MEDICINE, NECROMANCY AND THE LAW: ASPECTS OF MEDIEVAL POISONING

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And atte laste the feend, oure enemy,
Putte in his thought that he shoulde poyson beye,
With which he myghte sleen his felaws tweye;
.....
And forth he gooth, no longer wolde he tarie,
Into the toun, unto a pothecarie,
And preyde hym that he hym wolde selle
Som poyson, that he myghte his rattes quelle
.....

Chaucer: The Pardoner's Tale
line 844 et seq.

Lombroso's theories to the effect that the criminal might be readily identified by observation of certain atavistic physical characteristics[1] may have been long discredited but suffice it to say that it was the combination of a stomach disorder and my close observation of my colleagues which prompted this article. Had I indeed been fatally poisoned by any of them the legal position would not have been unduly problematic; difficulties in establishing guilt being those of the determination of *mens rea*—no different here from other cases of murder—and of the evidence of the cause of death, a task for the sophistication of forensic science and the disputation of the expert witness. Yet these same issues created far more difficulty for the medieval mind, and analysis of the crime within the middle ages calls for consideration of both the law of proof and the state of medical knowledge. Moreover, it will, I hope, become clear that the early poisoner is regarded not merely as one who has committed, by a more subtle and covert method, the same offence as his neighbour who uses a knife or a club. To reach the position of incorporation of poisoning as a simple subspecies of homicide we are obliged to consider the change not only from the points of view of an increasingly developed substantive and procedural criminal law and a more informed and educated medical science, but also with regard to the variation in a whole bundle of community attitudes which surround the offence.

It is difficult to establish how great a menace poisoning was, in terms of the extent of its occurrence, in the medieval period. One scholar writing of the fourteenth century suggests that "poisoning and stealth in homicide were rare".[2] This is a conclusion which is prompted, no doubt, by the relative scarcity of cases of this nature within official court records but, particularly with a crime of such a clandestine nature, to arrive at such a conclusion from such evidence may be premature. It is true that the "Acte for poysoning" of 1531 which will mark the end of the period covered in this paper does declare that the offence "in this Realme hytherto oure Lorde be thanked hath been

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moste rare and seldome comytted or practysed'',[3] but this rhetorical flourish can hardly be seen as an exact criminological assessment. The frequency of the commission of the offence remains quite simply unknown and unknowable. Certainly poison was a well known medieval commodity at least in some of its manifestations. However, it may well be the case, as will be suggested later that the persistent idea that the production of particularly potent manslaying potions required certain arcane skills was widespread within the Dark Ages when even the gathering of vegetable matter might need to be accompanied by incantations. Certainly Anglo-Saxon medicine spoke much of poison (átor) though mostly in connection with bites from venomous creatures—a list which at the time included toads, spiders and scorpions (indicating either domestic zoological confusion or the unabridged foreign pedigree of some medical literature) as well as snakes,[4] which latter beasts coil in the roots of the supposed remedial herbs in manuscript illustrations.[5] By the later middle ages poisons seem to have been in common use for the eradication of vermin. Chaucer's poisoner tells the apothecary that he wishes to be rid of a polecat as well as his rats,[6] whilst Robert Goodgrome the fifteenth century molecatcher who was to stumble across an alleged poisoning plot, might possibly himself have had some understanding of the craft by virtue of his occupation.[7]

The mention of Anglo-Saxon medicine above is instructive for it gives an indication of the way in which bodily affliction generally and poisoning in particular were viewed by early medieval society. Anatomy was but crudely understood and treatments were designed to counter symptoms leaving little ground for diagnosis. Of crucial importance was the fact that the medieval treatises of the tenth and eleventh century and the practice of the ''leech'' made great use of magic and charms in addition to herbal salves and potions.[8] Nor was this a shortlived phenomenon, for the leechbooks were being used until the thirteenth century and magic retained a significant hold on the treatment of disease throughout the middle ages, particularly, one might suppose, in the countryside. Even the renaissance of the twelfth and thirteenth centuries which saw medicine being taken into the universities and returning to a classical tradition made available again through Arabic scholarship, insofar as it did replace the craft of the Saxon leech did so by substituting astrology for incantation.[9] In respect of the treatment of poisoning within the Anglo-Saxon tradition Christian charms might be used or more ancient formulae. The single word ''Faul'' was deemed by some to be efficacious against adder bite.[10] Bede believed that anything from Ireland, even shavings from an Irish Book, would counteract poison.[11] In the twelfth century one Boamund is praised for his circumspection in carrying with him a knife which warned him by the moistness of its handle if his food had been poisoned.[12] Perhaps it might be appropriate at this point to draw attention to the widespread neglect of the elements of superstition and the irrational within the views offered by legal historians of the nature of medieval society and its law. So, to take an example from another area of law, the regulations concerning theft which proliferate in the Saxon dooms present the rational side of a society which also relied on supernatural charms to protect property from theft and to trace thieves if goods had been stolen.[13] Nor again in this evanescent Dark Age phenomenon forgotten by an age

which could produce *Bracton's De Legibus*. A case of the supernatural being used to discover the identity of a thief and the disposition of stolen goods may be found in central court records as late as 1505[14] and in community folklore at least as late as 1871.[15] Be that as it may the point to be made here is that the healing arts throughout the medieval period incorporated magic and the supernatural along with medication. Poisoning, the converse of the skill employed by leech or physician, like-wise united these two elements. The early poisoner is not then viewed as in the same category as the exponent of Sword or club but as a comrade of the necromancer and the sorcerer, whose ways were similarly clandestine and mysterious. The complicated recipe for "the worst poysone in the world" disclosed in 1440 to Robert Goodgrome which begins "thu shalt take v maner herbes, the names of whom I have wretyne in aboke and the flesshe of adede manne that hathe leyne in the erthe ix daies and ix nyghtes"[16] betrays not only in its use of human flesh but also in the repetition of the figure nine, a significant number in Anglo-Saxon illness and cure, a dark pedigree of considerable antiquity.[17]

To this point I will return later but something more must be said concerning early medicine which again was to cause difficulties for early lawyers in formulating a means of dealing with poisoning. This was the medieval doctor's habit of killing his own patient. Amongst the preparations listed in Anglo-Saxon leechbooks I am sure those with more biochemical insight than myself will find much to cause unease whilst even my own knowledge suggests that the use of hemlock as a consituent element of both a sleeping draught[18] and a "salve for lice"[19] in one text, may have been unwise and could have proven fatal. A recipe in the same text, the *Lacnunga*, for treating a pustule in the eye with an infusion of roots ends with the statement "with God's help no harm will come to him", a comment which seems equally germane whether it applies to the future development of the illness or the effect of the medication.[20] Surgery too could be a most risky business as the first-hand account of a fatally bungled amputation witnessed by a Lebanese doctor Thabit clearly demonstrates.[21] However, it should be borne in mind that notwithstanding the amplitude of early medical literature the predominant feeling would seem to have been that medieval practioners were not in fact expected to cure anything. The natural order of things was that illness or injury ran their course and that medical attention if successful was an unexpected bonus.[22] It is only with a greater sophistication of medical science that this position is reversed and this will explain why a mature jurisprudence with regard to those who killed rather than cured is relatively late in its development, a point to be touched upon again later.

Let us then turn to consider the legal provisions touching poisoning. Hidden homicides were regarded within the Anglo-Saxon legal world as particularly serious crimes and such *"Morth"* slayings were undemendable offences.[23] Measures against "wizards sorcerers and those who secretly compass death" are specially mentioned in the laws of Edward and Guthrum,[24] whilst the great legislator Aethelstan laid down the death penalty for dealers in "deadly spells".[25] The equivalence between poisoning and other aspects of witchcraft is made explicit in the Post Conquest *"Leges Henrici Primi"*, when the act is declared unemendable "si quis veneno vel sortilegio vel invultuatione seu malificio aliquo faciat homicidium".[26] The

provision is rooted in the Frankish Lex Ribuaria but may have been influenced by Aethelstan's legislation. There is certainly no reason to doubt its substance. Poison too is specifically treated in the *"Leis Willelme"*, where death or permanent exile is prescribed as a penalty.[27]

With the suppression of emendation in the developed medieval legal system of the late twelfth and thirteenth century the ancient distinction between open and secret slaying (of which latter we have seen poisoning forms a particularly serious sub-species) is retained in the texts, appearing both in *Glanvill* and the thirteenth century treaties.[28] This has produced some academic comment but the conclusion of the most exhaustive work by Kaye suggests that though a difference was still felt to exist between the two, nonetheless within the thirteenth and early fourteenth centuries "no procedural or substantive distinctions existed between killings done by stealth and killings not so done".[29] Whilst not disagreeing that this is the result of the issue the path to that result was not, I submit, quite as straightforward as Kaye maintains. There are very good reasons for *Bracton, Britton* and *Fleta* to maintain the old distinction. It was more than an antique hangover to them, it was a contemporary headache and the reason was a knotty problem of proof.

Secret offences were those which by definition were discoverable, if at all, by God. Necromancy, which outraged God, and poisoning, which used arcane practises to mimic the venom of the serpent which had brought sin into the world, were in particular appropriate for the judgment of the Almighty. Such was the gravity of these particular offences however that no man was to be exculpated by a casual miracle; if God wished to acquit He must make a clear sign and so both the law of Aethelstan and the provision of the Leges Henrici Primi insist on the threefold ordeal rather than the more usual test.[30] The removal of the support of the Church for the ordeal procedure in 1215 left a yawning gap in the trial process. As is well known that gap was filled by the petty jury. But the jury, as the authors of *Bracton* and the later texts well knew, was competent to speak only from its own knowledge and, of course, in the case of secret slayings it had none. The problem is dealt with specifically with regard to poisoning in the text of *De Legibus* in a much amended and confused passage the significance of which as indicative of the problems faced by the age in responding to the proof crisis I have had cause to comment on elsewhere.[31] In dealing with the appeal procedure, in which of course battle was still available, jury trial is at first, it would seem, considered inappropriate. Then a textual change allows the election of a jury on the ground that otherwise even hired champions might abuse the legal system by bringing appeals in cases of secret killing. The picture is one of confusion and by the final years of the century when *Fleta* is written the confusion has not been resolved. In poisoning cases, the author says, battle ought generally to be employed in the appeal, "because at the beginning the deed was not of such notoriety as to make it possible to be known by the countryside". However jury trial was occasionally permissible at the discretion of the justices where there is a disparity in the physical prowess of the parties.[32] The problems are discussed in relation to appeals but would apply with redoubled force if the presentment process is considered for there both

accusation and trial would necessarily depend on "presumption and hearsay" alone.

Notwithstanding these problems the author of *Britton* is clear that those who commit *"covertes felonies"* are to be indicted. As instances of these secret homicides Britton gives killing under pretence of law by a false judge and, notably, killing "par faus phisiciens et par mauveys surgiens et par poysoun".[33] In this confidence in the capacity to try these cases, necessarily of course by jury, and in this first mention of the possible criminal liability of the medical professions *Britton*'s text seems clearly the most modern in appearance of all the thirteenth century material.

It is worth noting however that the approvers' appeal, such as that employed in the Goodgrome case, would avoid any problems of establishing a prima facie case in relation to clandestine activities such as necromancy or poisoning and therefore would avoid the difficulty of indictment. It also however led to the possibility of implication of the innocent by a desperate "accomplice" or one who had been put under pressure for political reasons, a point to be borne in mind when cases of this nature are discussed below.

A further point may be made before passing on from the thirteenth century treatises. In *Bracton* we find our first mention of a particular usage of poison which may have been of considerable social significance, namely as an abortifacient. The status of the passage is unclear for it is based closely, as indeed is much of *Bracton*'s treatment of homicide, on the *Summa de Casibus* of Raymund de Penafort.[34] Most interestingly *Fleta's* treatment of the subject is expanded to include both the mother's own liability in taking an abortifacient as well as that of third parties and the use of poison as a contraceptive, itself declared to be homicide. These cases are themselves considered by Penafort, a circumstance which advances the claim that the author of *Fleta* was producing more than simply an epitome of Bracton but had, at least on this occasion, gone back to the original, or a very similar, source.[35] The position as given by *Fleta* is similar to that stated in English by Chaucer in the Parson's Tale, which again borrows material from Penafort's *Summa*. It is homicide, says Chaucer, "Eek whan man destourbeth concepioun of a child, and maketh a woman outher bareyne by drynkynge venenouse herbes thrugh which she may nat conceyve, or sleeth a child by drynkes wilfully, or elles putteth certeine material thynges in hire secree places to slee the child, . . . or elles if a woman have conceyved and hurt hirself and sleeth the child, yet is it homycide".[36] Despite the obvious popularity of these doctrines amongst these writers no case corresponding to any of these examples appears within the court records which I have consulted for this paper and the evidence of that silence is unclear. Perhaps *Bracton* and *Fleta* are merely engaging in a little academic embroidery and that in truth no such crime was recognized by English law at this time. On the other hand it may indicate that the crime was regarded as so heinous as to be but most infrequently accomplished or alternatively that an ambiguous societal attitude suppressed the chance of prosecution or the risk of conviction. Clearly the difficulties of proof in such a case would be no less, and could be rather greater, than in other species of poisoning. A case of 1422 in which one John Bigg was acquitted of a number of offences including the rape of Jane Athern and subsequent attempt to administer poison to her, with the use of violence when

she refused to take it, may have been a case of an attempt to administer an abortifacient after the violation but the record is not explicit on this point.[37]

Bigg's case is a rare example of poisoning being alleged in a case where the protagonists are private individuals. By the late fifteenth century however a well-defined class of cases has gradually established itself. This was found in a sequence of political trials, in which approvers' evidence was frequently crucial, concerned with plots to kill the king or other leading men of the realm. The means employed were necromancy, poisoning or a combination of the two and it seems clear that the old connection between the two arts is sustained throughout the medieval period. Certainly belief in necromancy was persistent and in a variety of forms. In 1371, for example, the King's Bench heard of a man who had purchased a Saracen's head in a bag from a man in Toledo which was to be used for trapping and questioning a spirit. Bag, head and the instructions for using this bizarre divination kit are ordered to be destroyed.[38] A relatively new element has worked its way into necromancy, however, in parallel to its utility in medicine, and that is astrology, and that too figures in some cases of the sort which we must now consider.

An early case from 1331 involved a plot to kill a royal minister, Robert of Ely, by use of pins in wax dolls.[39] That this was reckoned an effective means of bringing about the royal demise is attested by a case of some six years earlier when a Master John of Nottingham had been approached by a band of malcontents and offered twenty pounds and his keep in any religious house if he would use this technique to kill the king and a number of others. The method was tested on the unfortunate Richard of Sowe and a visit to his house after a pin had been driven into the doll's head found him "screaming and crying 'harrou' without being able to recognize anyone". He was then dispatched with a pin to the doll's heart. Sadly Master John died before the case came to judgment.[40]

In neither of these cases, the first-mentioned having been brought as a result of being taken in the act by the sherrifs of London the second by approver's appeal, was a specific offence named, the process continuing merely after recital of the alleged activities. The 1352 Statute of Treasons however, gave a handy formula which, though it also covered other transgressions, could be used to include this type of offence, namely "compassing and imagining the king's death".[41] Within the fifteenth century allegations of necromancy aimed against the king were not uncommon, the cases being tried by the Kings' Bench or the Council. In 1419 Joan, the window of Henry IV was accused of the offence.[42] In 1441 Roger Bolingbroke, who, together with the Witch of Eye who was implicated in the same affair was to be immortalized by Shakespeare, was accused of planning by magic to shorten the king's life from a painted chair adorned with swords. Notable persons could be implicated in such plots as evidence of political power struggles.[43] So the Duchess of Gloucester was alleged to have been connected with Bolingbroke whilst Clarence was touched by the revelations which led to the trial of the Oxford astronomer Dr John Stacey on a count of "compassing and imagining" in 1477.[44]

Poisoning continued, both legally and in contempary understanding, to be connected with such magical processes. In 1401 an approver alleged a plot

supported by the clergy to "arrange by necromancy and spell to make an ointment with which to anoint the saddle of the king . . . and before he had ridden ten miles he would be quite swelled up and die suddenly, sitting upright in his saddle".[45] A defendant in July 1419 objected to allegations of treason brought against him as being insufficient in law, there being no specific allegation as to how he had compassed or imagined the death of the king "i.e. by poisoning him in person, or by the black art or by some other contrivance or special device",[46] Goodgrome's appeal of 1440, some archaic and magical features of which have already been mentioned, concerned a plot which was aimed against the King and the Dukes of Gloucester and Norfolk. As in necromancy case of Master John of Nottingham, the potion was given a preliminary test. Goodgrome, who described the brew as "blacke as picche" and giving off "a fowle smoke and agrete stynke" tells of the experiment performed by one of his alleged accomplices: "And so I and the seid John Lyverton' wente into aloft Chamber be syde the Ostrie dore, and ablakke dogge went with us, and the seid John Lyverton' toke out alitille potte of his righte Sleve fast clothed with a litelle pegge, and ther called the dogge to hym, and droppid thre dropes of water upon the dogges bakke, and the seid dogge felle doune deed, and his iiij fete upward". Goodgrome's tale was not believed and the unfortunate molecatcher was himself sentenced to a traitor's death.[47]

Most of the evidence from legal records which I have consulted concerning poisoning in the later middle ages is derived from treasonable enterprises such as those described above. Under Henry VIII a step was taken which was to characterize all poisoning as treason and to prescribe a most fearful punishment for those who undertook it. The origin of the "Acte for poysoning", 22 Henry VIII c. 9, lay in an incident in which there may have been some suggestion, as a letter of the time from Chapuys to Charles V indicates, that the king himself was implicated.[48] Richard Roose, the cook of the Bishop of Rochester admitted that he had put a powder in porridge in the Bishop's kitchen. One Benet Durwen died from eating the brew which also accounted for Alyce Tryppyt, one of a number of poor persons to whom the leftovers were handed. Roose's attempt at exculpating himself is interesting. The powder, he claimed, was not intended to harm those who consumed it; he had been told that it would merely *"tromper"* them. The translation of this term is not easy. Cotgrave's 1611 French Dictionary gives "beguile" or "delude" but the translator of the Calendar of Letters and Patents offers "hocus", a term which, with its magical overtones, is perhaps the most appropriate in this context. Certainly the response to the crime was eminently medieval in its fear of the secret slaying. The Act states that "no person can lyve in suertye out of daunger of death by that mean yf practyse therof shylde not be exchued", and the "condigne punysshmente" is briefly laid down: "the said Richard Roose shalbe therefore boyled to deathe withoute havynge any advauntage of his clargie". This novel punishment, together with the removal of the right to clergy is then prescribed for all subsequent poisoners.

The later history of poisoning reveals more material which is of interest to the legal historian and merits separate treatment. It is not, however, inappropriate to end our survey with Roose's case and the Act of 1531 which it pro-

voked. For here is the dark and secret crime being condemned for its very secrecy and here a potion being used around which there still may have hovered an element of magic. Although such associations are not swift to fade yet the process is perhaps under way during the sixteenth century. Clearly the major developments in the law relating to homicide in general, developments which were being worked out throughout the sixteenth century and which were to create a murder/manslaughter division along the line of a more developed concept of intention, played a part in the fuller assimilation of the crime of poisoning, as of course did the now mature condition of the trial jury.[49] The celebrated case of *Saunders* in 1573 which deals with such issues as the administration of poison through an innocent agent, the problems of transferred malice and accessory liability, does so in a relatively modern way—the case may accurately be termed an investigation of the *mens rea* of murder.[50] But it is not simply the law which is more developed by this time. The indictment, whilst it still reports that the poisoner was "seduced by the instigation of the Devil", in much the same way as had been Chaucer's villain with whom we began, nevertheless reports, quite prosaically, that the poison involved was "called arsenik and roesacre".[51] Although yet again we must assume that common forms of poison had been establishing themselves, probably as remedies against vermin, for a considerable period, such mundane recitation seems worlds removed from Anglo-Saxon conceptions of "flying venom" and the potent king-swelling ointments of the fifteenth century.[52]

Medical opinion had certainly been developing throughout the middle ages and, although by no means divorced from superstition, was becoming gradually a more scholarly discipline—less than a century after Richard Roose had been condemned to be boiled alive William Harvey had discovered the circulation of the blood. Within the fifteenth century the physicians and surgeons had begun to become protective of their skills and the organization and licensing of the professions, although operative in Oxford even before 1350, was greatly extended under Henry VIII. This was partly to repress the risk of sorcery and poisoning[53] and was to lead to some selective reinterpretation of the medieval law on medical criminal liability. Staunford's *"Plees del Coron"* of 1557 gives a defence to felony for a Physician or Surgeon who killed one in his care, but the suggestion is that one who is not qualified as such will be guilty.[54] This protection of the professions is purportedly based on *Britton*, whose discussion as we have seen is based on the quality rather than the qualification of the medical practitioner concerned, and also on a case from Edward III given in Fitzherbert.[55] In this latter case also the doctor is released not because of his accredited status but because he was a man of sufficient ability (*'tiel mestier'*) to exculpate him from felonious intermeddling. It is rather gratifying to see this piece of Tudor protectionist chicanery attacked by Sir Matthew Hale, who, mindful of the unavailability of licensed medical help to many of the poor, strikes a more balanced note. "This doctrine therefore", he states, "that if any die under the hand of an unlicensed physician, it is felony, is aprocryphal, and fitted, I fear, to gratify and flatter doctors and licentiates in physic, though it may . . . have its use to make people cautious and wary, how they take upon them too much in this dangerous employment".[56]

Hale's discussion of poisoning which includes such issues as one giving another "purging comfits" as a joke, with fatal consequences,[57] is fascinating. But it lies in a time remote from belief in "elf-shot" as a cause of disease[58] and in a world very different from that understood by Master John of Nottingham or Robert Goodgrome. Poisoning has been too long ignored for it has been assumed that, as now, it is merely one *modus operandi* of homicide. The legal historian flatters the significance of the law if he assumes that the major developments in the definition of an offence are always the result of the sophistication of substantive legal doctrine. Here we have seen that much wider and more pervasive systems of belief must change before such developments can come about.

NOTES

[1] C. Lombroso: *L'Uomo Delinquente* (1876).

[2] B. Hanawalt: *Crime and Conflict in English Communities 1300-1348* (1979) p. 117. Cf. J. M. Kaye: *The Early History of Murder and Manslaughter* (1967) 83 LQR p. 365 at p. 370: "An inspection of homicide cases on any roll of the itinerant justices reveals that the typical instance of culpable, and therefore capital, homicide was the killing "upon a sudden occasion": we hear little of poisoning and other modes of killing taken, at a later time, to be copybook instances of premeditation . . ."

[3] 22 Henry VIII clx. *Statutes of the Realm*, p. 326.

[4] W. Bonser: *The Medical Background of Anglo-Saxon England* (1963) pp. 282-7. For medieval medicine generally see S. Rubin: *Medieval English Medicine* (1974) and G. H. Talbot. *Medicine in Medieval England* (1967).

[5] Bonser *op. cit.*, p. 283.

[6] G. Chaucer: *The Pardoner's Tale* in F. N. Robinson ed. *The Works of Geoffrey Chaucer* (1957) p. 153 lines 854-5.

[7] For Goodgrome's case, unusual in its use of English on the court record, see M. Aston: A Kent Approver of 1440 (1963) 36 *Bulletin of the Institute of Historical Research*, p. 82 which gives a transcript. I have used the contemporary spelling in quoting from this case but for typographical reasons the "thorn" symbol has been rendered "th".

[8] E.g. Bonser *op. cit.*, pp. 213 et seq., Rubin op. cit., pp. 125 et seq.

[9] Talbot op. cit., pp. 125 et seq.

[10] Bonser op. cit., p. 285.

[11] Bede: *History of the English Church and People* i. 1.

[12] *Chronicle of William of Malmesbury*, Giles ed., (1847) pp. 415-6.

[13] W. Bonser: *Anglo-Saxon Laws and Charms Relating to Theft*, (1946) 57 Folke-Lore pp. 7-11.

[14] *Coke v. Balinger, Select Cases in the Council of Henry VII* 75 Selden Society, C. G. Bayne and W. H. Durham eds., p. 151.

[15] Kilvert's Diary, February 1st 1871 (Plomer ed. 1938) vol. 1 p. 300. See also R. W. Ireland *First Catch Your Toad: Medieval Attitudes to Ordeal and Battle* 1980 II Cambrian LR p. 50.

[16] Aston op. cit., p. 87.

[17] On the figure nine see Bonser, *op. cit.*, pp. 213-216, 282.

[18] Recipes taken from the text of the *Lacnunga* in J. H. G. Grattan and C. Singer: *Anglo-Saxon Magic and Medicine* Part I p. 123.

[19] *Ibid.*, p. 173. This particular concoction was rubbed on the head.

[20] Ibid. p. 113. Bonser, *op. cit.*, p. 9 takes this as referring to the danger of the cure. I suggest that it is merely an appeal for its success, though I certainly wouldn't try the recipe!

[21] Quoted in TSR Boase: *Death in The Middle Ages*, (1972) pp. 9-10.

[22] Rubin: *op. cit.*, pp. 104-5.

[23] On "Morth" slaying see F. W. Maitland *The Early History of Malice Aforethought* in *Collected Papers*, HAL Fisher ed. vol 1 pp. 304 et seq. and Kaye *op. cit.*, pp. 370 et seq.

[24] Edward and Guthrum c. 11, see F. L. Attenborough ed. *The Laws of the Earliest English Kings* (1922), p. 109.

[25] II Aethelstan c. 6, Attenborough, p. 131.

[26] c. 71, L. J. Downer, ed. (1972), p. 226.

[27] c. 36, see A. J. Robertson ed. *The Laws of the Kings of England from Edmund to Henry I*, (1925), p. 268.

[28] *Glanvill* XIV, 3 (G. D. G. Hall ed.) (1965), p. 174, *Bracton* F134 (D. E. Woodbine and S. E. Thorne) (1968), vol. II p. 378, *Fleta* I, 30 (H. G. Richardson and G. O. Sayles ed.) (1955) p. 78. For *Britton's* views see infra note 33.

[29] Kaye *op. cit.*, p. 371.

[30] Supra notes 25 and 26.

[31] Bracton F. 137. See R. W. Ireland *The Presumption of Guilt in the History of Criminal Procedure* 1987 Journal of Legal History p. 243, and 11 Cambrian LR p. 57.

[32] *Fleta* I, 31.

[33] *Britton* I, vi (F. M. Nichols ed. (1865) vol. I p. 34).

[34] *Bracton* F. 120. On *Bracton and Penafort* see F. Schultz (1945), 61 LQR 287.

[35] Book 1 c. 23. On *Fleta's* originality see H. G. Richardson and G. O. Sayles in 99 Selden Society pp. xiv-xx.

[36] *Parson's Tale* lines 575 et seq. F. N. Robinson op. cit., p. 245. For Chaucer and Penafort see W. F. Bryan and G. Dempster: *Sources and Analogues of Chaucer's Canterbury Tales (re-issued 1958)*, pp. 723 et seq. For subsequent legal developments in this area see J. H. Baker *Spelmans Reports* vol. II 94 Selden Society. Introduction p. 306.

[37] *Year Books 1 Henry VI*, 50 Selden Society, (C. H. Williams ed.) p. 3.

[38] *Select Cases before the Court of King's Bench Edward III vol IV*, 82 Selden Society, G. O. Sayles ed., p. 163.

[39] *Select Cases in the Court of King's Bench Edward III vol V*, 76 Selden Society G. O. Sayles ed. p. 53.

[40] *Select Cases in the Court of King's Bench Edward II vol. IV*, 74 Selden Society, G. O. Sayles ed. p. 154.

[41] J. G. Bellamy: *The Law of Treason in England in the Later Middle Ages*, (1970), pp. 126 et seq. though the definition of necromancy given by the author seems rather restricted.

[42] *Ibid.*

[43] *Ibid., English Chronicle from 1377 to 1416*, Camden Society (1856), Davies ed. pp. 57 et seq; Shakespeare *King Henry VI—Part Two*, Act 1 scene 4.

[44] Bellamy op. cit., p. 127; C. Ross: *Edward IV*, (1974), pp. 240 et seq.

[45] *Select Cases in the Court of King's Bench Richard II, Henry IV and Henry V*, 88 Selden Society, G. O. Sayles ed. p. 113 (approver's appeal).

[46] *Ibid.*, p. 251.

[47] Aston: loc. cit.

[48] See the *Calendar of Letters and Papers Foreign and Domestic Henry VIII*, vol 5 (J. Gairdner ed.) no. 120. But note the subsequent decision that poisoning could not, therefore, be murder, Baker op. cit., p. 309 n. 2. Restated as murder Edward VI c. 12, xii.

[49] For the development of the law of homicide see Kaye, op. cit., and Baker op. cit., 303-316.

[50] 2 Plowden 473, 75 E.R. p. 706. Note also the assimilation of poisoning with other homicides in respect of the "year and day" rule, although not without hesitation—Baker *op. cit.*, p. 309 and note, 93 Selden Society pls. 13 and 70.

[51] 75 E.R. p. 706.

[52] On which phenomenon see Bonser *op. cit.*, p. 282.

[53] Talbot, *op. cit.*, pp. 71, 202 et seq. 3 Henry VIII c.xi—"common Artificers as Smythes, Wevers and Women boldely and custumably take upon theim grete curis and thyngys of greate difficultie. In the which they partely use socery and which crafte partlie applie such (medicine) unto the disease as be verey noyous", cf. 34 and 35 Henry VIII c. viii.

[54] Book 1 cap 9.

[55] *La Graunde Abridgement* (1516) Corone p. 163. The case is from the Nottingham Eyre. Presumably this is the case referred to in a discussion of the contractual liability of surgeons, given in A. K. R. Kiralfy: *A Sourcebook of English Law* (1957), p. 184. Fitzherbert gives "Devon" for "Denom"—either a mistranscription or, less likely, a confusion with Hugh De Courteneye, Earl of Devon, who headed the 1330 Bedfordshire Eyre.

[56] M. Hale: History of Pleas of the Crown (1736), vol I. p. 430.

[57] Ibid., p. 431.

[58] On "elf-shot" see Bonser op. cit., pp. 158-167.