Trounce that it draws heavily on both French and German sources (‘Introduction’, in *Athelston: A Middle English Romance*, ed. Trounce (London: Oxford University Press, 1951), pp. 1–61 (pp. 6–25)).


3 That is, in the late fourteenth or early fifteenth century. Some discussion about the precise date of the work has occurred. See especially Trounce, pp. 60–61, and Elizabeth Ashman Rowe, ‘The Female Body Politic and the Miscarriage of Justice in “Athelston”’, *Studies in the Age of Chaucer*, 17 (1995), 79–98.
of Richard II. However, the search for both antecedents and for contemporary parallels is limited in scope. These approaches suggest that the work must derive its inspiration from either the Anglo-Saxon past or contemporary events, without consideration of the possibility that both may be significant. Although *Athelston* is not one of the Matter of England romances – such as *Guy of Warwick* – that are usually viewed as an attempt to create a legitimizing English history for the Normans, an investigation of both the historical influences and contemporary politics suggests that the creation of a sense of unbroken English history, from Anglo-Saxon times to the fourteenth century, is central to the work.

The key to this unbroken history in *Athelston* is the treatment of the law. Two systems of law operate in *Athelston*, one espoused by the king and the other by his opponents. The differences between these systems reside in historical differences between medieval English and French law, specifically the right to trial by jury and the separation of the monarch from the legal system. King Athelston acts as if he is above the law of England while his opponents, the queen, archbishop, and barony, fight to uphold it. Uniquely English laws are central to the romance and, this essay will argue, combine with its historical element in a dramatic expression of fourteenth-century English identity.

### I. *Athelston* and Insular History

The names of many of the characters in *Athelston* – for example, Athelston, Edyff, Alryke, and Wymound, situate the story in the Anglo-Saxon period. The question of why the romance is located in an identifiable period of English history has been raised by scholars but not conclusively answered. While there is no clear analogue for *Athelston* to be found in any extant chronicle, stories told about the reign of the Anglo-Saxon King Athelstan, do contain tales of treason and brotherly disloyalty similar to those in *Athelston* – for example, the tale of the false cupbearer recorded

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4 See, for example, Rowe, pp. 87–94.
5 For a detailed exploration of the etymology of the names in *Athelston*, see Trounce, pp. 25–28.
6 Henceforth ‘Athelstan’ denotes the historical figure and ‘Athelston’ the king from the romance.
by William of Malmesbury and others in which Athelstan’s brother was falsely accused of treason by the king’s cupbearer.\(^7\)

The relationship between the historical King Athelstan and Athelston of the romance has been investigated on several occasions. Writing early in the twentieth century, Laura A. Hibbard stated that ‘any attempt to find the germ of the story in the legends about Athelstan’,\(^8\) should be rejected from the start and that ‘to a fourteenth-century mind, King Athelstan was in truth little more than a name popular enough to mean something … but suggesting only one of the kings of wild long-ago days’.\(^9\) Other studies have shown that the name of King Athelstan was, in fact, well known throughout the fourteenth century, although most accept only a limited link between Athelstan and \textit{Athelston}. For example, Trounce notes that ‘legends about Athelstan were widespread in England’\(^10\) but argues that the poet was more interested ‘in giving an English colouring to a well-known and popular type of story’\(^11\) than recounting a tale about the real Athelstan.

Elaine M. Treharne makes a more detailed study of what various chronicles have to say about Athelstan. She traces a decline in his reputation, arguing that he was recorded by his contemporaries in a positive light, that they focused on his military victories, his piety and his law-making, but that later chronicles followed William of Malmesbury’s lead in presenting him as ‘an aggressor, even a usurper’.\(^12\) Such deterioration in Athelstan’s reputation could help explain why his name was adopted for a less than exemplary king in \textit{Athelston}. However, Treharne’s argument that his standing declined is based on relatively few of the texts that depict Athelstan; she looks chiefly at William of Malmesbury, Layamon’s \textit{Brut}, and at Athelstan’s appearance in \textit{Guy of Warwick}. A more comprehensive investigation of the chronicles, particularly those which are approximately contemporary with

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\(^7\) This tale, and other examples of similarly related examples will be discussed in greater detail below.
\(^9\) Hibbard, pp. 234–35.
\(^11\) Trounce, p. 30.
\(^12\) Elaine M. Treharne, ‘Romanticising the Past in the Middle English “Athelston”’, \textit{The Review of English Studies}, n.s. 50 (1999), 1–21 (p. 7).
the romance, is required before any connection between the historical Athelstan and Athelston can be confidently made.\textsuperscript{13}

The English chronicles of the later fourteenth century tend to focus on Athelstan’s military victories and piety. For example, John of Trevisa’s translation of the \textit{Polychronicon} of Ranulph of Higden (completed in 1387) says that ‘by bataille he made suget Hoelus kyng of Britouns, and Constantyn kyng of Scottes’,\textsuperscript{14} gained control of ‘the Danes of Northumbelonde’\textsuperscript{15} through the marriage of his sister to its king and conquest on that king’s death, and defeated ‘Anlaf, a pynym, kyng of Irlond and of meny ilondes’.\textsuperscript{16} John of Trevisa also records Athelstan’s piety by detailing a number of holy relics he was given by foreign lords, noting that Saint Dunstan was born during the first year of Athelstan’s reign and that ‘by that gifte of God the kyng was i-holpe’.\textsuperscript{17} The \textit{Boke of Brut} (c. 1327) records his reign, focusing on similar details, as does Robert of Gloucester’s chronicle from the late thirteenth or early fourteenth century. The \textit{Shorter Metrical Chronicle}, from the early fourteenth century, notes Athelstan’s victory over the Welsh, his foreign alliances, and tells of the victory of Guy of Warwick over the giant Colbrond during his reign.\textsuperscript{18} So, to an English audience in the fourteenth century, Athelstan’s name was linked with more than the ‘wild long-ago days’.\textsuperscript{19} It would, instead, have suggested a king who was pious, victorious and English.

\textsuperscript{13} Although fourteenth-century chronicles were written in English, Latin and Anglo-Norman, this study focuses on English-language texts for three reasons. Firstly, English is the language of Athelston and while it is unlikely that either the poem’s author or audience were entirely monolingual, the possibility remains and English is the language that we can be sure was understood by both. Secondly, most of the early influential chronicles in either Latin or Anglo-Norman had been translated into English by the end of the fourteenth-century. Thirdly, Athelston does not seem to have been directed towards a highly educated audience and the English language chronicles often specifically stated that they were intended for an uneducated or at least lay audience.


\textsuperscript{15} \textit{Polychronicon}, p. 425.

\textsuperscript{16} \textit{Polychronicon}, p. 437.

\textsuperscript{17} \textit{Polychronicon}, p. 439.

\textsuperscript{18} This is an example of crossover between romance and chronicle as this episode is also found in \textit{Guy of Warwick}. The two texts appear together in the Auchinleck Manuscript.

\textsuperscript{19} Hibbard, “‘Athelston’, A Westminster Legend’, p. 235.
An attempt was made in the late nineteenth century by J. Zupitza to connect Athelstan with Athelston. It was related to a story, originally recounted by William of Malmesbury, concerning the death of Athelstan’s brother Eadwin. Eadwin was falsely accused of treason by the king’s cupbearer, and although he ‘denied the charge on oath he was driven into exile’ in a boat with no oars and only one attendant. Eadwin subsequently drowned, although the attendant survived and brought the body to shore. Athelstan was horrified by his own deed, did seven years’ penance, and executed the instigator. Zupitza’s argument that this story was directly related to Athelston has been rejected by later scholars. However, the general issues of treason, false accusation, and sworn brotherhood are undeniably present in both the romance and this story from the chronicles.

Another episode related by various chroniclers can also be connected to Athelston. John of Trevisa records that ‘Scontantyn kyng of Scottes’ who ‘hadde I-broke covenant’ with Athelstan his overlord, was defeated after the English king visited the shrine of ‘seint Iohn of Beverly’ and prayed for victory, a story also told in The Boke of Brut and Robert of Gloucester’s chronicle. The Scottish king, according to these accounts, was subject to Athelstan and the rebellion against him is an act of oath-breaking as well as treason. Although no account of this rebellion is directly analogous to Athelston, elements of the story, that is, oath-breaking, treason, and divine intervention all appear in the romance.

The connections between Athelston and the chronicles of England do not centre entirely on tales recounted about Athelstan, as is demonstrated by Hibbard’s investigation. Although she categorically dismisses any connection between Athelston and the Athelstan of the chronicles, Hibbard asserts that a connection can be made between the romance and a story told in a number of chronicles about Queen Emma, the mother of Edward the Confessor. In this story, Emma is accused

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23 Polychronicon, p. 431.
24 Polychronicon, pp. 431–33.
26 Including, but not limited to, the chronicles of Robert of Gloucester, Ranulph of Higden, Richard of Cirenceste, and Henry Knighton. See Hibbard, pp. 235–36 for a full history.
27 Hibbard, p. 229.
of treason against her son by Robert of Jumieges, Bishop of London and later Archbishop of Canterbury. She is imprisoned, but writes to the bishops she trusts, asking to prove her innocence by an ordeal. She is led by two bishops, taking nine steps across burning ploughshares unscathed, thus proving her innocence. Robert, waiting at Dover to hear the outcome of the trial, flees to Jumieges and eventually dies. The story of Queen Emma does bear some resemblance to *Athelston* in ways that the story of Eadwin’s death does not – for example, in the undergoing of an ordeal – but neither sworn brotherhood nor oath-breaking appears in Emma’s story. So like the tales about Athelstan, this story cannot be read as a direct analogue of *Athelston*.\(^{28}\) Hibbard’s work does, however, demonstrate that connections can be made between various episodes across the chronicle tradition and the romance. This strongly suggests that the choice of the Anglo-Saxon King Athelstan was a deliberate one by the composer of *Athelston*.

*Athelston* resonates not only with the stories told about King Athelstan and with the tale of Queen Emma but also with various episodes from the reigns of a number of Plantagenet kings; for example, the confrontations between Henry II and Thomas Becket, King John and Stephen Langton,\(^ {29}\) Richard II and Archbishop Thomas Arundel, or, as Geraldine Barnes points out, between Edward III and John Stratford.\(^ {30}\) As Barnes suggests, the parallels between the clash of Athelstan and Alryke and the one which occurred between Edward III and John Stratford are considerable. Stratford was accused by a fellow member of the Privy Council, and in retaliation to his dismissal from various posts and to charges laid against him, preached that the king had taken bad advice and broken some of the clauses of Magna Carta; in addition, Stratford demanded to be tried in *pleyn Parlement*, a term which is also used in *Athelston*.\(^ {31}\)

*Athelston* is also reminiscent of the clash between Henry II and Thomas Becket,\(^ {32}\) since their conflict was over judicial rights, specifically the right of the king to try the clergy. Traditionally, ‘the whole body of the clergy, including men

\(^{28}\) For further discussion see Trounce, ‘Introduction’, pp. 20–22.
\(^{29}\) Trounce, p. 33. Trounce also suggests that Bishop William Bateman may have been the immediate model for Alryke (p. 34, n. 2, and notes to lines 465–66).
\(^{31}\) Barnes, p. 56.
in minor orders, was subject, almost exclusively, to its own law in both civil and criminal cases’.  

Henry was unhappy with this situation and there were a number of cases ‘in which the archbishop was involved which attracted the king’s angry notice.’ The right of the king to try, or not try, whoever he wished is central to *Athelston*, so a connection can be made between Henry II’s conflict with Thomas Becket and Athelston’s conflict with Alryke.

It is, however, the changing relationship of Richard II and Thomas Arundel that had direct impact on English politics in the late fourteenth century, and this is a relationship that *Athelston* parallels in several ways. Elizabeth Ashman Rowe briefly mentions one occasion when there was a confrontation between the two men, but does not go into any detail about the confrontation nor about other aspects of their relationship which have parallels in the romance. Alryke’s relationship with Athelston progresses from brotherhood to confrontation to conciliation, and Thomas Arundel’s relationship with Richard II has recorded occasions of each of these. For example, at one point the king and the (then) bishop were in close accord: Richard, in a grant made in 1383, refers to Arundel as his ‘very dear relative’ and speaks of the ‘greatness of the singular affection’ he had for him. While not directly parallel, this is reminiscent of the oath of brotherhood taken by the four messengers and of the favours received from the king by his ‘brothers’ at the start of *Athelston*. A direct confrontation between the king and Arundel bears close resemblance to the confrontation between Athelston and Alryke. According to Henry Knighton, a contemporary chronicler, in 1386 Arundel, then bishop of Ely, was part of a delegation sent by ‘the common assent’ of the lords and commons to Richard II. This delegation was concerned with Richard’s long absence from parliament and with rumours that he had plotted to ambush and murder a party of knights that he had proposed be sent to him to express the will of the whole parliament. Knighton says the delegation’s complaints centred on the king’s refusal to take counsel and to abide by the law. They also threatened Richard with general uprising and deposition if he did not agree to return to the

34 Barlow, p. 92.
parliament. These complaints are very close to the issues that are at stake in *Athelston*, notably the king’s unwillingness to be governed by the law or advised by his counsellors.

Alryke acts as a conciliator when he organizes the trial by ordeal, since the form of the trial is not what either of the conflicting parties wanted. Initially, both Alryke and the queen ask for a trial ‘be comoun sent / In the plaine parlement’ (265–66) but Athelston is determined that they will not have a trial at all. Neither party’s wishes are fulfilled, but the trial by ordeal is a compromise acceptable to both. It is as a conciliator that Alryke bears some resemblance to Thomas Arundel, but not to the other bishops who have been suggested as possible models. Although Arundel was, as noted above, involved in at least one direct confrontation with Richard II and was a supporter of the Lords Appellant, he also played a number of roles in conciliatory activities between various parties in the late 1370s and 1380s. For example, he was part of a committee brought into existence at the request of the commons after the uprising of 1381, to appoint the most appropriate people to positions in the king’s household and the government. Although this committee was unable to remedy all of the complaints made by the commons, it did make some acceptable changes. For example, Mary Aston suggests that the appointments of the Earl of Arundel and Michael de la Pole as counsellors to the king were the results of the activities of this committee, and that the appointments were ‘some consolation for the commons’. Arundel’s role as a mediator is also visible in the confrontation with Richard discussed above. Although, as Knighton records it, this was an angry confrontation, neither the threats made by the delegation on behalf of the parliament nor those made by Richard were carried out, and the business of parliament was able to resume when Richard was convinced to return to it. So, Arundel, like Alryke in the romance, was known to function as a mediator.

*Athelston* thus resonates with various events recorded by the chroniclers of a number of English kings, including Athelstan and Richard II. Rowe’s statement about the resemblances to the reign of Richard II applies to all of the historical

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39 All quotes are from *Athelston: A Middle English Romance*, ed. A. Mcl. Trounce (London: Oxford University Press, 1951) and are referenced by line number.
41 Aston, p. 146.
parallels that can be drawn between English history and *Athelston*: ‘These events do not constitute direct sources of the poem but rather form part of the larger environment within which the poem was produced and received’. The combination of parallels that can be drawn between the contemporary events, Anglo-Saxon history, and various periods in between, is central to the meaning of the poem. The use of Anglo-Saxon historical references in general and of King Athelstan’s name in particular demonstrates that post-Conquest governmental crises were mirrored in earlier times.

**II. Athelston and the Law of England**

As noted above, *Athelston* is one of a number of romances that are often grouped by modern scholars under the label ‘Matter of England’, that is, ‘romances that can be described as romances of English heroes or as derived from native subject matter’. Rosalind Field is sceptical about the application of the label: ‘it may be that the Matter of England was imperceptible to medieval authors and audiences’; however, both she and Susan Crane note that romances usually identified in this way display an interest in justice and politics, and Lalia Phipps Boone argues that the Matter of England romances have a tendency to conform to contemporary criminal law. *Athelston* demonstrates precisely this kind of interest in the law, justice, and English settings and characters, and can as a result be read as one of the most insular of the Matter of England romances.

Other Matter of England romances that feature internal problems of government tend to resolve their crises in different ways from *Athelston*, as

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44 Field, p. 31.
46 Notably *Guy of Warwick*, *Bevis of Hampton*, *Havelok the Dane*, *King Horn*, *Richard Couer de Lion* and *Gamelyn*.
foreign intervention is often necessary to restore order. In *Athelston* the crisis is essentially an internal one, and is dealt with internally, without the intervention of, for example, the Danes as in *Havelok* or the Irish as in *King Horn*. No foreign force is necessary in *Athelston*. When the archbishop’s appeal to have the case heard ‘be comoun asent / In the playne parlement’ (447–48) is refused, he is able to act on his own initiative and with his own power when he threatens to place the kingdom under interdict (472–85). Although he does threaten to gather a foreign force – ‘And I schal wenden in vncouthe lond/ And gete me stronge men of hond’ (486–87) – he does not have to fulfil that threat, as the ‘lordys of Yngelond’ say that they will support him with force against the king (519–30) and Athelston agrees to what he has asked (531–42). This ability to deal with the crisis internally demonstrates the insularity of the work and shows that both the nobles and the church could legitimately challenge the power of the king. These challenges to the monarch’s power lie at the heart of the conflict in the work, and the catalyst for them is also significant because it is an issue of government and power which revolves around a uniquely English set of laws.

Aspects of the law have been the source of much critical inquiry into *Athelston*. For example, Christopher R. Fee and Treharne both note that its ordeals create a connection to the Anglo-Saxon period of English history. Treharne argues that ‘[t]he inclusion of Anglo-Saxon judicial and cultural features ... appears to be an attempt to impart authenticity to the text’, while Fee suggests that trial by ordeal had a place in the popular imagination of late medieval England as a form where God not fallible humans judged. Thus the inclusion of trials by ordeal in a recognizable Anglo-Saxon past suggests a kind of historical nostalgia, which reinforces the importance and authenticity of the work’s situation in an identifiable, English past. This English past in itself is important because the way the law is presented can be connected with contemporary English identity. The rights of individuals and details of legal procedure are central to the conflict in the poem,
and although Ojars Kratins\textsuperscript{51} and Trounce\textsuperscript{52} make brief mention of procedural issues and Rowe analyses injustices in the work, they have not, to date, been extensively investigated.

The presence of various aspects of the law and the working of government in general can, arguably, be read as the self-conscious expression of English identity. Such an assertion has not been the specific focus of any study to date; however, recent scholarship on medieval law offers helpful insights. For example, William Ian Miller notes that in medieval Iceland ‘Vár log (‘our law’) was our community as opposed to others’.\textsuperscript{53} Susan Reynolds also links the law and national identity:

National character is that which is attributed to any group thought of as a nation: the nation itself is the product of its member’s belief that it exists. In medieval terms, it was the fact of being a kingdom (or some lesser, but effective, unit of government) and of sharing a single law and government which promoted a sense of solidarity among its subjects and made them describe themselves as a people.\textsuperscript{54}

So, the nation as a community could be identified by, and itself identified with, legal systems and practices.

Evidence of the law being used to foster a sense of national identity in England can be found, as Mary P. Richards points out, in chronicles and laws from the Anglo-Saxon period. Richards argues that, despite the barriers between the Germanic tribes that colonized England and the different kingdoms that were forged, ‘bonds created by mutually intelligible language and by conversion to Christianity fostered within diversity a unity that gave rise to the self-conscious national and racial identity we call Anglo-Saxonism … Anglo-Saxon culture – its development, definition, and preservation – constitutes a major theme in the

\textsuperscript{52} ‘Introduction’, p. 24.
Richards draws attention to the way that various kings drew on the laws of other kingdoms to legitimate their own. She notes, for example, the code of Alfred the Great:

> those which were the most just of the laws I found – whether they dated from the time of Ine my kinsman, or of Offa, king of Mercians, or of Aethelberht, who was the first [king] to be baptised in England – these I have collected while [leaving aside] the others.

This statement, from Alfred’s preface to his code of laws shows that a sense of overarching identity existed as the laws of one Saxon kingdom could be applied within another.

Anglo-Saxon law was not discarded after the Conquest by the Norman rulers. Richards notes that the law was one of the few Anglo-Saxon systems that was used by the Normans: ‘Given their lack of respect for some other Anglo-Saxon institutions, the Normans surprise us with their attention to legal tradition’. Richards speculates that this may have been due to the Normans appreciating the adaptability of the laws and the care taken with their structure. She points out that collections of laws from after the Conquest which draw on Anglo-Saxon laws ‘follow precedent in ordering legal materials to show relationships and sources, and in associating the laws with historical lists’. Precisely how much post-Conquest law was foreign import and how much was actually based on Saxon practice is a matter of considerable debate; what is certain is that throughout the medieval period law-makers in England claimed that their laws at the least followed on from those of Saxon rulers.

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From the twelfth century on, Norman rulers tried to connect themselves with the Saxon past in order to lend their own rules legitimacy, and this was done chiefly through association with the figure of Edward the Confessor. Contemporary accounts of the Conquest portray William as Edward's lawful successor and closely associate William with upholding Edward's laws. This association with Edward and his laws continued in England throughout the Middle Ages, as Bruce O'Brien notes, 'St. Edward's law became the “legal standard” of the age.' As Janelle Greenberg notes, William the Conqueror swore to uphold Edward’s laws and his successors throughout the ages issued similar confirmations, sometimes in coronation charters, as in the case of Henry I, Stephen, and Henry II, later through the coronation oath of 1308 [and] in the Magna Carta.

The influence of the twelfth-century forgery the *Leges Edwardi Confessoris* and consistent references to Edward’s laws – and those of other kings such as Alfred and Cnut – in other influential medieval legal tracts such as the *Mirror of Justices*, the *Modus tenendi parliamentum* also demonstrate the way that the law was deliberately associated with the Anglo-Saxon period in the medieval English legal system. This invocation of Anglo-Saxon law in post-Conquest England thus creates a sense of continuity between the old order and the new.

The legal issue at the heart of *Athelston* is that of treason, and this is an area where old and new concepts, also aligned along English and Continental lines

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62 As recorded by, for example, the Bayeux Tapestry, Orderic Vitalis, Henry of Huntingdon, and Matthew Paris.
63 Greenberg, p. 38.
66 O’Brien, esp. chs. 1 and 2.
respectively, clashed during the fourteenth century. Treason was a particularly charged issue during the reign of Richard II, a situation that was reflected in the literature of the time, including *Athelston*. Richard Firth Green explores this situation and argues that there were two main notions of treason in operation:

- a personal conception of treason in which the offense was committed against someone who had good reason to trust the traitor, often because they were bound to one another by oath, and an institutional view of treason according to which it could only be committed against someone in political authority.

The first of these, the more personal type, was, Green argues, a concept that looked back to an ‘ethos that bound lord and man in a nexus of reciprocal obligations’ while the second looked towards a ‘far less egalitarian Anglo-Norman oath of fealty.’ According to Green, during the fourteenth century popular concepts of treason were linked very closely to the personal type where traitor ‘meant primarily someone who had betrayed a trust.’ He argues that this concept of treason ‘was increasingly threatened ... by the efforts of a centralized bureaucracy to entrench the rights of an impersonal crown.’

The importance of the manner in which treason was defined throughout the fourteenth century is flagged most clearly by Edward III’s 1352 Statute of Treasons, which was, according to Green, arguably ‘the first attempt to define the law’s sphere ... [and] exhibits clear signs of the increasing power of centralized royal authority.’ Richard II made additions to this statute in 1397 which ‘struck at the very heart of the feudal equation ... [and] finally turned what had once been, 

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69 Green, p. 207.
70 Green, p. 207.
72 Green, p. 214. Green cites a wide range of popular literature as evidence, including *Sir Gawain and the Green Knight*, ‘The Tale of the False Servant’ in Gower’s *Confessio Amantis*, Chaucer’s *Reeve’s Tale*, *Knight’s Tale*, *Parson’s Tale*, and *Merchant’s Tale*, and *The Earl of Toulouse*.
73 Green, pp. 218–19.
74 Green, p. 243.
at least in theory, a reciprocal agreement into an entirely one-sided obligation.\textsuperscript{75} This concept of treason can be closely linked to the French notion of treason in which ‘injured majesty was the central, all-encompassing aspect.’\textsuperscript{76} The trend in England of legal definitions of treason can thus be seen to have grown closer and closer to the French concept.

This trend, however, faced significant resistance in England. Such a trend can be closely connected to a monarchical desire for autocracy, a desire that Richard II displayed very clearly. He was, for example, famed – and defamed – for having said that ‘his laws were in his own mouth, or occasionally, in his breast.’\textsuperscript{77} He also, as Nigel Saul explores, encouraged various forms of address that had not been used in England before in order to promote the view that he was a ‘supra-mortal, even a God-like being.’\textsuperscript{78} In doing this he was, Saul argues, deliberately following not only the French forms of address but also the French notion of the king’s sovereignty.\textsuperscript{79} In essence Richard was attempting to give the English monarchy, that is himself, the same prestige and authority as was enjoyed by its European counterparts, particularly the French. His approach to treason is a significant part of this attempt as it formed an integral part of the power struggles that went on between Richard and his magnates throughout his reign. This clash between concepts of personal and institutional treason can be seen at work in \textit{Athelston} in the oath of brotherhood, the king’s autocratic behaviour, and the resistance of his barons to his tyranny. It provides the backdrop for the procedural issues that fill the work and are the focus of this investigation.

The presentation of the law in \textit{Athelston} manifests a combination of adherence to and marked deviation from English law of the late Middle Ages. The first major departure from English law in the work is King Athelston’s determination to execute Egeland and his family without a trial, something that had been forbidden

\textsuperscript{75} Green, p. 227.
\textsuperscript{79} Saul, p. 863.
in England since the Magna Carta in 1215. It is this determination that leads to conflict between the different power sources in the work and culminates in victory for the king’s opponents when he eventually agrees to allow a trial. The nature of the trials also differs from contemporary English practice, as they are trials by ordeal. This form of trial was outlawed across Europe during the thirteenth century. This outlawing is usually, as John A. Baldwin notes, dated Fourth Lateran Council, in 1215, but as Baldwin also points out the Council actually only forbade the clergy to ‘bless or consecrate the elements [its use] in secular justice was not specifically disallowed.’

Henry II followed the papal lead by issuing an ordinance in 1219 which forbade the use of the ordeal in criminal cases, instead substituting trial by jury. The only form of ordeal that did, officially, remain part of the English judicial system was *la peine forte et dure*, a procedure designed for situations where trial by jury did not function, that is, when the accused refused to accept a jury verdict. The English plea roles show that this decree was enforced as they record no trials by ordeal after 1219, as opposed to the dozens recorded between 1194 and 1219.

The two departures from contemporary procedure are radically differentiated in *Athelston*: the lack of a trial is shown negatively, while the ordeals are shown in a positive light. It is the different attitudes towards these two departures from contemporary practice which, I shall argue, underlines the poem’s assertion of Englishness. The accuracy of the representation of fourteenth-century legal procedure elsewhere in the highlights the importance of those instances which deviate from it and strongly suggests that they are not the result of ignorance on the part of the author but have a specific purpose in the work as a whole.

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81 George L. Haskins, ‘Executive Justice and the Rule of Law: Some Reflections on Thirteenth-Century England’, *Speculum*, 30.4 (1995), 529–38 (p. 533) argues that this was part of a program to extend royal power by bringing dispute resolution under the control of the king’s court.
83 Bartlett, p. 128.
When Wymound privately tells King Athelston that Egeland and his family are plotting treason, it is not the accusation directed against them that is at issue. The crime they are accused of was a real one. Both the 1352 Statute of Treasons and earlier common law state that to plot the death of the king was treason. The way in which the accusation is made can be read as slightly questionable, as no public charge is laid; however, the secretive nature of the accusation is still, arguably, within the letter of the law. Although the 38th clause of the Magna Carta states that ‘In future no bailiff shall upon his own unsupported accusation put any man to trial without producing credible witnesses to the truth of the accusation’, later law, that of Edward I, states that ‘our will is, that the accusation be laid before ourselves…and any person shall be permitted to make such accusation’. Also, as J. G. Bellamy notes, the legal writers of the end of the thirteenth century ‘agreed that the king or his ministers ought to receive information about a treasonable crime … by the immediate communication of the discoverer’. By making his accusation to the king alone, Wymound breaks no law and, had it been a true accusation, he would have been complying with the law. Athelston, with Wymound as a witness, could have legally tried Egeland and his family. Thus at this point in the poem, Athelston has not actually broken English law.

In terms of procedure at this point, it is the falseness of Wymound’s accusation that alone stands outside the law. The justice eventually done after the revelation that Wymound falsely accused Egeland and his family of treason closely follows the law of the time. As Walter Ullmann points out, an accuser ‘undertook to suffer the very same punishment for the very same crime with which he charged the accused’. Although absolute adherence to this principle was not uniform throughout Europe in the Middle Ages, the legal writers of the time agreed that an accusation should involve an agreement to submit to punishment if the accusation was not proved. Despite the fact that Wymound makes no such agreement, the

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88 Ullmann, p. 5.
romance shows that he eventually suffers the death that was intended for Egeland and his family. Athelston swears twice that he will draw and hang them – ‘For, be hym that weres the corowne of thorn, / they shole be drawen and hangyd to-morn’ (270–71) – and ‘He swoor othis be sunne and mone, / They shole be drawen and hongyd or none’ (456–57), and when their innocence is proved and Wymound is revealed to be their accuser, he suffers this very fate:

Fyue goode hors to hym were tayde,  
Alle men myghten see with yghe-  
They drowen him thorwgh ylke a strete,  
And sethyn to the Elmes, I yow hete,  
And hongyd hym ful hyghe. (802–06)

This manner of execution is also closely in keeping with the law of the time. Treason was held to be such an abomination in the Middle Ages that it was frequently punished in horrific ways, such as flaying alive, hanging, drawing, and quartering.

The killing of the couple’s children would also have been considered justified under contemporary law. As Bellamy says, ‘[t]he argument was that the crime of treason was so horrible that the traitor’s offspring were contaminated and ought to be destroyed with him’. 89 So neither the proposed punishment for treason, its infliction on the false accuser, or the inclusion of the couple’s children in the process was outside English law. This is significant, as none of the opponents of the king, who are constructed within the romance as upholders of justice, protest against them. Thus those who uphold justice and right, that is the queen, the Archbishop of Canterbury, and the barons, are linked to contemporary English law, as they protest when it is broken but not when it is kept. Contemporary law is thus positively endorsed in Athelston.

The two central points of the queen’s and Alryke’s protests are the imprisonment of Egeland and his family and the king’s resolve to have them executed without a trial. Their imprisonment itself is not outside the law; however, since they were arrested as the result of an accusation made by an individual, according to the law of the time, their accuser ought to have been arrested as well. 90 Since this does not happen to Wymound, there is a breach of the law at this point. The protests of the

89 Bellamy, p. 13.
90 Ullmann, p. 5.
queen and Alryke do not, however, focus entirely on this issue. While they both express a desire to have Egeland and his family released until their trial, it is the issue of the trial itself that is central to the work.

The queen begs for the release of Egeland and his family until their trial ‘In the playne parlement’ (266), and this is the first occasion that a trial has been specifically mentioned. At this point Athelston interrupts her:

‘Dame,’ he sayde, ‘goo fro me;
Thy bone shall nought y-grauntid be,
I do thee to undirstande.
For be Him that weres the coroune of thron,
They shole be drawen and hangid to-morn,
Yif I be king of lande’. (267–72)

The mention of a power other than his own, that is, the power of parliament, precipitates Athelston’s assertion of his own power to flout the laws of England. Since he swears he will do so ‘Yif I be king of lande’ (272), he is claiming the right to act, as king, outside the law. Athelston’s determination to condemn without a trial also precipitates the later confrontation with Alryke and the barons. When Alryke first confronts Athelston, he makes a request that is almost identical to the queen’s:

Lat me borwe hem till to morn,
That we mowe enqure
And weten alle be comoun assent
In the plaine parlement
Who is wurthy to be shent. (445–49)

This plea is refused in a manner that is as emphatic as Athelstan’s refusal of the queen’s request:

Lay doun thy cross and thy staff,
Thy mitir and thy ring that I thee gaff!
Out of my lond flee!
Highe thee faste out of my sight!
Wher I thee mete, thy deth is dight. (459–63)

By referring to ‘my lond’ and to the fact that he made Alryke archbishop, the king is again asserting the primacy of his own power.
The language that both the queen and the Archbishop use is highly significant as it creates a direct link between the romance and English legal practice in the late Middle Ages: ‘[t]he terms comoun asent and playne parlement appear frequently in parliamentary records of the fourteenth century’. The term playne parlement indicates ‘a distinction between the formal or plenary session and the less formal and less public proceedings of smaller groups’. So, a playne parlement was a public one, and the phrase points, to the difference between such a public setting and the private nature of Wymound’s accusation. Playne also carries other relevant connotations, not only in that it indicates a full or complete parliament, but also a just one. So, the term used by both the queen and the archbishop indicates that the parliament they are referring to is composed of the parliament as a whole, rather than just a select group.

English kings could not legally condemn anyone without a trial, and Athelston’s refusal to allow a trial in the parliament displays a denial of one of the basic rights guaranteed by English law: that is, the right to a trial by one’s peers. This right had been established in the 39th clause of the Magna Carta – ‘No free man shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by lawful judgment of his peers and by the law of the land’ – and was unique to England. Moreover, the 1352 Statute of Treasons clearly states that no one could be condemned without a trial: ‘none be out of his Liberties nor of his Freehold, unless he be duly brought to Answer, and forejudged of the same by Course of Law’. In addition, as Bellamy points out, according to legal principle in England during the late Middle Ages, in treason cases ‘judgement should not be by the king or his judges otherwise he would be the plaintiff and judge in his own case … a court of peers should give judgement’. So Athelston makes a blatant attempt to flout long-established English law and his opponents express a clear desire to uphold it.

91 Barnes, Counsel and Strategy, p. 55.
93 Barnes, p. 55.
94 Magna Carta: Text and Commentary, p. 43.
95 The Statutes At Large of England and of Great Britain: From Magna Carta to the Union of the Kingdoms of Great Britain and Ireland, ed. and trans. Thomas Edlyne Tomlins (London: George Eyre and Andrew Strahan, 1811), p. 583.
96 Bellamy, p. 19.
The model of monarchy that Athelston’s actions follow most closely is, in fact, French rather than English. In France, as in most countries on the European continent, there was a system of absolute monarchy, that is, the king was not subject to the laws of the land. However, in England, the king did not, and had never had, this kind of absolute power, but was obliged to act within the law. As S. H. Cuttler says, ‘the kings of France by themselves and without any further legal restraint could exercise their authority to pass sentence on accused traitors’, and they defended this kingly right against the encroachment ‘of municipal, seigneurial, and above all ecclesiastical courts’. It is this right to pass sentence that Athelston asserts, and he does so specifically in the face of opposition from other sources of power within the kingdom: the barons and the Church.

The procedures of treason trials differed as did the overall concepts of treason in the two countries. As Cuttler states, there were various ways in which a treason trial could proceed in France during the late Middle. While some of these, such as trial by combat, were the same as English procedures, others were very different. One of these was the procedure extraordinaire, some details of which bear close resemblances to the actions of Athelston. The procedure extraordinaire was ‘conducted in a secret inquisitorial manner. The accused would be interrogated without being apprised of the specific charges against him’. This bears close resemblance to what happens when Egeland and his family are arrested. Edyff questions her brother but receives no reply:

‘Why wole ye us slo?
What have we ayens you done
That ye wole have us ded so soone?
Me thinkith ye arn oure foe.’
The King as wood ferde in that stede;
He garte his sustir to persoun lede. (246–51)

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97 See, for example, Henry Bracton’s discussion of kingship where he asserts that the ‘law by which he is made’ is superior to the king (De legibus et consuetudinibus Anglia, vol 2, ed. George Woodbine, trans. S. E. Thorne (Cambridge: Harvard University Press, 1968–77), p. 110).
99 Cuttler, p. 85.
100 Cuttler, p. 90.
While this resemblance is, by itself, not strong enough to indicate a definite link between the romance and the procedure extraordinaire alone, given Richard II’s adherence to the French concept of treason it can be seen as an additional reference to French practice.

Although the ordeal had been officially banned in England in 1219, and the ordeals in Athelston are therefore a departure from contemporary English law, they are presented in a positive way that retrieves the English past. Treharne argues that the ordeals provide a kind of authenticity for the Anglo-Saxon setting of the work, noting that ‘[t]he ordeal in Athelson is reminiscent of Anglo-Saxon laws such as that of II Athelstan 4’. Fee also argues that, while it was legally obsolete when the romance was written, the principle of ordeal, where God and not fallible humanity was the judge, was ‘still deeply imbedded in the popular imagination’. Bartlett’s work supports this assertion – he argues that ‘knowledge of the ordeal might be dimmed but never disappeared. Literary and pictorial allusions kept the custom alive.’ The examples that Bartlett cites, notably Chaucer’s Troilus and Criseyde refer principally to mythic occurrences in an heroic past, settings much like that of Athelston. Alyke’s presence and the fact that he blesses the accused reinforces the notion of the divine presence as such a blessing had been, as noted above, expressly forbidden by the Fourth Lateran Council in 1215. Such ordeals as did exist in the form of the peine forte et dure were purely secular.

The ordeals in Athelston demonstrate not only that it is God and not humanity that passes judgement, but also reveals the direct intervention of God in the

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101 Treharne, ‘Romanticising the Past’, p. 16. See also Robert Bartlett who notes that ordeals were a significant part of the laws of several Saxon kings, referring specifically to III Aethelred 6, IV Aethelred 5 and 7, V Aethelred 30, VI Aethelred 37, and II Athelstan 4 (Trial by Fire and Water, p. 36, n. 6) and Fee, ‘Trial by Ordeal’, p. 28.

102 Fee, p. 28.

103 Bartlett, p. 134. Bartlett cites, among other examples, Chaucer’s Troilus and Criseyde which contains a reference to trial by ordeal in book 3, line 1046. Tales found in the chronicles such as the one about Emma, the mother of Edward the Confessor discussed above also show that the trial by ordeal lived on in popular memory.

104 Book 3, line 1046, where Criseyde offers to prove she is telling the truth by oath or ordeal.

105 Trounce also shows that stories of ordeals were told across Europe in the later Middle Ages, see Trounce, ‘Introduction’, pp. 6–8. Hibbard’s work, as referred to above, demonstrates that this was the case in England as well as on the Continent.
process. The outcome of trial by ordeal was not generally immediately apparent, as it depended on how the wounds inflicted during the trial healed. That the innocents who undergo ordeals in *Athelston* pass entirely unscathed through the fires, even – as Fee points out – appearing to find the flames ‘cool, painless, and even beautiful’, \(^{106}\) demonstrates the direct intervention of God. The simultaneous invocation of the Anglo-Saxon past and the will of God creates an idealized view of English history. This in turn serves to valorize the English present by showing God’s interest in the nation through his intervention in a procedure which was thought of as uniquely English. Thus *Athelston* partakes in historical nostalgia by positing the Anglo-Saxon past as an idealized time, when God intervened directly on earth, and also demonstrates the continuity of post-Conquest English law by endorsing uniquely English rights of individuals.

### III. Conclusions

*Athelston* demonstrates a concern with English identity through its emphasis on uniquely English legal procedures. Although there have been many attempts to identify precisely upon which king and archbishop Athelston and Alryke are based, the lack of firm evidence for one pair over another is in itself highly significant. By not overtly identifying any of a number of possibilities as his direct model, the poet can be read as tapping into a clearly established pattern of church involvement in secular government and of conflict between secular and spiritual authorities in such situations throughout post-Conquest history. That continuity can be read as a demonstration of England’s ability to overcome recurrent constitutional conflicts. Despite a lack of obvious models for this story of conflict in pre-Conquest England, the setting of the work in an identifiable London and Westminster \(^{107}\) and the way that historical records about King Athelstan can be linked to the poem connects it to the past. That is reinforced by the poem’s representation of the law. Uniquely English legal practices and rights are strongly endorsed over French practice throughout the work. *Athelston* is centrally concerned with fourteenth-century issues of government, and the contemporary mirroring of the Anglo-Saxon past gives a continuity to English history uninterrupted by the Conquest. By placing

\(^{106}\) Fee, p. 33.

a conflict between a king and an archbishop in Anglo-Saxon times, the author backdates post-Conquest conflicts to pre-Conquest history and thereby solves Plantagenet problems of government by recourse to Anglo-Saxon remedies.

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